
(2014) 05 DEL CK 0013
In the Delhi High Court
Case No : LPA 2006-11/2006

Balwan Singh and Others

APPELLANT

Vs

DDA and Others

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Contract Act, 1872 — Section 23
Delhi Development Act, 1957 — Section 12
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14(1), 14(2), 21(1), 42
Land Acquisition Act, 1894 — Section 4

Citation : (2014) 143 DRJ 442

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : Sumit Bansal, Mr. Ateev Mathur and Ms. Richa Oberoi, Advocate for the Appellant; V.K. Tandon, Advocate for R-2 and R-3 and Mr. Mahendra Rana, Advocate for R-8, Advocate for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Issue concerns the interpretation of the proviso to Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, as applicable in Delhi. Hereinafter it would be referred to as "The Act". The Section reads as under:-

42. Power of Chief Commissioner to call for proceedings—The Chief Commissioner may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be

heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.

2. As per the scheme of the Act, consolidation of land holdings commences when a notification is issued u/s 14(1) of the Act followed by the Constitution of an Advisory Committee having representatives of the stakeholders i.e. land holders. A scheme of consolidation has to be prepared by first publishing a draft scheme and inviting objections thereto from the land holders. The objections have to be decided. A final scheme for consolidation has to be notified. Thereafter, in terms of the notified scheme for consolidation, the consolidation of holdings has to be given effect to. A Consolidation Officer functions as the Nodal Officer. A Settlement Officer supervises.

3. On August 01, 1988, a notification u/s 14(1) of the Act was issued initiating consolidation proceedings in village Singhola and on April 13, 1989 a Consolidation Officer was appointed when a notification u/s 14(2) of the Act was issued. On May 25, 1989 an Advisory Committee was constituted. On March 21, 1990 the notification initiating the consolidation proceedings was annulled. On August 24, 1990 fresh notification was issued to initiate consolidation proceedings in village Singhola. On June 10, 1992 the scheme for consolidation was announced. On March 19, 1993 a declaration was issued u/s 4 of the Land Acquisition Act, 1894 to acquire, for the plan development of Delhi, certain lands in the revenue estate of village Singhola and these lands were the ones proposed under the consolidation scheme to extend the village abadi. On April 28, 1993 a memorandum was issued that in view of the proposed acquisition of the land in the southern direction of the village, which as per the scheme of consolidation was to be used to extend the abadi of the village, requiring the village abadi to be extended in the northern direction. Such land holders who had made demands for allotment of residential plots in the extended village abadi were requested to re-submit their demands for residential plots in the northern direction so that the scheme for consolidation could be amended. On May 25, 1993 the scheme for consolidation was revised and objections invited. The final scheme for consolidation was confirmed on July 14, 1993 by the Settlement Officer. Thus, the Consolidation Officer was in a position to effect re-partition. The scheme for re-partition was challenged in a writ petition in this Court but since the scheme was revoked the writ petition was withdrawn.

4. The Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959, hereinafter referred to as "the Rules" were amended on June 12, 1996, statutorily providing that for every 1 bigha of land in the extended abadi 2 bigha land in the holding would have to be surrendered. On July 03, 1996 a meeting of the land holders was held which appointed a 17 member advisory committee. It was followed by a publication of a draft scheme for consolidation once again on August 05, 1996 which appears to have been approved on March 14, 1997 and thereafter confirmed by the Settlement Officer on the footing that no objections were filed to the draft scheme. On April 25, 1997 the Consolidation Officer

confirmed that the scheme had been confirmed. The certified copy of the scheme was not made available to the villagers who became suspicious and made applications to the Settlement Officer raising a grievance that the Consolidation Scheme appears to be clothed with secrecy. On May 12, 1997 the Settlement Officer made a note that till said date he had not confirmed the scheme for repartition. On September 12, 1997 village Singhola was declared a development area u/s 12 of the Delhi Development Act.

5. Facts hereinafter are highly disputed. Whereas the Consolidation Officer claims that having notified the scheme for re-partition he concluded re-partition proceedings, the appellant claims to be contrary.

6. Writ petitions were filed in this Court alleging a large scale fraud. It was pleaded that the so called resolutions were contrived. It was alleged that the Consolidation Officer in collusion with influential land holders sat in his house and drew up sham proceedings. Representations were also made to the Lt. Governor of Delhi on the administrative side who directed the Deputy Commissioner of the concerned area to conduct an inquiry and submit a report. The Deputy Commissioner submitted a report, and the relevant parts thereof read as under:-

Consolidation:

From the record available in the Tehsil Office. It surmises that the consolidation proceedings were initiated twice in this village, once in September, 1988 and then in July, 1996. A chart of the main dates of the two sets of proceedings as entered in the respective consolidation register is placed at Annexure-II. It would be seen that repartition proceedings u/s 21(1) of the East Punjab Holdings (Prevention and Fragmentation) Act, were undertaken between 06.09.93 to 15.09.93 in proceedings were dropped and resumed again in the year 1996. It is the proceedings in the second instance that have been referred to in the term and reference of this inquiry and are being covered in the details given below, corresponding to serial No. 1 of the order of Inquiry.

2. As per the entries recorded in the consolidation proceedings register (II), during the proceedings of repartition u/s 21(1) between 26.05.1997 and 02.06.1997, 169 residential plots and 187 industrial plots were carved out and recorded. Out of 169 residential plots, 105 were of the size of 2 bigha and 2 biswas each, while 64 plots were of miscellaneous sizes. Details of these 169 plots and of miscellaneous sizes of 64 plots are available at Annexure-III A& B. All the 187 industrial plots were of 6 biswas each, details at Annexure-IV. As per resolution No. 33, in all 06 khasra Nos. were taken in Kayami (confirmation in situ) done in the extended Abadi, whose details are available at Annexure-V. Total areas of residential plots was 313-03 bighas and of all industrial plots 2 was 56-02 bighas. Residential Kayamis were in 11-05 bighas. The grand total comes to 380 bighas 10 biswas.

The possession of all these plots is shown as handed over on 03.06.1997 in the consolidation proceedings register, signed by A.C.O. under resolution No. 36

(number used twice in the proceedings). It bears signatures of 212 effected persons. A further resolution No. 37, dated 03.06.1997 records the presence of 273 persons confirming the distribution of pass books to them on the same date. These two resolutions imply that:-

a) All this was done physically on one day itself, i.e. 03.06.97, and with the consent of all right holders shown present and signing the same day.

3. As per the details available in this Register, following officials were associated with the consolidation proceedings.

xx x

(B) As for the area of possession reportedly given after consolidation, it has to be appreciated here that the details given above cover only the area that is included in the Abadi Deh (initial Lal Dora at the time of settlement), the phirni (extended Lal Dora in 1951-52 and the extended phirni area (under this Consolidation). This includes plots carved out and allotted under residential, industrial and kayami categories. However, as per the register, there were 383 Khatas in all in this village, out of which 212 have been recorded as having been given individual possession and 273 as being given the pass books also on 03.06.1997. These will also cover a vast area of agricultural land, the details of which have not been furnished above, but have been reflected in this map in sky blue colour, as distinct from the red colour which covers the plotted area. If any further identification of possession of agricultural holding, as distinct from plots, is desired that will require the following additional details:

I) Identification of Khatadras in these 383 khatas with individual details of their holdings both agricultural as well as in the extended phirni.

II) Since the possession has been shown to 212 person, whose names alone have been given, their identification of holdings as after consolidation proceedings.

III) Identification of the holdings of both kind of 273 persons shown as receiving pass books.

As mentioned before, it is not clear whether all these details are required to be furnished in this inquiry. If that be so, it would need a physical survey of the entire village khasrawise, synchronized with verification of pass books. This alone will establish the position of physical possession on ground vis-?-vis what has been shown on record. This will require substantial additional time. Of course, this will also require active cooperation of the khata holders, which may not be forth coming easily, and from all, as would be clear after perusal of the findings of this inquiry which follows:

Nonetheless a sample survey was got conducted in respect of the holdings inside and outside the Lal Dora, which indicates that a mixed possession may be obtaining on ground, mixed meaning as prior to consolidation and after that.

Much resistance was offered during the sample survey; a complete survey will require detailing additional field staff and precautions on the law and order side.

Court Cases:

During course of this inquiry it has been brought to my notice that the proceedings of the consolidation have been stayed by the Hon'ble High Court of Delhi vide its order dated 13.06.1997 and subsequently a contempt petition has also been filed against the Consolidation Officer. The Court is understood to have also set up a committee of GNCTD and DDA functionaries. Copies of some of these order are placed at Annexure-VII-A, B, C & D.

Findings:

Before I record findings, which are in respect of item No. (1) of the terms of reference and based on the consolidation proceedings register No. 2 (photocopy placed as Annexure No. IX), I may underline that the writ petition referred to above is understood to be hearing into the merits of consolidation are not a part of these findings (nor was this included in the terms and reference desiring this inquiry).

Certain aspects which arouse curiosity and have come to the fore on perusal of the consolidation register are as follows:

I) The register has not been serialised.

II) Pages have been left blank between resolutions.

III) Pages have been left blank even within the course of one resolution, that too even in the most important proceedings of repartition as from 26.05.1997 to 02.06.1997.

IV) Resolution Nos. have been repeated (No. 36) also and there are contradictory resolutions (25, 27, 30) too.

V) While the initial proceedings have the signatures of more than one functionary including and specially those of the Consolidation Officer, the later and material proceedings have only one signature, purportedly that of the A.C.O.

VI) The signatures of A.C.O. need verification.

VII) The proceedings from 26.05.97 to 02.06.97 have not been concluded/signed and when shown as concluded not signed.

VIII) Resolution Nos. 36 (second of this number) and 37 have been recorded purportedly on 03.06.97. However, a scrutiny shown that some signatures carry dates subsequent to 03.06.97.

IX) 273 pass books have been shown distributed and 212 possession claimed given in one day.

X) Most surprising fact is the non-signing of the repartition, the possession and

the pass books distribution proceedings by the Consolidation Officer, who has although signed proceedings that variously preceded.

Concluded.

7. On May 17, 2000 the Lt. Governor of Delhi passed an order which reads as under:-

Order

The inquiry report of the Deputy Commissioner dated 2 March 2000, which has been sent by the Divisional Commissioner and is placed in a separate file below, is of an interim nature. Still, it points out several incongruities, which raise doubts about the correctness of the consolidation proceedings. I agree, therefore with the recommendation of the Divisional Commissioner that he consolidation scheme be revised. While doing so the following will have to be kept in view:

(a) The revised norms concerning the maximum size of residential plots and prohibition on allotment of industrial plots.

(b) The points mentioned in the inquiry report of the Deputy Commissioner.

(c) It has to be ensured that for the residential area allotted in the extended Lal Dora commensurate amount of agricultural land is ceded. It has to be particularly ensured that in the entire process of consolidation the Goan Sabha is not casualty.

This may be brought to the notice of the Court, which has already stayed any further action under the previous scheme. A self explanatory submission should be made to the Court in this behalf, including the inquiry report of the Deputy Commissioner.

8. It is apparent, and this is not disputed by any party, that the order dated May 17, 2000 was issued by the Hon"ble Lt. Governor of Delhi u/s 42 of the Act, which confers a revisional power on the Chief Commissioner (in Delhi the Lt. Governor). Learned counsel for the parties were not at variance that said power could be exercised even suo moto by the Hon"ble Lt. Governor of Delhi.

9. The aforesaid order has been set aside by the learned Single Judge on the ground that evidenced by the proviso, no order or scheme or re-partition can be varied or reversed without giving a notice to the parties interested. The learned Single Judge has held that it is now well settled that an integral component of the principles of natural justice is the right to be heard: Audi alteram partem. The learned Single Judge has taken note of the fact that the latter part of the proviso to Section 42 contains the exception to the Rule of not granting an opportunity of hearing to the persons likely to be affected, provided a satisfaction was arrived at that the consolidation proceedings have been vitiated by unlawful consideration. Finding no such satisfaction recorded either in the report submitted by the Deputy Commissioner to the Hon"ble Lt. Governor or in the order passed by the Hon"ble Lt. Governor, the learned Single Judge has

concluded that the order was liable to be set aside. So concluding, the learned Single Judge has observed that the Hon''ble Lt. Governor would be free to exercise the revisional power u/s 42 of the Act but after issuing notice to the parties likely to be affected. On the subject as to what would constitute unlawful consideration for the purposes of invoking the power under the proviso to Section 42 to dispense with granting opportunity of hearing to the persons likely to be affected, the learned Single Judge has noted an earlier opinion pronounced by him reported as *Rajinder Singh and Others Vs. Financial Commissioner and Others*, wherein the learned Single Judge had noted that in the Act, there being no definition of the phrase "unlawful consideration", the same would have its generic meaning as per Section 23 of the Contract Act, 1872 which states that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another, or the Courts regards it as immoral, or opposed to public policy.

10. Our job in appeal is simple. Whether the facts noted in the report submitted by the Deputy Commissioner, make out a case for it to be held that the proceedings of consolidation have been vitiated by unlawful consideration.

11. But before that, we overcome a technical objection which has weighed with the learned Single Judge. Neither the report submitted by the Deputy Commissioner nor the order passed by the Hon''ble Lt. Governor records a satisfaction that in their opinion the proceedings have been vitiated by unlawful consideration.

12. It is trite that it is the substance which matters and not the form. Not reciting the mantra that I am satisfied that the proceedings have been vitiated by unlawful consideration would not mean that the recitation of the hymns is not as per the scriptures. We would thus be guided by the substance, for if on a meaningful, not pedantic, reading of the report which has formed the basis of the order passed by the Hon''ble Lt. Governor we find an opinion emerging making out a case of the proceedings being vitiated by unlawful consideration, it would warrant an interference in the appeal.

13. The learned Deputy Commissioner has very succinctly brought out as many as 10 wrongs noted by him with reference to the record of consolidation. We re-note the 10. They read as under:-

I) The register has not been serialised.

II) Pages have been left blank between resolutions.

III) Pages have been left blank even within the course of one resolution, that too even in the most important proceedings of repartition as from 26.05.1997 to 02.06.1997.

IV) Resolution Nos. have been repeated (No. 36) also and there are contradictory resolutions (25, 27, 30) too.

V) While the initial proceedings have the signatures of more than one functionary including and specially those of the Consolidation Officer, the later and material proceedings have only one signature, purportedly that of the A.C.O.

VI) The signatures of A.C.O. need verification.

VII) The proceedings from 26.05.97 to 02.06.97 have not been concluded/signed and when shown as concluded not signed.

VIII) Resolution Nos. 36 (second of this number) and 37 have been recorded purportedly on 03.06.97. However, a scrutiny shown that some signatures carry dates subsequent to 03.06.97.

IX) 273 pass books have been shown distributed and 212 possession claimed given in one day.

X) Most surprising fact is the non-signing of the repartition, the possession and the pass books distribution proceedings by the Consolidation Officer, who has although signed proceedings that variously preceded.

14. The first four wrongs i.e. the register not being serialised, pages being left blank between resolutions and even within resolutions blank pages left out and in particular concerning the two most important proceedings of repartition held between May 26, 1997 to June 02, 1997 would bring out that if permitted to be taken to the logical conclusion the same would defeat the provisions of the Consolidation Act. It has to be kept in mind that the villagers had raised a serious issue whether at all a scheme for re-partition had been finalized and notified to the villagers. Whereas the Consolidation Officer wrote a letter on April 25, 1997 that the scheme had been confirmed in the week before the date when he wrote the letter, on May 12, 1997, the Settlement Officer had made a note that he had not confirmed the scheme.

15. Further, the wrong as per Serial No. VII concerning the proceedings between May 26, 1997 to June 02, 1997 would evidence that some proceedings which were shown as concluded were not signed and that some proceedings which ex-facie unconcluded were signed. Two resolutions bearing same No. 36 and a resolution No. 37 purportedly concluded on June 03, 1997, bear signatures carrying dates subsequent to June 03, 1997 when the signatory appended signatures thereto. The next wrong found at Sl. No. 9 would show that 212 persons were given possession on one day. We find it impossible that on one day the Consolidation Officer could, to the satisfaction of 212 persons, demarcate their consolidated holdings brought at one site. We simply highlight that the pithily summarized wrongs by the Deputy Commissioner have been elaborately brought out in the preceding paragraphs of the report with reference to the record and a mere reading thereof would bring out that the proceedings as recorded were a sham. So pervasive is the sweep of the deficiencies found in the record that one can find no escape to conclude that the Consolidation Officer did so at the instance of some land holders to give them a benefit forbidden by law

and in any case the proceedings would evidence that there was an understanding between the Consolidation Officer and some land holders, which agreement resulted in sham proceedings to be drawn up, and if permitted would defeat the provisions of the law. Further, the proceedings which were pursuant to an obvious agreement would cause injury to the other land owners. In any case, if one finds that the proceedings drawn up are sham, that would be the end of the matter for the so-called consolidation proceedings would be consolidation proceedings improperly so-called.

16. Where the underlined acts constituting a wrong are so pervasive that the entire process would require to be scrapped because nothing worthwhile can be salvaged, the situation would be akin to where unfair means are adopted at an examination by a vast majority of the students. The board is not then required to grant an opportunity to all the candidates to represent their cases if the examination as a whole was to be cancelled. The reason being, as held in the decision reported as *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, the board has not charged any particular candidate for having resorted to unfair means so as to enable him to defend himself. The mass scale adoption of unfair means having vitiated the examination as a whole required the examination as a whole to go. (para 13)

17. The facts noted by the learned Deputy Commissioner bring out a fraud committed by the Consolidation Officer. The report brings out that the re-partition effected as per the record was illusory because the record was manipulated.

18. A fraud vitiates everything.

19. The appeal is accordingly allowed. Impugned decision dated September 18, 2006 passed by the learned Single Judge is set aside. The order passed by the Hon"ble Lt. Governor on May 17, 2000 is upheld.

20. No costs.