

(2015) 01 DEL CK 0154

In the Delhi High Court

Case No : Writ Petition (C) No. 9128/2008

Jai Narain

APPELLANT

Vs

The Collector (North West)

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Citation : (2015) 1 AD 662 : (2015) 147 DRJ 331

Hon'ble Judges : Suresh Kait, J.

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; Rajiv Nanda, SC and M.K. Vikkey, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the present petition, the petitioners seek quashing of the impugned order dated 12.12.2008 passed by the respondent No.1 in Case No.24/DC/NW/2005 and directions, thereby directing the respondents No. 1 and 2 to allot Plot No. 304 in favour of the petitioners.

2. Brief facts of the case are that Scheme for consolidation of land of Village Khara Khurd was framed during the period 1973-75. In the year 1974, father of the petitioners No.1 and 3 to 7, namely, late Shri Ram Murti (to be referred as "Predecessor-in-Interest") , moved an application before the Consolidation Officer for allotment of 2 Bighas land. Pursuant thereto, Consolidation Officer offered Plot No. 341, however, Predecessor-in-Interest was desirous of having Plot No.304, which demand was refused by the Consolidation Officer vide its order dated 08.12.1975. Accordingly, an application was moved by him before the Settlement Officer, which was dismissed vide order dated 16.12.1976. Being aggrieved, the same was challenged before the Additional Collector, which was accepted vide order dated 20.11.1978.

3. Being aggrieved respondents No. 3 to 8 challenged the order of the Additional Collector vide W.P.(C) No. 284/79. The same was dismissed by this Court vide

order dated 03.01.2003. Thereafter, the respondents No. 3 to 8 filed a Review Petition No.2653/2003 in W.P.(C) No. 284/79, which was dismissed vide order dated 07.03.2003. Then the aforesaid respondents filed an LPA No. 47/2003, which was also dismissed by the Division Bench of this Court vide its order dated 28.02.2005. Consequently, the said respondents moved to the Supreme Court vide SLP (Civil) No. 11366 of 2003, which was disposed of vide order dated 08.03.2004 and the matter remanded to this Court for fresh adjudication.

4. Thereafter, the petitioners moved an application before the Consolidation Officer for rectification of the Array in Khatauni. Accordingly, the Additional Collector sought a report from the Kanungo (Headquarter) regarding deficiency in the account of the petitioners. Pursuant thereto, a report was filed by the Tehsildar in respect of the deficiency of the Khatauni.

5. Mr.R.K.Gupta, learned counsel appearing on behalf of the petitioners submitted that the respondent No. 1 failed to appreciate that in the previous round of proceedings, all the authorities under the Act had proceeded on the footing that area of Khasra No.3566/1105/2 was 4 Bighas 8 Biswas instead of what is recorded in the Register of Consolidation Proceedings, which shows that the entries in the Register of Consolidation Proceedings could have been manipulated. The Deputy Commissioner/Collector committed a grave error while holding that the entire land measuring 30 Bighas 13 Biswas in the account of Late Shri Ram Murti has been acquired. The above report was confirmed vide report dated 23.10.2008 received from the Land Acquisition Branch, District North-West. Thus, no land has been allotted in the name of the petitioners, which can be adjusted/taken back if Plot No. 304 is allotted to them, as their entire holding has been acquired.

6. Late Shri Ram Murti, Predecessor-in-Interest, moved an application for allotment of plot measuring 2 Bighas in the phirni area in the year 1975 when his land was not acquired. After acquisition of the land, petitioners had not withdrawn the compensation in respect of their entire holding measuring 30 Bighas 13 Biswas. As per the Scheme flouted in the year 1973, the petitioners were entitled to have land measuring 2 Bighas in the phirni area and accordingly moved an application in this regard but the impugned order caused the miscarriage of justice as no plot has been allotted to them after acquisition of their entire land, which is in violation of principles of natural justice.

7. Learned counsel for the petitioners submitted that on one hand, the Deputy Commissioner, North West, relied upon the report of the Tehsildar dated 23.10.2008, however, on the other hand, he ignored the material fact that report of Tehsildar shows that land measuring 0.10 Biswas in Khasra No. 304 min. has been shown allotted in the name of Tek Ram and the petitioners, however, the possession of the said land was never handed over to them. The record of Tehsildar is itself contrary to the order passed by the Deputy Commissioner, North West, Delhi.

8. Learned counsel further submitted that while disposing of the LPA No.47/2003, the Division Bench of this Court vide its order dated 28.02.2005, directed the Additional Collector to dispose of the appeal within a period of three months. However, the Additional Collector/Collector passed the impugned order on 12.12.2008, i.e., after lapse of more than 3 1/2 years. The Division Bench in para 16 of the order dated 28.02.2005 recorded as under:-

"16. In view of the aforesaid, we allow the appeal and set aside the impugned order dated 3.1.2003 of the learned Single Judge as well as the order of the Additional Collector dated 20.11.1978 and remand the matter back to the Additional Collector to pass an order after hearing both the parties and dealing with the submissions of the parties and the reasoning of the orders passed by the competent authorities. It will be open to the said Additional Collector to take into account the subsequent events which may have occurred."

9. Learned counsel submitted that the Collector was bound to afford proper opportunities to both the parties and to consider the subsequent events, which may have occurred. However, from perusal of the impugned order passed by the Collector, it is clear that he had considered the subsequent events only in respect of the petitioners and not in respect of party No. 1 and 2, as indicated by him in the impugned order. Thus, the order has been passed in violation of principles of natural justice.

10. Learned counsel further submitted that earlier Collector vide its order dated 10.06.2008 directed the SDM (Narela) , Delhi, to inform the status of Plots No. 304 and 305. Both the parties were also directed to file their affidavits.

11. Learned counsel for the petitioners submitted that no person/Bhumidar can be allotted any additional land other than his holding. In case, if it is found that the land of the party Nos. 1 and 2 had already been acquired and had been allotted in excess of their holding, the respondents have no right or title for allotment of Plot No. 304.

12. Learned counsel further submitted that the land acquired by the Authorities cannot be said to be acquired till the compensation is paid to the petitioners in view of the law laid down in the case of Pune Municipal Corporation and Anr. Vs. Harakchand Misrimal Solanki and Ors., I (2014) SLT 637, and judgment rendered in case of Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu, , whereby the Apex Court held as under:-

"13. From the discussions made above, it is amply clear that though there is lack of clarity on the issue whether compensation has been paid for majority of land holdings under acquisition or not, there is no dispute that physical possession of the lands belonging to the Appellants under consideration in these appeals has not been taken by the State or any other authority on its behalf and more than five years have elapsed since the making of the award dated 30.11.2006 and 01.01.2014 when the 2013 Act came into force. Therefore, the conditions mentioned in Section 24(2) of the 2013 Act are satisfied for allowing the plea of

the Appellants that the land acquisition proceedings must be deemed to have lapsed in terms of Section 24(2) of the 2013 Act. The appeals are disposed of accordingly. It goes without saying that the Government of Tamil Nadu shall be free, if it so chooses to initiate proceedings of such land acquisition afresh in accordance with the provisions of 2013 Act. In the facts and circumstances of the case there shall be no order as to costs."

13. On the other hand, Mr. Pradeep K. B., learned counsel appearing on behalf of the respondents No. 3 to 8 submitted that as per the Scheme of consolidation, there was a provision for allotment of residential plot maximum of an area measuring 2 Bighas to each Bhumidar within the extended Abadi area and for allotment of such residential plot, the Bhumidar had to deliver double the value of the agricultural land to the size of the plot allotted to him. Accordingly, father of respondents No. 3 to 8 was allotted Plot No. 304, in respect of which the requisite agricultural land was deducted from his account. On the contrary, Predecessor-in-Interest of the petitioners was allotted Plot No. 306 and was also offered Plot No. 341, which he refused, therefore, the requisite agricultural land was not deducted from the account of the petitioners. Late Shri Ram Murti, Predecessor-in-Interest, filed objections before the Consolidation Officer, which was dismissed on 08.12.1975. Thereafter, the Predecessor-in-Interest filed appeal under Section 21(3) of the East Punjab (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act") , before the Settlement Officer. The said appeal was dismissed vide order dated 16.12.1976. Being aggrieved, the Predecessor-in-Interest, filed second appeal under Section 21(4) of the Act before the Additional Collector, Delhi, which was accepted vide order dated 20.11.1978 and it was directed that Plot No. 304 comprised in Khasra No. 3566/1105/2 be allotted to the Predecessor-in-Interest and if there was any deficiency, the same shall be made good by allotting area out of Plot No. 305.

14. Being aggrieved, late Shri Tek Ram, filed the Writ Petition No. 284/79 before this Court for quashing and setting aside the order dated 20.11.1978, passed by the Additional Collector, Delhi. The same was disposed of vide order dated 03.01.2003, holding that the Consolidation Officer considered the allotment of plot of land, as available, to the petitioners in accordance with the provisions of the East Punjab (Consolidation and Prevention of Fragmentation) Act, 1948. Thus, found no infirmity in the impugned order.

15. Learned counsel for the respondents No. 3 to 8 further submitted that against the order dated 03.01.2003, the aforementioned respondents filed an LPA No. 47/2003, which was dismissed in limine vide order dated 15.01.2003. The Review Petition No.276/2003 was also dismissed as withdrawn vide order dated 18.02.2003. Subsequent thereto, the aforementioned respondents filed Review Petition No. 2653/2003 in W.P.(C) No. 284/1979, which was dismissed vide order dated 07.03.2003.

16. Further submitted, in Civil Appeal No.1493/2004, the Supreme Court set aside the earlier order dated 15.01.2003 passed by the Division Bench of this

Court and directed that matter be decided afresh on merits by recording reasons. Thereafter, the respondents No. 3 to 8 filed CM No. 5284/2004 for revival of the appeal in terms of the directions of the Supreme Court enclosing the relevant material in respect of subsequent development. Accordingly, opportunities were granted to the respondents No. 3 to 8 to bring to the notice of this Court the subsequent developments sought to be urged for consideration.

17. Consequently, the Division Bench of this Court remanded the case to the Additional Collector to pass an order after hearing both the parties. Thus, it was open to the Additional Collector to take into account the subsequent events. Accordingly, the Collector passed the impugned order dated 12.12.2008 after getting detailed inquiry conducted by the Tehsildar, Saraswati Vihar, Delhi.

18. Learned counsel for the respondents No. 3 to 8 submitted that issue to be decided by the Collector was whether late Shri Ram Murti (Predecessor-in-Interest) and appellant before the Collector were entitled for allotment of Plot No. 304 or any other plot after taking into consideration the entire facts. Accordingly, after considering the report dated 23.10.2008 submitted by the Tehsildar, Saraswati Vihar, Delhi/ Inquiry Officer, other records and the order dated 08.12.1976 passed by the Settlement Officer, the Collector held as under:-

"I am satisfied that as per the consolidation scheme, the demand of late Shri Ram Murti has been met and there is no deficiency in allotment of land in his account during the consolidation proceedings."

19. Learned counsel for the respondents No. 3 to 8 further submitted that the Collector also noted that the entire land measuring 30 Bighas 13 Biswas in the account of Late Shri Ram Murti, had been acquired, thus, there was no land left with him which can be adjusted if any residential plot was allotted to them. Moreover, after acquisition of the land, the Revenue Courts have no jurisdiction.

20. It is submitted that the petitioners have challenged the order of the Additional Collector and the primary contention of the petitioners was that the application for correction of their account under Section 43A of the Act has not been considered. The report of Tehsildar, Saraswati Vihar, Delhi/Inquiry Officer dated 23.10.2008, is contrary to records, wherein the area of Khasra No. 3566/1105/2 has been recorded as 3 Bighas 10 Biswas, instead it should have been 4 Bighas 17 Biswas. Learned counsel submitted, this objection has been raised in the present petition first time by way of an application dated 11.09.2005 filed under Section 43A of the Act before the Consolidation Officer, after delay of about 32 years.

21. Learned counsel further submitted that as per the Scheme of the East Punjab (Consolidation and Prevention of Fragmentation) Act, 1948, Section 19 deals with publication of draft schemes, wherein it has been provided that within 90 days from the date of such publication, objections are to be filed before the Consolidation Officer. Section 20 deals with confirmation of the schemes. After the confirmation is notified, if anybody is affected by the said Consolidation

Scheme, the recourse available to such land owner is to file appeal provided under Section 21 of the Act. Section 43A of the Act provides only for correction of clerical and arithmetical error in a Scheme so made. Therefore, the present petition is not maintainable and is liable to be dismissed because the Collector vide impugned order dated 12.12.2008 rejected the claim of the petitioners and consequently dismissed the appeal holding that the petitioners are not entitled for residential plot as per the consolidation scheme. The impugned order was passed by the Collector after conducting a detailed inquiry and findings so recorded by the Collector are pure findings of facts, which cannot be interfered by this Court under the writ jurisdiction.

22. Learned counsel submitted that law has been settled in the case of B.K. Muniraju Vs. State of Karnataka and Others, , wherein the Apex Court held that writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.

23. Learned counsel further submitted that father of the respondents No. 3 to 8 had already surrendered the requisite land from his account, on the contrary Late Shri Ram Murti (Predecessor-in-Interest) did not surrender any land as he refused to take Plot No.341, which was offered to him by the Consolidation Officer.

24. Learned counsel appearing on behalf of the respondents No. 9 and 10 submitted that the aforementioned respondents were having double agricultural land to the extent of 2 Bighas 8 Biswas in Village Khera Khurd, Delhi. During the consolidation proceedings, the respondents have been allotted residential plot measuring 1 Bigha 4 Biswas for their residence, i.e., Plot No.305 located in the vicinity of their old residence. The allotment was completed as per the provisions of the Scheme. The main dispute is between the petitioners and the respondents No. 3 to 8 regarding Plot No.304. The petitioners have neither claimed any relief regarding Plot No.305 nor made any averment against respondents No. 9 and 10.

25. Learned counsel further submitted that the Additional Collector vide its order dated 20.11.1978 directed that Plot No.304 be allotted to the petitioners and further ordered that in case of deficiency, the same will be made good by using Plot No.305. In the first round of litigation, the counsel appearing on behalf of the petitioner in W.P.(C) No. 284/79 (wherein the Predecessor-in-Interest was respondent No.2) , made a statement that the said respondent did not press the claim for making up deficiency in his entitlement either from Plot No.305 or otherwise, therefore, the present petition deserves to be dismissed as respondents No. 9 and 10 are concerned.

26. I have heard the learned counsel for the parties.

27. As per the Scheme of consolidation, there was a provision for allotment of residential plot maximum of an area measuring 2 Bighas to each Bhumidar

within the extended Abadi area and for allotment of such residential plot, the Bhumidar had to deliver double the agricultural land to the size of the plot allotted to him. Accordingly, father of respondents No. 3 to 8 was allotted Plot No. 304, in respect of which the requisite agricultural land was deducted from his account. Whereas, Predecessor-in-Interest of the petitioners was allotted Plot No. 306 and was also offered Plot No. 341, which he refused, therefore, the requisite agricultural land was not deducted from the account of the petitioners.

28. Late Shri Ram Murti, Predecessor-in-Interest, filed objections before the Consolidation Officer, which were dismissed on 08.12.1975. Thereafter, said Ram Murti filed an appeal under Section 21(3) of the Act before the Settlement Officer, the same was dismissed vide order dated 16.12.1976. Being aggrieved, second appeal was filed under Section 21(4) of the Act before the Additional Collector, Delhi, which was accepted vide order dated 20.11.1978, whereby directed that Plot No. 304 comprised in Khasra No. 3566/1105/2 be allotted to the Predecessor-in-Interest and if there was any deficiency, the same shall be made good by allotting area out of Plot No. 305.

29. It is pertinent to mention here that being aggrieved by the aforesaid order, late Shri Tek Ram, filed the Writ Petition No. 284/79 before this Court for quashing and setting aside the order dated 20.11.1978 passed by the Additional Collector, Delhi. The same was disposed of vide order dated 03.01.2003, holding that there was no infirmity in the impugned order. Accordingly, the petitioners were not entitled to allotment of Plot No. 304.

30. The respondents No. 3 to 8 challenged the same before this Court by filing review petition and LPA, however, could not succeed. Thereafter, challenged vide Civil Appeal No.1493/2004, before the Supreme Court and same was allowed by setting aside the order dated 15.01.2003 passed by the Division Bench of this Court in LPA No. 47/2003 and directed that matter be decided afresh on merits by recording reasons. Consequently, the Division Bench of this Court remanded the case to the Additional Collector to pass an order after hearing both the parties. Thus, it was open to the Additional Collector to take into account the subsequent events. Accordingly, the Collector passed the impugned order dated 12.12.2008 after getting detailed inquiry conducted by the Tehsildar, Saraswati Vihar, Delhi.

31. The issue to be decided by the Collector was whether late Shri Ram Murti (Predecessor-in-Interest) and the petitioners before the Collector were entitled for allotment of Plot No. 304 or any other plot after taking into consideration the entire facts. After considering the report dated 23.10.2008 submitted by the aforementioned Tehsildar/ Inquiry Officer, other records and order dated 08.12.1975 passed by the Settlement Officer, the Collector held that the demand of late Shri Ram Murti has been met and there is no deficiency in allotment of land in his account during the consolidation proceedings.

32. Moreover, entire land measuring 30 Bighas 13 Biswas in the account of Late

Shri Ram Murti, had been acquired, thus, there was no land left with him which can be adjusted if any residential plot was allotted to them. The objection raised by the petitioner, first time, by way of an application dated 11.09.2005 filed under Section 43A of the Act before the Consolidation Officer, after delay of about 32 years, that the report of Tehsildar dated 23.10.2008 is contrary to records, wherein the area of Khasra No. 3566/1105/2 has been recorded as 3 Bighas 10 Biswas, instead it should have been 4 Bighas 17 Biswas.

33. Additionally, as per the Scheme of the East Punjab (Consolidation and Prevention of Fragmentation) Act, 1948, Section 19 deals with publication of draft schemes, wherein it has been provided that within 90 days from the date of such publication, objections are to be filed before the Consolidation Officer. Section 20 deals with confirmation of the Schemes. After the confirmation is notified, if anybody is affected by the said Consolidation Scheme, the recourse available to such land owner was to file appeal provided under Section 21 of the Act. Section 43A of the Act provides only for correction of clerical and arithmetical error in a Scheme so made. Therefore, vide impugned order dated 12.12.2008, the Collector has rejected the claim of the petitioners by holding that the petitioners are not entitled for residential plot as per the consolidation scheme. The said order has been passed after conducting a detailed inquiry, therefore, this court is not inclined to interfere with the order passed by the Collector.

34. Accordingly, finding no merit in the petition, the same is dismissed with no order as to costs.