
(2013) 05 DEL CK 0287

In the Delhi High Court

Case No : Writ Petition (C) 2862 of 2011 and CM 6084 of 2011

Kanwal Singh and Others

APPELLANT

Vs

GNCT and Another

RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14(1), 42

Citation : (2013) 05 DEL CK 0287

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : V.P. Rana and Mr. Hetal Vara, for the Appellant; Anjana Gosain, for R-1/GNCTD and Mr. Arvind Sah, for R-3, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—Consolidation in Village Bakoli, Delhi commenced by issuance of notification dated 13.4.1984 and 5.3.1990 u/s 14(1) and (2) of the East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948. The draft Consolidation Scheme was confirmed on 8.9.1996. Re-partition of the land took place on 14.7.1997. During consolidation, late Shri Jagan, father of the petitioners was allotted one residential plot measuring 2 bigha and 2 biswas and one industrial plot measuring 6 biswas. In addition to the above referred two plots and agricultural land, he was also allotted another plot bearing number 78/25 measuring 15 biswas. The residential plot measuring 2 bighas 2 biswas as well as the plot measuring 15 biswas, which was also a residential plot, were sold by late Shri Jagan to the petitioners on 2.3.2003, after obtaining the requisite NOC. Vide order dated 4.2.2004, the Consolidation Officer withdrew the aforesaid plot bearing number 78/25 from the petitioners and agricultural land comprised in Khasra number 1/25 min (1-6), was allotted to them.

2. Being aggrieved from the order passed by the Consolidation Officer, the

petitioners preferred a revision petition before the Finance Commissioner u/s 42 of the East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948. According to the learned counsel for the petitioners, two contentions were primarily raised by them before the Finance Commissioner. The first contention was that the impugned order dated 4.2.2004 had been passed by the Consolidation Officer without giving a show cause notice and/or opportunity of hearing to them. The second contention of the petitioners, according to the learned counsel for the petitioners, was that under the Consolidation Scheme in Village Bakoli, the land which remained unallotted was to be reverted back to the original owner of the said land.

3. The revision petition was dismissed by the Financial Commissioner vide order dated 28.2.2011, holding that the surplus land had been allotted to them and, therefore, they had no case on merit, though he accepted the contention that the impugned order had been passed by the Consolidation Officer without any notice of hearing to the petitioners and to this extent, it suffered from a legal infirmity. However, no view was taken by the Finance Commissioner on the contention of the petitioners that under the scheme, the unallotted plot was to revert back to the original owner of the land.

4. The learned counsel appearing for the respondent no. 1 submits that in fact the plot in question did not originally belong to the petitioners and under the Scheme, the maximum area of the residential plot which could be allotted to a person was 2 bighas 2 biswas and, therefore, late Shri Jagan could not have been allotted any residential plot, over and above the residential plot of 2 bighas 2 biswas which had already been allotted to him.

5. Since the order passed by the Consolidation Officer is a non-speaking order having been passed without giving any show cause and/or opportunity of hearing to the petitioners and the Financial Commissioner did not deal with the contention of the petitioners that under the Scheme, the unallotted plot was to revert back to the original owner of the land, which would be necessary to have adjudication of these disputed questions of facts. It would not be possible for this Court, while exercising jurisdiction under Article 226/227 of the Constitution to go into these disputed questions of facts and take a view one way or the other. In view of the foregoing facts and circumstances, the writ petition is allowed and the matter is remanded back to the Consolidation Officer to decide (i) who was the owner of plot bearing number 78/25 measuring 15 biswas at the pre-consolidation stage.

(ii) In case the plot in question was owned by late Shri Jagan at pre-consolidation stage, whether under the Scheme of Consolidation, he was entitled to allotment of this plot over and above the residential plot measuring 2 bighas 2 biswas already allotted to him.

The writ petition stands disposed of with above directions. The parties shall appear before the Consolidation Officer on 11 AM on 27.5.2013. The

Consolidation Officer, after hearing the parties, including respondent no. 2 to 5 before this Court, shall pass an appropriate order within four weeks thereof.

Dasti under the signature of the Court Master.