

(2013) 11 DEL CK 0041

In the Delhi High Court

Case No : LPA 68 of 2013

Balwan Singh and Others

APPELLANT

Vs

Settlement Officer and Another

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Delhi Panchayat Raj Act, 1954 — Section 18

Citation : (2013) 11 DEL CK 0041

Hon'ble Judges : Nuthalapati Venkata Ramana, C.J; Manmohan, J

Bench : Division Bench

Advocate : N.S. Dalal with Mr. Devesh Pratap Singh, for the Appellant; Yogesh Saini and Ms. Deepti Gaur, Advocates for Mr. V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present Letters Patent Appeal has been filed challenging the judgment and order dated 03rd December, 2012 passed by learned Single Judge in W.P.(C) 8965/2007 whereby the writ petition filed by twenty-one villagers of village Mundka, Delhi, challenging the order of Settlement Officer (Consolidation) dated 04th April, 1983 directing shifting of cremation ground to a new location at the outskirts of extended Lal Dora of the said village was dismissed. The learned Single Judge while dismissing the writ petition has observed as under:-

9. Upon in-depth consideration of the submissions of respective parties and on perusal of material on record, this Court finds that Settlement Officer's order of 4th April, 1983, which is based upon Financial Commissioner's order of 8th October, 1982 has attained finality and operates as res-judicata. It needs no reiteration that an Authority does not have jurisdiction to decide a matter if res-judicata or principle of estoppel arises. However, in this regard, a decision of a Coordinate Bench of this Court in Rajinder Singh and Ors. Vs. Government of the National Capital Territory of Delhi and Ors., rendered on 17th August, 2007 can be referred to with advantage.

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11. Attention of this Court was not drawn to any provision of law which permits Financial Commissioner to recall or review its order. Undisputedly, order of 8th October, 1982 passed by the earlier Financial Commissioner, Delhi has attained finality. Therefore, Financial Commissioner, Delhi was justified in not entertaining revision petition against aforesaid order of 8th October, 1982 and Settlement Officer's order of 4th April, 1983, which has attained finality.

12. So far as jurisdictional bar raised by petitioners' counsel is concerned, suffice it would be to say that no doubt, regulation and maintenance of public utility lands is to be done by Gaon Sabha/Gaon Panchayat concerned but its relocation during the consolidation proceedings can be only done by the consolidation authorities. It is so said, because a plain reading of Section 18 of Consolidation Act makes it abundantly so clear. Aforesaid provision reads as under:-

18. Lands reserved for common purposes - Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct -

(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;

(b) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose.

13. In view of the afore-noted provision of law, Financial Commissioner's order of 8th October, 1982 relocating the cremation ground outside the extended abadi of village is not only sound on facts but in law as well.

14. As is evident from the aforesaid narration, the jurisdiction to relocate public utility land during consolidation proceedings is of consolidation authorities and not of Gaon Sabha/Gaon Panchayat, whose one of the duty and function as enumerated in Section 18 of The Delhi Panchayat Raj Act, 1954, is to regulate and maintain such cremation grounds.

15. Since aforesaid Deputy Commissioner's Affidavit of 22nd March, 1995 in contempt proceedings before Financial Commissioner in another matter and the Gaon Panchayat Resolution of 11th July, 1983, which appears to be defective for want of quorum, are in ignorance of Section 18 of Consolidation Act as noted herein above, therefore, they are to be discarded as it is abundantly clear from afore-going narration that jurisdiction to relocate any public utility land of Gaon Sabha/Gaon Panchayat during consolidation proceeding is of consolidation authorities and not of Gaon Sabha/Gaon Panchayat....

(Emphasis supplied)

2. Learned counsel for appellants submitted that the learned Single Judge failed to appreciate that earmarking of a ground for cremation purpose was the sole

prerogative of the Gram Panchayat, who had vide its resolution dated 09th April, 1983 resolved to use the land in question for that purpose.

3. He further submitted that if the impugned order was not set aside, it would amount to taking away or abridging the appellants' fundamental right to freedom of religion.

4. A perusal of the paper book reveals that initially the Gaon Sabha had filed a writ petition challenging the order of Financial Commissioner dated 26th May, 1995 on the ground that he had failed to consider the unanimous Gaon Sabha's resolution dated 11th July, 1983 resolving that the land in question be used as a cremation ground and not for any other purpose.

5. Not only the said writ petition was dismissed, but also an appeal being LPA No. 93/1997 filed against the order of the learned Single Judge was dismissed by a Division Bench of this Court vide order dated 23rd January, 2001. The said order of the Division Bench reads as under:-

We do not find any infirmity or illegality in the order of the learned Single Judge dated February 21, 1997. The learned single Judge has rightly pointed out that the appellant did not challenge the order passed by the Financial Commissioner dated 8th October, 1982, as a consequence of which the order attained finality. The subsequent order passed by the Financial Commissioner on 26th May, 1995 merely directed the implementation of the earlier order dated 8th October, 1982. Even otherwise, we find that the stand of the appellant is not justified. It has been found as a matter of fact that Khasra No. 191 in village Mundka is surrounded by residential houses and in view of this situation, the authorities were of the opinion that the cremation ground should be shifted elsewhere. We are told that an alternative site for cremation has been provided.

In view of the foregoing, the appeal is hereby dismissed and the interim order dated 25th April, 1997 stands vacated.

(Emphasis supplied)

6. In view of the aforesaid order, we pointed out to learned counsel for appellants that the present appeal amounted to re-litigation and was liable to be dismissed with costs.

7. However, learned counsel for appellants submitted that the principle of re-litigation was not attracted as the present appellants were not parties to either the aforesaid writ or Letters Patent Appeal No. 93/1997 and in any event, the said proceedings had been dismissed on the short ground that the Financial Commissioner's order dated 08th October, 1982 had not been challenged--which the appellants had done in the present proceedings.

8. However, we are not convinced with the arguments of the learned counsel for appellants, as upon a reading of the earlier Division Bench's order in LPA 93/1997, we find that the matter was also decided on merits.

9. We are of the view that the order with regard to cremation ground could only have been challenged by the Gaon Sabha, which challenge having failed, the present proceeding at the instance of the appellants was not maintainable.

10. We may mention that there is an increasing tendency today amongst the litigants to challenge orders which have attained finality by filing fresh writ petitions through a new set of petitioners. If this unhealthy trend is not checked at the earliest, we are of the view that tomorrow another set of villagers shall approach this Court challenging the previous and today's decision of the Division Bench on the ground that they were not parties to either of the two proceedings.

11. The Supreme Court in *K.K. Modi Vs. K.N. Modi and Others*, has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier. This re-agitation may or may not be barred as *res judicata*. In our opinion, if an issue which has attained finality is sought to be re-agitated, it amounts to an abuse of the process of the court. In our view, frivolous or vexatious proceedings also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like in the present case.

12. Consequently, present Letters Patent Appeal amounts to re-litigation of an issue that had been settled in LPA No. 93/1997 vide order dated 23rd January, 2001.

13. We are also of the opinion that the decision to shift cremation ground does not amount to violation of fundamental right of the appellants to freedom of religion. As a result of the impugned decision, it is not as if no cremation ground is available to the appellants to cremate their dead according to religious rites. The cremation ground has only been shifted some distance away. Accordingly, present Letters Patent Appeal is dismissed.