

(1987) 12 DEL CK 0018
In the Delhi High Court
Case No : Civil Writ Appeal No. 1174 of 1976

Har Narain

APPELLANT

Vs

Financial Commissioner, Delhi and Others

RESPONDENT

Date of Decision : 27-12-1987

Acts Referred:

Citation : (1988) 34 DLT 98

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Ramesh Chandra and Mahipal Singh, for the Appellant;

Judgement

P.K. Bahri, J.

(1) Har Narain has filed this writ petition for quashing and setting aside the order dated April 14, 1975, passed by the Consolidation Officer-Respondent No. 4, appellant order dated August .18, 1975, made by the Settlement Officer-Respondent No. 3, order dated December 6, 1975, passed by the Additional Collector-Respondent No. 2 and the order dated September 3, 1976, made in revision by the Financial Commissioner- Respondent No. 1.

(2) Facts, in brief, are that the consolidation of land holdings was carried out at village Kangan Heri in accordance with the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. According to the petitioner, the consolidation proceedings were completed and the petitioner was allotted Kila Nos. 23 & 24 of Rectangle No. 30 in repartition proceedings and he was given possession of the same in the year 1971 itself. He has further alleged that he has installed a tubewell in Kila No. 24. It was averred that the consolidation proceedings were to end after the possessions had been delivered and no objections were filed by anyone including respondent No. 5-Gaon Sabha, Village Kangan Heri, with regard to the allotment of aforesaid land to the petitioner. It is alleged that somewhere In the first week of May 1975, the petitioner came to know that the Consolidation Officer-Respondent No. 4 had made an order on

April 14, 1975, without giving any notice to the petitioner by which he cancelled the allotment of Kila Nos. 23 & 24 in favor of the petitioner and in lieu of the same he allotted land comprises in Kila Nos. 62/12/2/1, 18/2 and 19. He has pleaded that in view of this order the holdings of the petitioner have been fragmented and scattered and he had been deprived the facility of the tubewell installed by him in Kila No. 24. He has alleged that there is no provision under the aforesaid Act which empowered the Consolidation Officer to make the impugned order after the scheme of the consolidation has been completed and" proceedings have been closed. The petitioner, being aggrieved of the aforesaid impugned order of the Consolidation Officer, had preferred an appeal which was dismissed by the Settlement Officer-Respondent No. 3 on August 18, 1975, and he preferred the second appeal which was dismissed by the Additional Collector-Respondent No. 2 vide order dated December 6, 1975 and he filed a revision to Respondent No. 1-Financial Commissioner, who dismissed the same vide order dated September 3, 1976. The petitioner has referred to the provisions of Section 21 of the aforesaid Act in order to support his case that there was no jurisdiction or power in the Consolidation Officer to re-open the issue after allotments in repartition proceedings have been made and possessions have been delivered.

(3) On behalf of respondents I to 4, the Consolidation Officer-Respondent No. 4 has filed the affidavit. He has mentioned that Kila Nos. 23 & 24 of Rectangle No. 30 were reserved for common purposes like tethering of the cattle in the consolidation scheme and the Consolidation Officer has no jurisdiction or power to allot the said land to anyone. It is averred that the allotment made by the Consolidation Officer of the aforesaid unallowable land meant for common purposes of the villagers was without jurisdiction and hence a nullity in law and the said allotment did not confer any rights on the petitioner and the Consolidation Officer was entitled to correct his wrong order in that respect. It was admitted in this affidavit by the Consolidation Officer that the aforesaid land was, of course, allotted to the petitioner by mistake and no objections had been filed at any time by anyone and this mistake came to be noticed only when the records were being scrutinised for consignment to the record room and the Consolidation Officer was duty bound to correct the mistake suo motu. Gaon Sabha through its Pradhan-Rati Ram has filed the counter taking almost similar pleas.

(4) As far as the facts are concerned ,they are not in dispute. The scheme of consolidation, which was approved, clearly shows that the aforesaid land was reserved for common purposes. The land comprised in Kila No. 30/24/1 measuring 2 big has 8 his was kept for play-ground and the land comprised in Kila No. 30/22-23-24 in Kila No. 32/8-13 measuring 20 bighas 5 biswas. had been reserved for sitting place for the cattle. Annexure C1 contains the detail of the land meant for common purposes. It is, indeed, not disputed that no objections were filed by anyone when the aforesaid land was proposed to be allotted to the petitioner. However, the question arises whether the apparent

mistake made by a Consolidation Officer in allotting the aforesaid land which was not allot able at all could be corrected by him under the provisions of the aforesaid Act or not. It may not be out of place to mention here that there was prescribed a procedure for finding out the centre of the land-holding of a particular bhumidar and has been laid down in annexure F1 which is also not in dispute. It lays down that during the repartition every chak shall be of a suitable shape and at a place where the centre of that right holder falls and at least 40 % of the pre-consolidation area of the right holder be included in his chak. In the present case, the centre of the holding of the petitioner was in Kila No. 62 but he did not opt for having his land in that particular Kila. However, in the present case, it is not for this Court to go into the question whether the petitioner could be allotted the land outside his centre of holding. The point which needs decision is whether the Consolidation Officer had the power to cancel the allotment already made in favor of the petitioner and pass another order allotting some other land to the petitioner in lieu of the non-allot able land. The East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, in preamble lays down that this Act is to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Punjab and for the assignment or reservation of land for common purposes of the village. It is, hence, the object of this statute to provide for the reservation of land for common purposes of the village. Section 14 of the aforesaid Act lays down as to-how the scheme for consolidation of holdings is to be put into operation. Section 15 deals with the subject of providing compensation to any holder who is allotted a land of less market value than that of his original holding. Section 18 provides that the Consolidation Officer can direct that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place. In the present case, the scheme of the Consolidation of holdings definitely provides for preservation of the particular land including the land in question for common purposes. So, there was no order made u/s 18 by the Consolidation Officer that the said land which is preserved for common purposes is not to be kept for common purposes and any other land is to be substituted for that purpose. Section 19 contemplates the publication of the draft scheme and any person affected by the said draft scheme could make objections in writing to the Consolidation Officer and the Consolidation Officer was duty bound to consider those objections and submit the scheme with such amendments as he considers necessary to the Settlement Officer for approval. Section 20 lays down that how the scheme is to be treated as confirmed. It is, indeed, not disputed before me that the scheme was prepared and duly confirmed and no objections at any stage had been filed regarding the draft scheme by anyone. So, the scheme became final which clearly indicated that the land in question was meant and was preserved for common purposes. The repartition proceedings which were to take place after the scheme had been confirmed u/s 21 of the aforesaid Act could not result in modification of the confirmed scheme. No power has been given under the provisions of Section 21 to the Consolidation Officer to allot any land which is

reserved for common purposes in the said scheme of consolidation of holdings. However, admittedly in repartition proceedings in which again no one made any objection the unallowable land, which was preserved for common purposes under the scheme duly confirmed, came to be allotted to the petitioner. It is unfortunate that the Gaon Sabha or the Revenue officials slept over the matter and allowed the possession to be taken of the said land by the petitioner and it was only after three years that this mistake was detected by the Revenue officials. Counsel for the petitioner has vehemently argued that as soon as the repartition proceedings became over and possessions had been delivered the Consolidation Officer had no power to reopen the matter and pass the impugned order. It is true that u/s 36 of scheme for the consolidation of holdings confirmed under the Act can at any time be varied or revoked by the authority Which confirms it subject to any order of the Chief Commissioner. But here it was not a case where the said scheme of holdings was sought to be varied or revoked. The Chief Commissioner u/s 42 of the aforesaid Act has been given power to call for and examine the record of any case and may pass such order as he thinks fit but no order could be made by him without giving the parties interested notice to appear and opportunity to be heard. Admittedly, no such power has been exercised by the Chief Commissioner u/s 42 of the aforesaid Act.

(5) The only provision which has been invoked by the learned counsel for the Respondent No. 5, Mr. Mahipal Singh, in support of the impugned orders is Section 43-A which reads as. follows :-

"CORRECTION of clerical errors-Clerical or arithmetical mistakes in a scheme made, or an order passed by any officer, under this Act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties."

Counsel for the petitioner has argued that the allotment of the land in question in favor of the petitioner could not be considered to be made by any clerical or arithmetical mistake arising from any accidental slip or omission made by the Consolidation Officer. He has argued that only the mistake made in writing or typing by inadvertence could be got corrected by taking resort to the aforesaid provision. He has cited Ram Nath v. Financial Commissioner. 1983 2nd 739 . I have gone through this judgment and I find that in the said case question for consideration did not arise with regard to the interpretation of Section 43-A of the Act. The facts of the cited case, in brief, are that during the consolidation proceedings the Consolidation Officer withdrew certain land from the petitioner Ram Nath and allotted the same at first to Gaon Sabha and later on the land was withdrawn and given to Ram Saroop. The order of Consolidation Officer was challenged before the Financial Commissioner by means of revision who had set aside the orders of the Consolidation Officer and remanded the case to the Consolidation Officer with the direction to the Consolidation Officer to appropriately make up the deficiency of Ram Saroop on account of restoration of the aforesaid land to Ram Nath. However, the Consolidation Officer instead of

complying with the order of the Financial Commissioner proceeded to allot the same land again to Ram Saroop. The revision was filed against that order which was dismissed and a writ petition was filed. After perusing the provisions of Sections 21 & 24 of the Act it was held by this High Court that it would thus appear that after repartition persons entitled to the possession of the land allotted on repartition have to be put into actual and physical possession and after this is done the scheme shall be deemed to have come into force and possession of the allottees thereafter cannot be disturbed except under the specified circumstances enumerated in Section 24. In the said case also, no objections u/s 21 had been filed and the order was not covered by the provisions of Section 24. Hence, the same was set aside by the Court. There was no question raised in the said case that the Consolidation Officer had made the impugned order in order to correct any clerical mistake. So, there did not arise any occasion for this Court to consider the provisions of Section 43-A. Hence, on facts this case is distinguishable.

(6) A similar provision is encroached in Section 43-A exists in Section 152 of the CPC and also in rule 83 of the Rules framed in the Indian Income Tax Act. Rule 83 came up for consideration before the Supreme Court in Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, . It was laid down by the highest Court that an arithmetic mistake is a mistake of calculation ; a clerical mistake is mistake in writing or typing. It was held that an error arising out of or occurring from an accidental slip of omission is an error due to careless mistake or omission unintentionally made. In Halsbury's Laws of England, Fourth Edition (Vol. 26), in para 557 it has been laid down that "after the judgment or order has been entered there is power, both under rules of court and inherent in the judge or master who gave or made the judgment or order, to correct any clerical mistake in it or some error arising in it from any accidental slip or omission.....or possibly in special cases where the order is founded upon a mistake of fact.". In the present it is evident from the face of the record itself that the land in question was not allot able at all to any right holder as the same had been clearly preserved in the scheme of the consolidation of holdings for common purposes of the village. The fact that it was allotted by the Consolidation Officer in repartition proceedings means on the face of it that it was done under some clerical mistake due to some accidental slip. It escaped the notice of the Consolidation Officer that the said land is un allot able. It cannot be said that the Consolidation Officer had made this allotment consciously knowing the facts. He had clearly made a mistake of fact when he made the said allotment which was discernible only in 1974. It is now settled law that any clerical mistake made in the order due to accidental slip or omission can be corrected at any time and there is no period of limitation prescribed for the same. Such a clerical mistake could be remedied by the concerned officer suo motu. The petitioner is not right when he has pleaded that he had been not made aware of this mistake before the same was corrected because the respondents have placed on record copy of the application dated December 31,

1974, of this very petitioner made to the Settlement Officer. Annexure "E" shows that the petitioner had been made aware about the said mistake occurring in the said order of allotment. The impugned order was passed by the Consolidation Officer on April 14, 1975. So, it cannot be held that the order has been made at the back of the petitioner. From the facts, I come to the firm conclusion that the allotment of the land in question was made by the Consolidation Officer initially due to clerical mistake resulting from some accidental slip of his failure to notice that the land in question was not at all allot able .The mere fact that the petitioner has installed a tube well in the land in question does not mean that the petitioner can be allowed to retain the said land which could not be at all allotted to him or anyone else under the scheme of the consolidation proceedings in question. The petitioner can very well remove his tubewell from the land in question.

(7) In view of the above discussion, I hold that the impugned orders are valid and cannot be challenged. I dismiss this writ petition and discharge the rule, and vacate the stay order. The parties are left to bear their own costs in view of the peculiar facts of the case.