

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 172/2012

REVISION PETITION UNDER APPENDIX-
VI-B RULE 31 OF DELHI LAND REFORMS
RULES, 1954 READ WITH SECTION 187
OF DELHI LAND REFORMS ACT, 1954.

In the matter of :

Sh. Joginder Singh Khatri
S/o Late Sh. Attar Singh Khatri
R/o H.No. 1/11043
Subhash Park, Naveen Shahdara,
Delhi.

Appellant

Versus

1. Tehsildar Punjabi Bagh,
Main Rohtak Road,
Nangloi, Delhi.
2. Smt. Raj Khatri
W/o Late Sh. Attar Singh Khatri
3. Sh. Kuldeep Singh Khatri
S/o Late Sh. Attar Singh Khatri
4. Sh. Pritam Singh Khatri
S/o Late Sh. Attar Singh Khatri

All Residents of C-4/87-A, Yamuna Vihar, Delhi.

5. Ms. Aradhana Dhama
W/o Sh. Sunil Dhama
D/o Late Sh. Attar Singh Khatri
R/o A-100/11, Gali No. 1,
Gamri Extn., 4 ½ Pushta,
Shastri Park, Pushta Road,
DELHI.

Respondents

D.M. SPOLIA, FINANCIAL COMMISSIONER

Order dated March 14, 2014

1. This order shall dispose of the Revision petition filed by Shri Joginder Singh Khatri under Appendix-VI-B Rule 31 of Delhi Land Reforms Rules, 1954 read with Section 187 of Delhi Land Reforms Act, 1954 against the mutation order dated January 29,

2011 passed by Tehsildar (Punjabi Bagh) in file No. M-302/Teh./PB/2010-11.

2. As per the petitioner the brief facts of the case are as under :-

- (i) One Shri Attar Singh Khatri was the owner of the agricultural land bearing khasra No. 76/12/2(0-10) and 13(4-16), total measuring 5 bighas 6 biswas situated in the revenue estate of village Tikri Kalan, Delhi.
- (ii) Shri Attar Singh Khatri died on September 24, 2010 leaving behind five legal heirs : his widow, Smt. Raj Khatri (R-2), three sons namely Shri Joginder Singh Khatri (Petitioner), Shri Kuldeep Singh Khatri (R-3) and Shri Pritam Singh Khatri (R-4) and one daughter, Smt. Aradhana Dham (R-5).
- (iii) Thereafter, R-2 to R-5 filed an application before R-1, Tehsildar (Punjabi Bagh) for mutation of the said land of deceased in their favour by concealing the name of the petitioner, Shri Joginder Singh Khatri stating that there is no legal heir except R-2 to R-5. In this regard, R-2 filed an affidavit as well and other respondents R-3 to R-5 gave statement on oath before R-1, Tehsildar(Punjabi Bagh).
- (iv) R-1, Tehsildar (Punjabi Bagh) sanctioned mutation in respect of said land in favour of R-2 to R-5 vide order dated January 29, 2011.

3. By way of present petition the petitioner has challenged the above said mutation order dated January 29, 2011 passed by R-1, Tehsildar (Punjabi Bagh) on the following grounds :

- (i) That as per section 50 of Delhi Land Reforms Act, 1954 and also under the provisions of Hindu Succession Act the

petitioner is class-I legal heir of the deceased Shri Attar Singh Khatri, being one of his sons.

- (ii) That R-2 to R-5 had intentionally, deliberately and with malafide intention concealed the name of petitioner as one of the legal heirs of Shri Attar Singh Khatri in their application for mutation before the Tehsildar (Punjabi Bagh) to deprive the petitioner from his lawful and legal right/share in the property of his father.
- (iii) That as per section 23 of Delhi Land Reforms Act, it is the duty of Tehsildar to make enquiry as appears necessary, however, in the present matter R-1, Tehsildar (Punjabi Bagh) has not done proper enquiry to find out all the legal heirs of late Shri Attar Singh Khatri. Had he done that, the fact of one of the legal heirs i.e. the petitioner been left out malafidely would have come to his knowledge and being a disputed case of mutation, the Tehsildar would have transferred the case to the SDM for proper adjudication as per the provisions of section 24 of Delhi Land Reforms Act, 1954. Thus, by passing the impugned mutation order dated January 29, 2011 the R-1, Tehsildar (Punjabi Bagh) has acted in exercise of jurisdiction with material irregularity.

4. As per the reply of R-1, Tehsildar (Punjabi Bagh) at the time of the proceedings of mutation case before him nowhere during the entire process there was any document, statement or any other piece of evidence which might have led him to believe that there was some other legal heir as well thereby necessitating any enquiry. This being so, he had proceeded with passing of the mutation order dated January 29, 2011.

5. The main contention of the Respondents (R-2 to R-5) as per their written and oral submissions is as under :

- (i) That the deceased Shri Attar Singh Khatri during his lifetime had severed all his relations with the petitioner and for the last 27 years the petitioner had been living separately and had no concern or connection with the deceased in any manner.
- (ii) That there is a WILL dated June 24, 2010 executed by the deceased Attar Singh Khatri during his lifetime as per which the land in question has been bequeathed in favour of his two sons namely Shri Kuldeep Singh Khatri (R-3) and Shri Pritam Singh Khatri (R-4) in equal shares. The said WILL was not available at the time of passing of the mutation order dated January 29, 2011 and it has come to the knowledge of R-3 & R-4 at this late stage and they have already moved an application seeking modification of the said mutation order on the basis of this WILL. And this being the development the present revision petition has become infructuous.

6. Having heard all the parties in detail and having gone through the case file this Court's observations are as under:

It is an admitted fact that the petitioner, Shri Joginder Singh Khatri is one of the sons of Late Shri Attar Singh Khatri. Mere severing of contact between the father and the son does not deprive the petitioner of his share in the property of his father unless and until the father had specifically wished otherwise through a WILL. It is further admitted by both the parties that there was no WILL at the time of passing of the impugned mutation order dated January 29, 2011. This being so, the mutation order dated January 29, 2011 of Tehsildar (Punjabi Bagh) does not have the strength to survive and

accordingly it is set aside. The discovery of WILL purported to have been made by late Shri Attar Singh Khatri in favour of R-3 & R-4, at a belated stage raises sufficient & reasonable apprehensions and there is a clear need to establish its genuineness. However, as of now, this Court does not wish to go into the matter any further.

7. In view of the above facts and circumstances, since the mutation in this case is a disputed one, the case is referred to the SDM/RA(Punjabi Bagh) for starting the proceedings *de novo* and pass a well reasoned order strictly on merits in accordance with the law after hearing all the parties concerned. Needless to say, the SDM/RA(Punjabi Bagh) shall club the present case with the application purported to have been moved already by R-4, Shri Pritam Singh Khatri for seeking mutation on the basis of the WILL dated June 24, 2010 of late Shri Attar Singh Khatri.
8. The petition stands disposed of with the above observations and directions.


(D. M. SPOLIA)
Financial Commissioner
Delhi
March 14, 2014