

(2007) 06 DEL CK 0004
In the Delhi High Court
Case No : Writ Petition (C) 712 of 1985

Beg Ram

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

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

Citation : (2008) 149 PLR 42

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : S.P. Juneja, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This petition is directed against the order dated 1.2.1985 passed by the Financial Commissioner allowing the revision petitions, being Cases Nos. 293-294/1984-CA, filed by the Gaon Sabha Dera Mandi, Respondent No. 2 herein, u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ("Holdings Act"). By the impugned order, the Financial Commissioner set aside the orders dated 11.1.1982 and 20.3.1982 passed by the Consolidation Officer allotting certain lands in favor of the petitioner.

2. The consolidation proceedings in Village Dera Mandi commenced in the year 1974 and concluded on 21.7.1984. According to the petitioner, when the consolidation proceedings started, it was notified by the Consolidation Officer that the Abadi land would be valued at Rs. 1.5 i.e. one and half times the value of the agriculture land. It was also announced that every resident family was permitted to apply for a land in the Abadi ranging from half a bigha to five bighas. When the scheme was sought to be implemented, it was found that many of the residents had indicated an excess demand of Abadi land. Those allotted land in the abadi failed to take possession of the land when offered to them since they would have to surrender one and a half times the value of the

agriculture land. Consequently, some abadi land was rendered surplus and the Consolidation Officer then enquired from the other residents if they were prepared to take abadi land in lieu of agricultural land. Consequently, the petitioner and certain others applied for allotment of abadi land after surrendering one and a half times the value of agriculture land.

3. The above facts are borne out by the order passed on 20.3.1982 by the Consolidation Officer on the recommendation of the Patwari that land be allotted to both the petitioner and one Shri Behari. In the same order, the Gaon Sabha was shown as "Haqdar No. 299" in relation to 10 bighas 13 bids was of land. Of this, 7 bighas 10 bids was was allotted to the petitioner and 3 bighas 3 bids was to Shri Behari. It is stated that on 25.7.1984 the final verification took place of the Khatauni papers and with that the consolidation scheme stood finalized.

4. After the conclusion of the scheme of consolidation, the Gaon Sabha on 29.9.1984 filed revision petitions u/s 42 of the Holdings Act stating that the land could not have been taken away from the Gaon Sabha and allotted to the petitioner. The order of the Consolidation Officer approving the proposal put up by the Patwari was assailed on the ground of non-application of mind. It was contended that this allotment in favor of the petitioner was in excess of his entitlement in terms of the Scheme of consolidation.

5. By the impugned order, the Financial Commissioner set aside the orders of the Consolidation Officer on the ground that no reasons were given by him other than simply approving the proposal of the Patwari.

6. The main plank of the petitioner's case is that once the consolidation scheme was finalised, the Financial Commissioner did not have jurisdiction to entertain the revision petitions from the Gaon Sabha. Reliance is placed upon the judgment of This Court in *Suraj Mal v. Manohar Lal* (1973) 1 Del 1016 where it has been held that all objections can be entertained only during the pendency of the consolidation proceedings and that once the scheme is finalized, the allotment made during the pendency of the consolidation proceedings cannot be challenged. It is further submitted that the Financial Commissioner proceeded on the basis that land vested in the Gaon Sabha was allotted to the petitioner. In fact it was the excess land which was allotted and that too prior to the finalization of the consolidation proceedings.

7. The Gaon Sabha in its counter affidavit does not deny the applicability of the judgment of This Court in *Suraj Mal*. However, it is pointed out that the Consolidation Officer did not give notice to the Gaon Sabha before making the changes. It is further not denied that although there were 300 changes in the khataoni during the consolidation proceedings it is only the change in favor of the petitioner here that has been challenged.

8. Although the respondents were served in this writ petition, they did not appear in any hearing after 1.5.2006. The LRs of the petitioner were brought on record by an order dated 5.2.2007 whereby the order dated 18.3.2004 disposing

of the writ petition on the ground of abatement was set aside and the writ petition was restored to file.

9. None appeared on behalf of the respondents at the final hearing and despite an opportunity given on 14.5.2007 to file a short written note of arguments, the respondents did not do so. The Court accordingly proceeds to decide the case on merits.

10. Section 42 of the Holdings Act reads as under:

42. 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, 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 Chief Commissioner is satisfied that the proceedings have been vitiated by unlawful consideration).

11. The words "at any time" occurring in Section 42 of the Holdings Act has been held by This Court in Suraj Mal (supra) mean "any time during the pendency of the consolidation proceedings." That being the position, the learned Counsel for the petitioner is right in contending that the Financial Commissioner could not have entertained the revisions petitions filed by the Gaon Sabha after the conclusion of the consolidation proceedings.

12. There is merit in the submission of the learned Counsel for the petitioner that during the course of the consolidation proceedings land was specifically earmarked for common use and for community purpose and the balance land was treated as excess. Applications were invited for allotment of such excess land. In the circumstances, the excess land could not be stated to have finally vested in the Gaon Sabha till such time the consolidation scheme was not finalized. The allotment in favor of the petitioner took place even prior to such finalization of the consolidation proceedings. It also cannot be said that the order passed by the Consolidation Officer is without reasons. The Consolidation Officer was concurring with the recommendations of the Patwari which notes the reasons justifying the allotment in favor of the petitioner. It cannot also be said that the Consolidation Officer lacked the jurisdiction to make the allotment. The impugned order of the Financial Commissioner is unsustainable on this ground as well.

13. For all the above reasons, the petitioner is entitled to succeed. The impugned order dated 1.2.1985 of the Financial Commissioner is set aside. Accordingly, this writ petition is allowed with no order as to costs.