

(2015) 03 DEL CK 0014

In the Delhi High Court

Case No : LPA 174/2015, CMs No. 5562 and 5563/2015

Jai Narain and Others

APPELLANT

Vs

Nagender and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 03 DEL CK 0014

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : R.K. Gupta, for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra court appeal impugns the judgment dated 6th January, 2015 of the learned Single Judge of dismissal of W.P.(C) No. 9128/2008 preferred by the appellants. The appeal is accompanied with an application being CM No. 5563/2015 for condonation of 13 days delay in re-filing of the appeal. For disposal of this application, issuance of notice of the appeal to the respondents is not deemed necessary. The delay in re-filing the appeal is condoned and the application is disposed of.

2. Having gone through the impugned judgment and the memorandum of appeal and having prima facie not found any ground to entertain this appeal, we have also heard the counsel for the appellants at length on the merits of the appeal.

3. The lis has a long history. Consolidation proceedings under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 were held in Village Khera Khurd in the year 1973-75. Under the Scheme of consolidation, bhumidars and non-bhumidars were eligible for allotment of residential plot of the maximum size of 2 bighas in the extended phirni / abadi and after adjusting the value thereof, the balance land was to be allotted in agricultural land.

4. Sh. Tek Ram, being the predecessor of the respondents 1 to 6, in the said consolidation proceedings was allotted residential plot No. 304 admeasuring 1 bigha 10 biswas.

5. Sh. Ram Murti, being the predecessor of the seven appellants filed objection before the Consolidation Officer to the aforesaid allotment claiming that plot No. 304 was part of his pre-consolidation holding. The said objection was on 8th December, 1975 dismissed by the Consolidation Officer and the appeal there against preferred by Sh. Ram Murti to the Settlement Officer was also dismissed vide order dated 16th December, 1976. Sh. Ram Murti preferred a second appeal to the Additional Collector, which was allowed vide order dated 20th November, 1978 solely on the ground that plot No. 304 was part of pre-consolidation holding of Sh. Ram Murti and also had a Dharamshala, well and trees thereon. Accordingly, plot No. 304 was allotted to Sh. Ram Murti and it was further ordered that if there was any deficiency in the entitlement of Sh. Ram Murti, the same will be made good by allotting area out of plot No. 305.

6. Aggrieved therefrom, Sh. Tek Ram preferred CWP No. 284/1979 in this Court. Both Sh. Tek Ram and Sh. Ram Murti died during the pendency of the writ petition and were substituted by the respondents 1 to 6 and the appellants respectively. However, for the sake of convenience, reference hereinafter is by the name of Sh. Tek Ram and Sh. Ram Murti only. The writ petition was dismissed by a learned Single Judge of this Court vide judgment dated 3rd January, 2003.

7. Sh. Tek Ram preferred an appeal, being LPA No. 47/2003 but which was on 15th January, 2003 dismissed in limine by a non-speaking order.

8. Sh. Tek Ram then took the matter to the Supreme Court by filing SLP(C) No. 11366/2003 which was granted and converted into Civil Appeal No. 1493/2004. It was inter alia the contention of Sh. Tek Ram before the Supreme Court that "having regard to the subsequent developments and the acquisition of the very lands in question," Sh. Ram Murti "will have no further subsisting rights any longer to assert any claim in the matter". The Supreme Court vide order dated 8th March, 2004 allowed the appeal of Sh. Tek Ram and remitted the matter to the Division Bench of this Court with a direction to restore LPA No. 47/2003 to its original position and dispose of the matter afresh on merits. Liberty was also given to Sh. Tek Ram to bring to the notice of the Division Bench of this Court the subsequent developments which were urged before the Supreme Court and the Division Bench of this Court was directed to consider such subsequent developments as well.

9. The Division Bench of this Court, on LPA No. 47/2003 being so remitted, vide judgment dated 28th February, 2005, recorded:

(i) that both Sh. Ram Murti and Sh. Tek Ram were possessed of land in the village;

(ii) that in the consolidation proceedings, Sh. Ram Murti was allotted plot No. 306 and Sh. Tek Ram was allotted plot No. 304;

(iii) that the grievance of Sh. Ram Murti was that his entitlement was not complete with the allotment of plot No. 306 and he approached the Consolidation Officer; though the Consolidation Officer offered another plot bearing No. 341 to Sh. Ram Murti but he refused to accept; the Consolidation Officer accordingly vide order dated 8th December, 1975 supra rejected the application / objection of Sh. Ram Murti;

(iv) that Sh. Ram Murti in appeal before the Settlement Officer claimed that he should be allotted either plot No. 304 or 305, being his pre-consolidation land; the Settlement Officer however found that plot No. 306 satisfied the requirement of Sh. Ram Murti and the offer of plot No. 341 made to Sh. Ram Murti had not been accepted and accordingly on 16th December, 1976 dismissed the appeal;

(v) that the Additional Collector however on 20th November, 1978 allowed the second appeal of Sh. Ram Murti without considering the reasons given by the Consolidation Officer and the Settlement Officer;

(vi) that it was the contention of Sh. Tek Ram in LPA No. 47/2003-(a) that the demand of Sh. Ram Murti in addition to plot No. 306 already allotted to him should have been satisfied from plot No. 305 and not from plot No. 304; (b) that Sh. Ram Murti in fact was only a co-sharer of plot No. 306; (c) that the Consolidation Officer and the Settlement Officer were the Revenue Authorities at site, who had considered the value of land including the factor of proximity to come to the conclusion that the demand of Sh. Ram Murti was satisfied and their said conclusions should not have been so lightly interfered with by the Additional Collector; and held

(vii) that the order dated 16th December, 1976 of the Settlement Officer was a well reasoned order and found that the demand of Sh. Ram Murti stood satisfied with the allotment of plot No. 306; if this finding had to be set aside by the Additional Collector, it could be only for cogent reasons to be recorded and which had not been done;

(viii) that plot Nos. 304, 305 and 306 were in one line, contiguous to each other; thus, the plot contiguous to plot No. 306 which was allotted to Sh. Ram Murti was plot No. 305 and the Additional Collector in his order dated 20th November, 1978 had not dealt with this issue;

(ix) that the mere fact that in the pre-consolidation area, Sh. Ram Murti had a Dharamshala, well and trees, did not give him any right for higher allotment of land;

(x) that the Additional Collector could not have set aside the order of the Settlement Officer without returning a finding that plot No. 306 allotted to Sh. Ram Murti did not satisfy in value his right;

(xi) that it was also the contention of Sh. Tek Ram that since then the land to be surrendered by Sh. Ram Murti had in fact been acquired-this plea was also required to be considered by the Revenue Authorities.

Accordingly, the matter was remanded to the Additional Collector to pass an order in accordance with law, after recording proper reasons, as to why the orders of the Consolidation Officer and Settlement Officer needed to be set aside / modified.

10. The Additional Collector, on remand aforesaid, in order dated 12th December, 2008, found / observed / held:

(A) that in the consolidation proceedings, plot No. 304 was allotted to Sh. Tek Ram, plot No. 305 was allotted to Sh. Sultan Singh (predecessor of respondents No. 7 and 8 herein) and plot No. 306 was allotted to Sh. Ram Murti;

(B) that the grievance of Sh. Ram Murti was that his entitlement was not complete with the allotment of plot No. 306;

(C) that Sh. Ram Murti was offered another plot bearing No. 341 in the neighbourhood but he refused to accept the same, maintaining that he should have been allotted either plot No. 304 or 305 which was his pre-consolidation land;

(D) that the Settlement Officer held that the demand of Sh. Ram Murti stood satisfied on allotment of plot No. 306 and offer of plot No. 341, which was refused;

(E) that the Tehsildar, Narela, Delhi in his fresh report dated 21st April, 2008 had stated that there is no deficiency in the account of Sh. Ram Murti;

(F) that the Halqa Patwari and Office Kanungo also, on 10th May, 2006 had reported that though Sh. Ram Murti claimed his pre-consolidation holding to be admeasuring 4 bighas 8 biswas, however the area of the said holding was recorded as 3 bighas 10 biswas in Khatoni Chakbandi;

(G) that on the basis of the pre-consolidation holding admeasuring 3 bighas 10 biswas of Sh. Ram Murti, there was no deficiency in the Khata of Sh. Ram Murti;

(H) that as per the report dated 23rd October, 2008 submitted by the Tehsildar, Saraswati Vihar, the total land which was in the account of Sh. Ram Murti before consolidation operations was of the standard value of 12 bighas 15 biswas and that land allotted to Sh. Ram Murti during the consolidation proceedings was of standard value of 12 bighas 14 biswas;

(I) that as per the consolidation scheme, deficiency of 0-2 biswa in allotment could be overlooked;

(J) therefore, as per the scheme, there was no deficiency in the account of Sh. Ram Murti during consolidation operations;

(K) that the Halqa Patwari had also reported that the entire land admeasuring 30 bighas 13 biswas allotted to Sh. Ram Murti during consolidation stood acquired;

(L) thus, no land had been left in the name of Sh. Ram Murti which could be adjusted / taken back, if plot No. 304 was to be then allotted to Sh. Ram Murti;

(M) that in any case, after acquisition of land, the Revenue Courts were left with no jurisdiction in the matter;

(N) that the Collector (Additional Collector) independently also was satisfied that as per consolidation scheme, the demand of Sh. Ram Murti had been met and there was no deficiency of land in his account during the consolidation proceedings.

Accordingly, the appeal preferred by Sh. Ram Murti against the orders of the Consolidation Officer and the Settlement Officer was dismissed.

11. Aggrieved from the aforesaid order dated 12th December, 2008 of the Collector (Additional Collector), the writ petition from which this appeal arises was filed.

12. The learned Single Judge, in the impugned judgment has concurred with the order of the Collector (Additional Collector).

13. The counsel for the appellants before us has contended, (I) that the Collector has decided the matter de hors the directions and parameters contained in the judgment dated 28th February, 2005 supra of the Division Bench; and, (II) that even if the finding of the Collector in the order dated 12th December, 2008 of there being no deficiency in the account of Sh. Ram Murti were to be accepted as correct, the Collector did not consider that Sh. Tek Ram also was not entitled to plot No. 304.

14. We are unable to accept either of the aforesaid arguments. The Collector (Additional Collector), in deciding the appeal, was required to adjudicate the claim of Sh. Ram Murti of his being entitled to plot No. 304 for the purpose of making up the deficiency in his account post consolidation of land and because plot No. 304 was part of his pre-consolidation holding. The Collector, in the order dated 12th December, 2008 has found that there was no deficiency of land in the account of Sh. Ram Murti, to make up which he claimed plot No. 304. The Collector undoubtedly has not returned any finding on the claim of Sh. Ram Murti to plot No. 304 on the basis of the same being part of his pre-consolidation holding but has reasoned that, even if for this reason, plot No. 304 is to be today given to Sh. Ram Murti, Sh. Ram Murti had been left with no land from which allotment of plot No. 304 to him could be balanced. As far as the contention, of Sh. Tek Ram being not entitled to plot No. 304, the same was never in issue, as would be obvious from the record aforesaid.

15. There is thus no merit in the appeal.

16. We may also record that the challenge by Sh. Ram Murti in this appeal is a

challenge to the factual findings returned by the Collector in his order dated 12th December, 2008 and in which challenge, the learned Single Judge has not found any merit. Ordinarily, this Court and more so, while exercising powers under the Letters Patent Appeal, is not to interfere with the factual findings. No error staring on the face of the record in the said factual deductions and conclusions drawn / made by the Collector is pointed out to us also.

We therefore do not find any reason to entertain this appeal and dismiss the same.