

(2012) 12 DEL CK 0173

In the Delhi High Court

Case No : Writ Petition (C) No. 8965 of 2007

Balwan Singh and Others

APPELLANT

Vs

Settlement Officer and Others

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Panchayat Raj Act, 1954 — Section 18, 18(j), 32

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

Citation : (2012) 12 DEL CK 0173

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : N.S. Dalal and Mr. Devesh Pratap Singh and Mr. Aditya Bhadoo, for
the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur

1. Asserting that Gaon Sabha or Gaon Panchayat has right to use its land in the best possible manner for the benefit of the villagers, 21 petitioners

claiming to be the residents of Village Mundka, Delhi, assail the impugned order of 1st February, 2007 whereby their revision petition u/s 42 of

East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (hereinafter referred as the Consolidation Act) stands dismissed

while maintaining order of Settlement Officer (Consolidation) of 4th April 1983 requiring shifting of cremation ground to new location at the

outskirts of extended lal dora of this village and by holding that there is no provision in the Consolidation Act to recall or review the order of 8th

October, 1982 passed by his predecessor. According to learned counsel for

petitioners impugned order of 1st February, 2007 (Annexure P-2)

suffers from jurisdictional error as the power to regulate places for disposal of the dead body lies with the concerned Gram Panchayat as per

Section 18(j) of The Delhi Panchayat Raj Act, 1954 and so Consolidation Authorities have no jurisdiction to shift the cremation ground from one

place to another during the consolidation proceedings.

2. At the hearing, it was pointed out by learned counsel for petitioners that scheme for consolidation of this village was framed in the year 1976 and

at that time, Khasra No. 779 (old), whose new number is Khasra No. 191 was earmarked as cremation ground. It is further pointed out that in the

year 1980-81, some person sought intervention and Financial Commissioner vide his order of 6th October, 1982 had directed that cremation

ground be shifted from Khasra No. 191 to another place at the outskirts of Firni as this Khasra Number is surrounded from all sides by residential

plots of the right holders. Upon remand, Settlement Officer (Consolidation), vide order of 4th April 1983 had amended the scheme of

consolidation while invoking Section 36 of Consolidation Act, to shift the cremation ground outside extended abadi and had thus rejected

application filed for not shifting the cremation ground from Khasra No. 191 with clarification that Gaon Sabha will be at liberty to use it in any

manner it likes, other than the cremation ground and this land will not be available for allotment to any individual.

3. It stands noted in the impugned order that L.P.A. by Gaon Sabha was dismissed on the ground that order of 8th October, 2002 has not been

challenged. During the course of hearing, it was not disputed that LPA was filed against order of 4th April, 1983.

4. Undisputedly, aforesaid order of 8th October, 1982 had been challenged by petitioners in the year 2002. According to petitioners, in the year

2002 itself they had come to know about passing of orders of 8th October, 1982 and of 4th April, 1983. To contend that the land earmarked for

cremation ground cannot be changed by consolidation authorities as Gaon Sabha land reserved for common utilities has to be managed by Gaon

Sabha only, attention of this Court was drawn to Gaon Sabha's purported Resolution of 11th July, 1983 which takes note of order of 8th

October, 1982 of Financial Commissioner but still had resolved that majority of

villagers were of the opinion that land of Khasra No. 191 ought to be used as cremation ground.

5. Implicit reliance was placed by learned counsel for petitioners upon Deputy Commissioner's Affidavit of 22nd March, 1995 filed in Contempt

proceedings before Financial Commissioner, Delhi wherein it was maintained that Gaon Panchayat is competent to regulate Gaon Sabha property

including cremation ground as per Section 18(j) read with Section 32 of The Delhi Panchayat Raj Act, 1954. It was also asserted in the aforesaid

Affidavit that consolidation authorities cannot override statutory provisions of The Delhi Panchayat Raj Act, 1954, which is a subsequent legislation

and that Gaon Panchayat, Mundka had already passed resolution of 11th July, 1983 regulating the use of Khasra No. 191 as a cremation ground.

To seek an end to contempt proceedings, it was stated in aforesaid Affidavit that this cremation ground had already two old sheds and as such the

boundary wall was sought to be erected and the work was almost complete.

6. While relying upon aforesaid Affidavit and Gaon Panchayat resolution, it was contended by learned counsel for petitioners that impugned order

suffers from jurisdictional error and so it deserves to be set aside as the jurisdiction to deal with cremation ground is with the Gaon Panchayat

concerned and not with the consolidation authorities.

7. Learned counsel for respondents counters the afore-noted stand of petitioners, by asserting that no doubt regulation of cremation ground is the

function of Gaon Panchayat but the lands reserved for common purposes are always relocated during the consolidation proceedings and there is a

valid justification to do so in the instant case. To raise the plea of res-judicata, respondent's counsel relies upon the factum of Settlement Officer

(Consolidation) order of 4th April, 1983 amending the scheme to shift cremation ground from Khasra No. 191 to another place outside extended

village abadi, having attained finality. Therefore, it is asserted on behalf of respondents that this writ petition is barred by res-judicata and even on

merits, petitioners have no case as Affidavit of 22nd March, 1995 misconstrues the legal position regarding jurisdiction to shift common utility land

to another place being exclusively of consolidation authorities and so aforesaid Affidavit of 22nd March, 1995 is of no avail. Regarding Resolution

of 11th July, 1983, it is maintained by respondent's counsel that this Resolution

is signed by just eleven persons and is not a valid Gaon Sabha

Resolution as the quorum for any Gaon Sabha meeting is 1/5th of its total members whereas this Resolution is signed by just eleven persons and

because it cannot be said that there were just only fifty-five members in the Gaon Sabha of this village. So, dismissal of this writ petition is sought

by learned counsel for respondents.

8. Upon indepth 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.

9. In Rajinder Singh (Supra), it was ruled that considering that the matter has already been agitated upto this Court earlier, this Court is of the view

that principles of res-judicata operate in such a situation to negate the plea that the order dated 17.1.2006 permitted a re-opening of the entire

dispute concerning the validity of the sale deeds through which the petitioners purchased the lands in question. Thus, principle of estoppel was

applied to prevent Respondent No. 3 therein to seek to disturb finality of aforesaid legal consequence.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. No doubt, scope of jurisdiction of this Court under Article 226 of the Constitution of India is limited to correcting errors of manifest injustice as

reiterated in Rajinder Singh (Supra), while taking note of the decision in W.P. (C) No. 3232 of 2002, Dhani Ram v. Ram Sarup, rendered on 2nd

February, 2007 relied upon by the petitioners, but this case is not one of such cases. In light of what is said above, I find that impugned order does

not suffer from any jurisdictional or manifest error. Resultantly, this writ petition is dismissed with no orders as to costs.