
(2014) 01 DEL CK 0179

In the Delhi High Court

Case No : Writ Petition (Civil) 888/2013 and C.M. Appl. 1687 of 2013

Ashish

APPELLANT

Vs

Govt. of NCT Delhi

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2015) 214 DLT 369

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : V.P. Rana, Advocate for the Appellant; Shariq Mohammad and R.K. Saini, Advocate for the Respondent

Judgement

Hima Kohli, J.—The petitioners have filed the present writ petition praying inter alia for quashing and setting aside the order dated 31.1.2013, passed by the respondent No. 2/Additional Collector/Deputy Commissioner/District Magistrate, North District, Delhi, in an appeal preferred by the respondent No. 3/Samiti. Vide order dated 31.1.2013, the respondent No. 2 had stated that he was making compliances of an order dated 26.11.2012 passed by the High Court in W.P.(C) 7360/2012, a petition filed by the respondent No. 3/Samiti herein, where-under directions were issued to the respondent No. 2 to consider the representation of the respondent No. 3/Samiti for seeking possession of the plot allotted to it during the consolidation proceedings that were held in the year 1954. By the impugned order, the order dated 5.10.2012 passed by the Consolidation Officer on applications filed by the petitioners and the respondent No. 3/Samiti, was quashed and set aside by the respondent No. 2 and directions were issued to the Tehsildar (Alipur) to hand over the physical possession of a parcel of land measuring 6 Bighas situated in village Khera Kalan to the original allottees and their legal heirs with immediate effect. Further, the entries made in the records of rights as per the order dated 5.10.2012 passed by the Consolidation Officer, were directed to be cancelled.

2. The main grievance of the petitioners is that the respondent No. 2 was not

competent to pass the impugned order and that the said order was passed behind their back and without affording them a hearing. Learned Counsel for the petitioners states that the respondent No. 2 does not enjoy judicial powers under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 for hearing the appeal against the order passed by the Consolidation Officer and the remedy against the said order of the Consolidation Officer lies by way of a revision petition before the Financial Commissioner. He further states that it was not brought to the notice of the respondent No. 2 that the members of the respondent No. 3/Samiti had already filed a consolidated appeal against the order dated 5.10.2012 passed by the Consolidation Officer, before the Settlement Officer, which was pending adjudication. Lastly, learned Counsel states that while passing the impugned order, the respondent No. 2 had flouted the principles of natural justice as the petitioners were not called for seeking their response to the order dated 5.10.2012 passed by the Consolidation Officer, more so when the said order had been passed in their favour.

3. Learned Counsel for the respondent No. 3/Samiti states that the subject land was allotted to the members of the Samiti way back in the year 1954 as members of the weaker Section, but possession of the said land was never handed over to them. He states that after the order dated 5.10.2012 was passed by the Consolidation Officer, though the members of the respondent No. 3/Samiti had filed a consolidated appeal against the said order before the Settlement Officer, during the pendency of the said appeal, the appellants therein were apprehensive that the status of the subject land was likely to be changed by the petitioners and therefore, they had approached the respondent No. 2 and simultaneously approached the High Court for appropriate relief. It is however not disputed that the petitioners were never granted a hearing by the respondent No. 2 before the impugned order came to be passed. It is also an admitted position that under the Statute, the remedy against an order passed by the Consolidation Officer lies by way of a revision petition before the Financial Commissioner and not by approaching the Settlement Officer.

4. To resolve the aforesaid issue, it is deemed appropriate to dispose of the present petition with the consent of the parties. Directions are issued that the consolidated appeals stated to have been filed by forty five members of the respondent No. 3/Samiti before the Settlement Officer and disposed of vide order dated 4.4.2013 in the light of the impugned order dated 31.10.2013 passed by the respondent No. 2, shall be revived. As it is the Financial Commissioner, who is the competent authority vested with the power to entertain a revision petition against an order passed by the Consolidation Officer, and not the Settlement Officer, once the appeal is treated as a revision petition, it shall be placed before the Financial Commissioner for further proceedings. The petitioners as also the forty-five members of the respondent No. 3/Samiti, who had filed the consolidated appeal, shall appear before the Financial Commissioner on 3.3.2014, so that pleadings can be completed. Thereafter a date shall be fixed by the Financial Commissioner for both sides to address arguments. Both the parties

shall be entitled to raise before the learned Financial Commissioner, all the pleas as may be available to them, both on facts and in law, within the scope of a revision petition.

5. In view of the aforesaid order, the impugned order dated 31.1.2013 passed by the respondent No. 2 is quashed and set aside. Till appropriate orders are passed by the Financial Commissioner on the application for interim relief as may be filed by the members of the respondent No. 3/Samiti/revisionists, the parties shall maintain status quo with regard to the title and possession of the subject land.

6. In view of the submission made by the Counsel for the respondent No. 3/ Samiti that the members of the Samiti have not been granted possession of the subject land despite the fact that allotments in their favour had matured as long back as in the year 1955, the learned Financial Commissioner is requested to expedite the hearing of the revision petition and make an endeavour to dispose of the same, preferably within a period of three months from the date of conclusion of arguments by both sides. Neither side shall be accommodated for unnecessary adjournments. The petition is disposed of alongwith the pending application.

DASTI to the Counsel for the respondent No. 2.