(2010) 09 DEL CK 0081

In the Delhi High Court

Case No : Writ Petition (C) No. 2037 of 1992 and C.M. No. 3935 of 1992

Sh. Satish Chand Kapoor (deceased) through LR''s. APPELLANT

Vs

The Financial Commissioner and Another RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:
Delhi Land Reforms Act, 1954 — Section 43, 67, 85

Citation : (2010) 09 DEL CK 0081

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R.P. Bansal, Rakesh Mahajan, Amit Singh and Gautam Anand, for the Appellant; S.S. Dalal and D.P. Singh for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition impugns the order dated 28th February, 1992 of the Financial Commissioner, Delhi. For better appreciation, hereinafter the facts are set out in chronological order.

2. The petitioner filed an application u/s 85 of the Delhi Land Reforms Act, 1954 for having himself declared as Bhoomidar of 36 bighas 17 biswas of land situated in the Revenue Estate of Village Samaspur Khalsa, Delhi. The respondent No. 2 herein was impleaded as a respondent in the said proceedings. It was the case of the petitioner in his application u/s 85 (supra) that he had been in adverse possession of the land belonging to the respondent No. 2 herein; that the respondent No. 2 had failed to initiate ejectment proceedings against the petitioner within the prescribed time and hence the petitioner had become entitled to Bhoomidari rights of the said land. Notice of the said proceeding u/s 85 is stated to have been issued to the respondent No. 2 herein. The process server is stated to have reported that the respondent No. 2 herein refused to accept the notice. The respondent No. 2 herein was proceeded against ex parte and the petitioner was declared as the Bhoomidar of the said land by the SDM/ Revenue Assistant, Najafgarh, Delhi on 15th January, 1985.

3. The respondent No. 2 herein on 12th October, 1987 applied before the SDM/ Revenue Assistant for setting aside of the said ex parte order contending that he learnt of the order dated 15th January, 1985 only on 27th September, 1987 and that neither was he ever served with the summons of the proceeding u/s 85 of the DLR Act nor had he refused to receive the same.

4. The petitioner herein opposed the said application and pleaded that the application was barred by time. The petitioner in this regard relied on a document dated 18th March, 1985 allegedly having the thumb mark of the respondent No. 2 and signature of the son of the respondent No. 2 and in which the respondent No. 2 had admitted knowledge of the order dated 15th January, 1985 declaring the petitioner as Bhoomidar.

5. The SDM/Revenue Assistant accepted the plea of the petitioner of respondent No. 2 at least on 18th March, 1985 having knowledge of the ex parte order dated 15th January, 1985 and dismissed the application of the respondent No. 2 herein for setting aside of the ex parte order as being time barred.

6. Aggrieved therefrom the respondent No. 2 herein preferred the Revision petition before the Financial Commissioner and from the order wherein the present writ petition has been filed.

7. The Financial Commissioner in the order impugned before this Court has recorded that he had called for the file culminating in the ex parte order dated 15th January, 1985 declaring the petitioner as Bhoomidar; however the said file was found to be not available and was not available before the SDM/Revenue Assistant even when the application for setting aside of the ex parte was made. The Financial Commissioner set aside the order of the SDM/Revenue Assistant dismissing the application of the respondent No. 2 for setting aside of the ex parte order dated 15th January, 1985 and set aside the said ex parte order and remanded the matter to the SDM/Revenue Assistant for decision afresh on the application of the petitioner u/s 85 of the DLR Act, after hearing the respondent No. 2. The Financial Commissioner held that the SDM/Revenue Assistant had not given proper opportunity to the respondent No. 2 to meet the case set up by the petitioner on the basis of the document dated 18th March, 1985 and on the basis whereof only the application for setting aside of the ex parte was held to be time barred. The Financial Commissioner further held that the petitioner had failed to explain as to what prompted the parties to execute the said document. The Financial Commissioner also held the missing original case file to be a suspicious circumstance enough to set aside the order therein proceeding ex parte against the respondent No. 2.

8. This Court in exercise of writ jurisdiction would interfere with the orders of the Tribunals/Authorities under its jurisdiction only if finding the order to be in excess of jurisdiction vested in such Tribunal or Authority or in failure to exercise jurisdiction. The writ jurisdiction is not intended to be the same as an appellate jurisdiction. (See Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , Syed

Yakoob Vs. K.S. Radhakrishnan and Others, and Sadhu Ram Vs. Delhi Transport Corporation, . The legislature has deemed it appropriate not to provide any further challenge under the Delhi Land Reforms Act, 1954 to the orders of the Financial Commissioner. This Court in violation of the legislative intent cannot act as the Appellate Court. Ordinarily, an order of the Tribunal/Authority if within its power and if based on reasons would not be interfered merely because this Court may have formed a different opinion.

9. The Supreme Court in Ashok Kumar and Others Vs. Sita Ram, held "The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter, there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the statutory authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction, the High Court is not expected to interfere with the final order passed by the statutory authority unless the order suffers from manifest error and if it is allowed to stand, it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

10. Recently in Punjab Roadways Moga through its General Manager Vs. Punja Sahib Bus and Transport Co. and Others etc. etc., the Apex Court reiterated that a writ court seldom interferes with the orders passed by such authorities exercising quasi-judicial functions, unless there is serious procedural illegality or irregularity or they have acted in excess of their jurisdiction.

11. In the present case there is no dispute that the Revision petition was maintainable before the Financial Commissioner. The Financial Commissioner has given reasons for setting aside of the order of the SDM/Revenue Assistant and for setting aside of the ex parte order dated 15th January, 1985. The reasons given are not such which are totally beyond the context or which may shock the conscience of this Court. The suspicion raised owing to the file containing the report of refusal of service by the respondent No. 2 having gone missing cannot be said to be unfounded. In fact this Court also in the last 18 years since when the petition has been pending before this Court made repeated efforts to call for the said file. The same is however not available. It may be noticed that the file was found missing even when the application for setting aside of the ex parte was moved before the SDM/Revenue Assistant within about 2? years of the ex parte order. The said period of 2? years was not such in which the file would ordinarily be destroyed or could be lost. The fact that the file was missing within a short time does raise questions of propriety.

12. I am therefore of the opinion that the order of the Financial Commissioner is incapable of interference in writ jurisdiction.

13. There is another aspect of the matter. The order of the nature of setting aside of the ex parte decision is essentially a discretionary order, though discretion has to be exercised within the established parameters. Once the discretion exercised is found to be not unreasonable, even an Appellate Court would refuse to interfere in the same. The Supreme Court in Ramdev Food Products Pvt. Ltd. Vs. Arvindbhai Rambhai Patel and Others, held that the appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that Court was reasonably possible on the material -the appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. Recently in Pavan Sachdeva v. S.M.S. Pharmaceuticals Ltd. (2008) 10 SCC 803 the Supreme Court set aside the order of the High Court in exercise of revisional powers setting aside the order of the Trial Court setting aside the ex parte decree.

14. However since the notice of the writ petition was issued and the same has remained pending before this Court for the last 18 years, I refrain from dismissing the writ petition on the aforesaid grounds alone and proceed to deal with the arguments raised by the counsel for the petitioner. However before doing so I must record that it is the petitioner who has shown laxity in pursuing this petition. The petitioner was not willing to have the petition argued even now and was forced to have it argued only when the same was listed on day to day basis. In the interregnum, both the petitioner and the respondent No. 2 have died and their legal heirs have been substituted.

15. The counsel for the petitioner has argued that the respondent No. 2 had in fact sold the land aforesaid. On being asked to show the sale deed, it was told that the sale was by way of Agreement to Sell, original whereof have been filed before this Court and kept in a sealed cover. The said sealed cover was called for and opened. The documents therein besides the Agreement to Sell also contain Registered Receipts. All documents purport to bear the thumb impression of the respondent No. 2. Besides the said Agreement to Sell, the documents also comprise of affidavit and General Power of Attorney. It is contended that the said documents were nowhere challenged by the respondent No. 2. It is further argued that the respondent No. 2 was a resident of the same village and after the ex parte order dated 15th January, 1985, the petitioner had made improvement on the said land by raising construction, installing tube-well and planting eucalyptus trees thereon and without any objection from the respondent No. 2 or any other person. It is urged that the respondent No. 2 being a resident of the same village was aware of the said activities and is thus deemed to have been aware of the ex parte order dated 15th January, 1985.

16. On enquiry from the counsel for the petitioner whether the petitioner had any

copy of the refusal report on the process sent to the petitioner, the counsel relies in negative.

17. The counsel for the petitioner has further contended that the respondent No. 2 had not challenged the Girdawari entries in the name of the petitioner and it is also argued that there has to be presumption of correctness of the proceedings held by the SDM/Revenue Assistant. It is stated that the Financial Commissioner has wrongly held that the SDM/Revenue Assistant in the proceedings for setting aside of the ex parte order did not grant proper opportunity to the respondent No. 2 to meet the defence of the petitioner on the basis of the document dated 18th March, 1985 aforesaid as from the order sheets of those proceedings it is shown that the respondent No. 2 failed to file the rejoinder inspite of opportunity and also failed to appear before the SDM/Revenue Assistant. On enquiry as to the stand of the respondent No. 2 vis-?-vis the document dated 18th March, 1985, it is stated that the Revision petition preferred by the respondent No. 2 before the Financial Commissioner is not available. However from the reply of the respondent No. 2 to the present petition it is contended that the document has not been denied and there is no categorical denial of having not thumb marked the said document. It is urged that the respondent No. 2 after having sold the land to the petitioner had turned dishonest and was blackmailing the petitioner owing to the Sale Deed having not been executed and the document dated 18th March, 1985 was also executed for the said reason only. It is also urged that the son of the respondent No. 2 was employed by the petitioner as the chowkidar for the said land and the document dated 18th March, 1985 also bears the signatures of the son of the respondent No. 2. Reliance is placed on Section 43 of the DLR Act to contend that the transfer of the land with possession is deemed sale and the right of the respondent No. 2 stood extinguished u/s 67(d) of the DLR Act. It is contended that no case for interference in Revision by the Financial Commissioner, with the well reasoned order of the SDM/Revenue Assistant dismissing the application for setting aside of the ex parte order was made out. Reliance is placed on an order of the same Financial Commissioner in another proceeding refusing to entertain the Revision against the order of dismissal of application for setting aside of the ex parte order. Lastly, it is urged that even if the Financial Commissioner was of the view that the application for setting aside of the ex parte order had not been correctly decided by the SDM/Revenue Assistant, the Financial Commissioner should have directed decision of that application de novo instead of setting aside of the ex parte order dated 15th January, 1985. On enquiry as to who is in possession of land, it is informed that the petitioner is in possession of land.

18. The counsel for the respondent No. 2 on the contrary contends that the respondent No. 2 had never sold or agreed to sell the land to the petitioner. It is stated that the petitioner obtained the ex parte order dated 15th January, 1985 from the SDM/Revenue Assistant as a device to dispossess the respondent No. 2 from the land. It is stated that till the ex parte order dated 15th January, 1985 the petitioner was not in possession of the land and armed with the said order

dispossessed the respondent No. 2 from the land and entered into unauthorized possession thereof. It is further argued that with this intent only the petitioner filed a false FIR against the respondent No. 2 of having trespassed on the said land and in prosecution whereunder the respondent No. 2 was acquitted. It is stated that since the present proceedings have been pending, there was no occasion for the respondent No. 2 to file any other proceedings for possession or otherwise against the petitioner. It is also argued that the case, of the respondent No. 2 having sold/agreed to sell the land to the petitioner has been set up for the first time in the present petition and was not the case of the petitioner at any earlier point of time. It is urged that in fact the case of Agreement to Sell is contrary to the case in the application u/s 85 of the DLR Act. It is stated that Section 85 of the DLR Act could not have been invoked if the petitioner was claiming title to the land under Agreement to Sell. It is stated that the Agreement to Sell was not produced before the SDM/Revenue Assistant or the Financial Commissioner also. It is stated that it is for this reason only that the file culminating in the ex parte order dated 15th January, 1985 has been got misplaced.

19. The counsel for the petitioner has not been able to rebut the arguments aforesaid.

20. None of the arguments of the counsel for the petitioner persuade me to interfere even if permissible with the order of the Financial Commissioner. The petitioner cannot now be permitted to rely on the Agreement to Sell and other documents. The proceedings from which this petition has arisen, arose from the application filed by the petitioner u/s 85 of the DLR Act. Such an application lies only from non-institution of the suit for ejectment of a person occupying land without title. The case of the petitioner in the said proceedings was that he had occupied the land of the respondent No. 2 without any title. The petitioner cannot at a subsequent stage in the same proceedings be heard with inconsistent pleadings. In fact such inconsistent pleadings in themselves constitute suspicious circumstances in addition to those noticed by the Financial Commissioner.

21. On perusal of the order sheet of the SDM/Revenue Assistant in the proceedings for setting aside of the ex parte order, I also do not find any error in the reasoning of the Financial Commissioner of proper opportunity having not been given to the respondent No. 2 to meet the case set up by the petitioner on the basis of document dated 18th March, 1985. Though it is correct that the respondent No. 2 had failed to file the rejoinder by/on the date given therefore and had also failed to appear on that date but the SDM/Revenue Assistant showed undue haste in disposing of the application. The application was decided on the very same day when the same was listed next for filing of rejoinder. There is also merit in the reasoning of the Financial Commissioner of there being no occasion for execution of the document dated 18th March, 1985. If the version of the petitioner of being in unauthorized occupation of the land was correct, the petitioner after having got himself declared as the Bhoomidar had no occasion to

approach the respondent No. 2 for executing the declaration document. Similarly, if the version now of the petitioner of being agreement purchaser of the land is correct, then also the document dated 18th March, 1985 does not give reference to the Agreement to Sell. The document dated 18th March, 1985 appears to have been produced only for decision of the application for setting aside of the ex parte order even in the absence of the file in which the respondent No. 2 was proceeded against ex parte and in which file only the report of refusal on the basis of which respondent No. 2 was proceeded against ex parte existed. Else in the absence of the file, the application for setting aside ex parte order was bound to be allowed.

22. I do not find any merit in the contention of the petitioner of respondent No. 2 being not entitled to the relief of setting aside of ex parte order for the reason of having not challenged the documents relied on by the petitioner for the first time in the present proceedings. If the petitioner fails in establishing the case u/s 85 of the DLR Act, the respondent No. 2 would be entitled to his remedies.

23. There is no merit in the petition. The petitioner having held up the proceedings in pursuance to the order of the Financial Commissioner is burdened with the costs of 25,000/-. The parties are directed to appear before the SDM/ Revenue Assistant on 20th October, 2010. The SDM/Revenue Assistant is now directed to decide the application of the petitioner u/s 85 of the DLR Act within eight months of 20th October, 2010.