
(2007) 05 DEL CK 0198
In the Delhi High Court
Case No : Writ Petition (C) 37 of 1979

Hoshiar Singh

APPELLANT

Vs

Additional Collector

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21(1), 21(3), 24

Citation : (2007) 05 DEL CK 0198

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

Bench : Single Bench

Advocate : S.N. Bhardwaj and J.N. Chauhan, for the Appellant; S.D. Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This writ petition was filed on 11.1.1979 questioning the orders dated 23.3.1978 of the Consolidation Officer, the Order dated 11.7.1978 of the Settlement Officer and the Order dated 20.11.1978 passed by the Additional Collector. The last mentioned order rejected the appeal filed by the Petitioner, against the Order dated 11.7.1978 of the Settlement Officer u/s 24(i) of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 ("Act").

2. The proceedings emanate from the scheme of the consolidation of the lands in village Sanoth in Delhi. After the scheme was finalised, during the repartition proceedings u/s 21(1) of the Act, while deciding the claim of one Shri Pratap Singh, certain changes were made in the extent and location of lands allotted to other persons including the Petitioner herein. Land to the extent of 3 bighas and 9 bids was in Kila No. 40/6 was withdrawn and allotted to Respondent No. 4 herein and in lieu thereof certain other land measuring 2 bighas and 18 bids was allotted to the present Petitioner. Aggrieved by this order, the Petitioner filed an appeal before the Settlement Officer u/s 21(3) of the Act. The contention of

the Petitioner was that kila No. 40/6 was entirely of the pre-consolidation area of the Petitioner and he accordingly had a preferential right to it. He claimed that he had a boring in this land from which he used to draw water with the help of a tractor and, Therefore, the land should not have been withdrawn from him. According to him, the Respondent No. 4 had no centre at that place. He claimed that the deficiency in the holding allotted to him should be made good by shifting the allotment made to Respondent No. 4 herein to an area where Respondent No. 4 and his brothers had their first centre.

3. The Settlement Officer rejected the petitioner's appeal by an order dated 11.7.1978. The Settlement Officer found that there was no tube-well of the appellant in kila No. 40/6. The Settlement Officer accepted the submission of the Respondent No. 4 that if the land allotted to the Petitioner (which was between the earlier land and the khalasi), was not allotted to him but kept in the khata of the Gaon Sabha, and the Petitioner was allotted land contiguous to the said land, then the Petitioner would encroach upon the Gaon Sabha land. The Settlement Officer further ordered that the boring could be removed by the Petitioner or, in the alternative, he could be compensated for the same.

4. The petitioner's further appeal before the Additional Collector was dismissed and at this stage the Additional Collector held that there was no boring in khasra No. 40/6 because it was shown to be situated in khasra No. 15. The order of the Settlement Officer was confirmed.

5. The grounds on which the Petitioner has assailed the order of the Additional Collector is that it is a non-speaking order and that on the ground on which the allotment of land at kila No. 40/6 was denied to him was not a valid ground at all. It is submitted merely because the land which was sought for was next to the land allotted to the Gaon Sabha, it could not be denied to the Petitioner on the apprehension that he would encroach on the said land.

6. This writ petition was kept pending for many years. While rule was issued on 5.2.1979 after all the respondents were served, an interim direction was issued permitting the Petitioner to take his tractor to the boring in kila No. 6 and/or 15 of Rectangle No. 40 through the area allotted to Respondent No. 4.

7. Thereafter the writ petition was listed on 14.2.2002 by which time counsel for the parties expired and fresh notice was directed to issue. On 12.1.2006 a counter affidavit was filed on behalf of Respondents 1-3 which two important facts were brought on record. One was that the land in question had been acquired under the Land Acquisition Act, 1894 ("LA Act") by land acquisition Award No. 11/2004-05. Previous to this in the year 1999-2000, Petitioner had sold his entire land to his grand-sons. It was further pointed out that Respondent No. 4 Shri Khem Ram had expired during the pendency of the petition and his LRs were not brought on record. Finally it was pointed out that the consolidation proceedings were finalised in the year 1983-84 and the deficiency as alleged had actually been removed.

8. An application (CM. No. 2365/2006) was filed on 13.1.2006 for substituting the Petitioner, who died on 5.6.2005, by his two sons. This application was allowed by the Court on 1.11.2006 after condoning the delay on 1.11.2006.

9. The substituted petitioners thereafter filed a rejoinder on 28.3.2007. In the rejoinder it is not denied that the entire land in village Sanoth has been acquired under the LA Act. It is also not denied that Respondent No. 4 has died during the pendency of these proceedings. The fact that consolidation proceedings were finalised in the year 1983-84 and the record has been consigned to the record room thereafter is also not denied. What is sought to be contended now is that the deficiency of the original petitioner was never made good, and that the corresponding pro-rata compensation for the acquired land, which is still lying undisbursed with the Land Acquisition Collector, should be directed to be paid to the LR's of the Petitioner.

10. This Court is unable to agree with the submission now made by the Petitioner. It appears that the subsequent facts have, for reasons best known to the Petitioner, not been brought to the attention of this Court, and they have rendered the reliefs being sought in the petition incapable of being granted. In the first place, if as has been explained by the Respondents, the consolidation proceedings were finally concluded in the year 1983-84 and the record has been consigned after fulfilling the deficiency. That fact should have been brought to the notice of the Court. Secondly, if the Petitioner had in fact sold away the land to his grandsons, then obviously he had accepted the lands allotted to his share during the final consolidation proceedings and his grandsons, who were not brought on record, were obviously not interested in pursuing his claim for additional land as a result of those consolidation proceedings. Thirdly, it is not denied that the Respondent No. 4 died during the pendency of the writ petition and no steps were taken to bring his LR's on record. Respondent No. 4 had been made a party because the Petitioner was claiming that the land allotted to the Respondent No. 4 in kila No. 40/6 should in fact be allotted to the Petitioner.

11. There is no question of now directing, in these proceedings, the payment of land acquisition compensation pro-rata to the extent of land which the Petitioners claim was deficient. The question of land acquisition compensation was never part of these proceedings and the Petitioners would have to work out their remedies, if any, under the provisions of the LA Act.

12. For all the above reasons, there is no merit in this writ petition and it is dismissed with no orders as to costs.