

(2012) 07 DEL CK 0269

In the Delhi High Court

Case No : Writ Petition (C) No. 7399 of 2007 and C.M. No. 14061 of 2007

Kanshi Ram (D) Through LRs.

APPELLANT

Vs

Consolidation Officer and Another

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 36, 43A

Citation : (2012) 07 DEL CK 0269

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : N.S. Dalal, for the Appellant; V.K. Tandon, Advocate for Respondent No. 1 and Mr. P.S.Vats, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Aggrieved by Consolidation Officer's order of 25th June, 1998 (Annexure P-2), petitioner had preferred a Revision Petition to Financial Commissioner which stands dismissed vide impugned order of 24th August, 2007 (Annexure P-5), upholding withdrawal of agricultural land to the extent of 3 bighas each from Khasra No.25/10 and 109/3 in the Revenue Estate of Village Mundka, Delhi from the petitioner and it being allotted to Chandgi Ram & others. Learned counsel for the petitioner impugns order of 24th August, 2007 (Annexure P-5) as well as order of 25th June, 1998 (Annexure P-2) of the Consolidation Officer on the ground that the Consolidation Officer has no jurisdiction to exercise the power u/s 43A of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 and that there was no deficiency in the holding of respondent No. 2 who is the legal heir of Chandgi Ram as the deficiency so found in the holding of second respondent was already made good by the Consolidation Officer vide order of 17th May, 1990 (Annexure P-4). According to petitioner's counsel, the provision which can be invoked to make the deficiency good is Section 36 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 and the resort to Section 43A of the

aforesaid Act by the Consolidation Officer is misdirected. It was vehemently argued by learned counsel for the petitioner that a wrong calculation has been done to indicate excess land in the holding of the petitioner whereas there is no excess land in the petitioner's holding and so the orders impugned herein deserve to be quashed.

2. Justifying the impugned orders, it was contended by learned counsel for the respondents that due to miscalculation, deficiency in the holding of second respondent had occurred which was made good in the year 1990 vide order (Annexure P-4) and again, in the year 1998 exhaustive survey of the consolidation record was undertaken before closing of Consolidation Scheme, as during the intervening period, some of the right holders of this scheme had litigated and since steps were taken to amend the scheme for purpose of providing residential plots in the phirni, errors in calculation had occurred and so, vide order of 25th June, 1998 (Annexure P-2) excess land of 6 biswas from the holding of the petitioner has been withdrawn and has been allotted to the second respondent before closing of the Consolidation Scheme on 25th June, 1998 and thus, there is no illegality or infirmity in the impugned orders as the jurisdiction has been validly exercised by the Consolidation Officer by resort to Section 43A of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 and the reference to Section 36 of the aforesaid Act by petitioner's counsel is clearly misplaced as the consolidation scheme is neither sought to be varied or revoked.

3. Upon considering the submissions advanced and on perusal of the impugned orders, this Court finds that petitioner's counsel is not right in submitting that Consolidation Officer lacks jurisdiction to make up the deficiency in the land holdings during the currency of the Consolidation Scheme by invoking Section 43A of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 as this submission runs counter to the decision of the Division Bench of this Court in L.P.A. No.1734/2006, Shri Leo Puri vs. Consolidation Officer & Ors, rendered on 30th September, 2008, declaring that the Consolidation Officer is fully competent to rectify a mistake resulting in deficiency in holdings when the scheme is in operation by resort to Section 43A of the aforesaid Act, as such mistakes are capable of correction by Consolidation Officer by virtue of the power conferred by the aforesaid provision.

4. No decision to the contrary has been cited. Since the rights of the parties are not required to be re-determined, therefore, Section 36 of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 cannot be invoked to rectify the deficiency in the land holdings and so, resort to Section 43A of the aforesaid Act has been correctly made by the Consolidation Officer to make good the deficiency in the land holdings as Consolidation Officer does not become functus officio during the prevalence of the Consolidation Scheme.

5. Relying upon the ratio of the decision in Leo Puri (supra), submission of petitioner's counsel of resort to Section 36 of the Consolidation Act to address

the issue of deficiency of holdings is negated. While exercising the writ jurisdiction this Court is not required to dwell upon the merits of the factual issue of deficiency being there or not. Otherwise also, concurrent finding of fact recorded by two forums regarding petitioner holding excess land and there being deficiency in holding of second respondent appears to be correct and so, no fault can be found in the orders impugned herein. Consequently, finding no substance in this petition, I dismiss it while leaving the parties to bear their own costs. Pending application is also disposed of as infructuous.