
(2011) 10 DEL CK 0131

In the Delhi High Court

Case No : Writ Petition (C) No. 492 of 2007

Baljeet Singh

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14, 21(2), 21(3), 42

Citation : (2011) 10 DEL CK 0131

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : N.S. Dalal in W.P. C No.492 and 693/2007, for the Appellant; Ravi Gupta with Mr. Kuldeep Balhara, Advocate for Respondent No. 3. in W.P. (C) No.492 and 693/2007, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—On 8th September, 1993, Notification u/s 14 of East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948 was issued for consolidation of holding in Village Kanjhawla, Delhi and on 6th July, 1996, petitioners herein had made an application to the Authorities concerned to make a demand for allocation of 2 bighas and 2 biswas of land towards North-East side of this Village.

2. On 14th November, 1996, a scheme under the aforesaid Act was prepared and was announced in this Village and thereafter, on 8th September, 1998 an application was made by the petitioners to the Consolidation Officer regarding confirmation and clarification about their possession. In the year 1999, petitioners had filed their objections u/s 21(2) of the East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948, thereby showing that how the allotment of Khasra No. 144/32 of this Village is wrong and as to how the petitioners are entitled to the allotment therein as they had been using this land as Gher and Gitwar since long.

3. Projecting the factual position as narrated above, petitioners assert that on 25th February, 2000, without deciding the application and objections of the petitioners and also without looking at their proposal, their objections were dismissed by the Consolidation Officer only on the ground that the plot in question has been allotted in another case to somebody else by his predecessor and it cannot be reviewed.

4. Aggrieved by the aforesaid order of 25th February, 2000 of the Consolidation Officer, petitioners herein had preferred statutory appeal u/s 21(3) of East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948 which was allowed, holding as under:-

It is admitted that the C.O. has not considered the objections of the appellant U/s 21(2) and was not given due opportunity of being heard and decided the matter by saying that "the claim of the appellant could not be finalised as the said Plot No.144/32 has been decided in somebody else's favour by my predecessor Sh.C.L.Gaur which the present P.O. cannot review, hence objections rejected". The Plot No.144/32 has been allotted from the G.Sabha Land to Respondent No. 2 (Rohtas) whereas the appellant has been using the same for his Gher and Gitwar since long. According to scheme "if someone is in possession of G.Sabha Land, he is entitled for allotment of the same" since the appellant was in possession in G.Sabha Land bearing Khasra No. 144/32 (New), so the appellant is entitled for allotment of the same. Contrary to that the Respondent No. 2 (Rohtas) is not entitled for allotment of Khasra No. 144/32 not being in possession of the same. In the light of above observation I accept the appeal of the appellant and set-aside the order dated 25.2.2000 passed by the Consolidation Officer. Further the Plot No.144/32 is withdrawn from the Respondent No. 2 (Rohtas) and allotted to the appellant to the extent of 1/2 share of Easter side. The C.O. is directed to make necessary changes in the revenue record.

5. Dis-satisfied with the Appellate Order of 1st November, 2002, Respondent No.3 - Rohtas herein, had resorted to statutory remedy of preferring a revision petition u/s 42 of the East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948 and the learned Financial Commissioner vide impugned Order of 14th December, 2006, had accepted the revision petition while noting as under:-

It is an admitted fact that plots in the suit land were allotted during re-partition proceedings to the petitioner and that his possession was not disturbed in appeal decided by the Consolidation Officer through Order dt.25.2.2000. I find on record a clarificatory application submitted by Respondent No. 2 to the CO dated 18.9.98, which claim his possession on the suit land alongwith its direction but there is no application or demand letter from Respondent No. 2 on record which establishes his preferential claim over the suit plots. In the light of the above, I find that the impugned order is not a speaking order since it has reached a conclusion regarding possession of Respondent No. 2 without any documentation

or evidence. I am therefore inclined to accept the revision petition filed by the petitioner against the impugned Order.

6. Since the petitioners i.e. Baljit Singh on one hand and Ashok etc., on the other hand, stake their claim in the land in question, i.e., Khasra No. 144/32 to the extent of 50% each and the facts of the above titled two petitions being identical, submissions advanced in these two petitions were common ones and so, this order would govern the fate of both these petitions.

7. It was strongly contended by Mr.N.S.Dalal, learned counsel for the petitioners that u/s 42 of East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948, learned Financial Commissioner has to do justice and has to look at the preferential right and has to look at the fact whether the allotment is as per the scheme or not. Since the allotment of Respondent No. 3 is contrary to the scheme and this fact has not been looked into by him and on no ground, the Respondent No. 3 is entitled for two plots and that too on the main road and he has already got the enrichment by having more land in lieu of inclusion of his another land within the Lal Dora and as such the order of the learned Financial Commissioner is wrong and there can be remand to the learned Financial Commissioner thereby directing him to decide the entire questions including; (i) his entitlement on various grounds so raised by him in the objections; (ii) his entitlement on the ground of scheme; (iii) his entitlement on the ground of preferential right; (iv) his entitlement on the ground of being smaller bhumidhar; and on the grounds which are inherent and ancillary to that vis-?-vis the claim of the Respondent No. 3 and if this is to be seen on this touchstone then the Respondent No. 3 is not entitled for this plot No.144/32 rather he is entitled for the plot at some other place.

8. Ultimately, with much vehemence, it was urged by petitioner's counsel that if the impugned order had found the appellate order to be non-speaking one, then in all fairness, the Financial Commissioner ought to have remanded this matter to the Consolidation Officer who had illegally refused to exercise the jurisdiction vested in him. Reliance was placed by Mr.N.S.Dalal, learned counsel for the petitioners upon a decision in WP(C) No.133/2008 Sardar Singh v. Financial Commissioner, Delhi, rendered on 9th February, 2011 to assert that where contentions urged are not dealt with, the appropriate course is to remand the matter back.

9. To the contrary is the submission of Mr.Ravi Gupta, Senior Counsel for Respondent - Rohtas, who points out the futility of remanding this matter back, by drawing the attention of this Court to the objections of 24th June, 1998, (Annexure P-3) filed by the petitioners, to highlight that what is being urged now on merits, is not part of the objections raised by the petitioners to the re-distribution of the land in pursuance to the Consolidation Scheme in question. Thus, it was contended that these two petitions lack substance and so deserves dismissal.

10. Upon having considered this matter in its entirety, it transpires that it is beyond dispute that it is the mandate of the Consolidation Scheme that "if someone is in possession of Gaon Sabha land, he is entitled for allotment of the same". Appellate Authority has found that the petitioners to be in possession of the Khasra No. 144/32 in question as they had been using the same for their Gher and Gitwar since long. This finding of the Appellate Authority was questioned by the Revisional Authority on two counts. On the first count, impugned order finds fault with the Appellate Order on the ground of it being non-speaking and on the second count, it finds that the petitioners are unable to substantiate their possession over the land in question.

11. Learned counsel for the petitioners is right in his submission that if a statutory authority finds the order questioned before it, to be non-speaking then, appropriately the matter needs to be remanded. But, this is not the end of it. On the second count, impugned order finds that the petitioners do not have any evidence to indicate their possession on the land in question. It was on the second count, learned counsel for the petitioners could not satisfy this Court as to how the finding in the impugned Order is bad in law.

12. Upon being so confronted, it was then urged by petitioners' counsel that the objections of the petitioners ought to have been dealt with at any stage on merits and the petitioners cannot be non-suited in the manner they have been done by the Consolidation Officer and the Revisional Authority and an inspection of Khasra No. 144/32 ought to have been got conducted to ascertain petitioners' possession over it.

13. Faced with such a situation, at the hearing, it was put to petitioners' counsel that to do substantial justice, a spot inspection can be got done at this stage to ascertain as to who is in actual physical possession of the land in question and this was acceptable to Respondent's counsel but the petitioners' counsel had avoided it, by urging the merits of petitioners' claim.

14. It is no longer res-integra that in exercise of the writ jurisdiction, this Court is not to enter into merits and demerits of the claims raised in the proceedings like the instant one, and has to just satisfy itself as to whether there is any error apparent on the face of the record. Upon having tested the impugned order, in the light of the objections raised by the petitioners, this Court realises the futility of remanding this matter for decision afresh on the petitioners' objections, as they are conspicuously silent upon their being in physical possession of the land in question, i.e., Khasra No. 144/32, Village Kanjhawla, Delhi. Thus, the decision in Sardar Singh (supra) does not come to the rescue of the petitioners.

15. As a sequel to the above narration, finding no error apparent on the face of the impugned order, these two petitions are dismissed while leaving the parties to bear their own costs.