

(2007) 03 DEL CK 0040

In the Delhi High Court

Case No : Writ Petition (C) 2777 of 1991

Om Parkash and Others

APPELLANT

Vs

Financial Commissioner Delhi and Others

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14(1), 20

Citation : (2007) CriLJ 1530

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

Bench : Single Bench

Advocate : O.N. Vohra and Shraddha Bhargava, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The petitioners are residents of Village Mundka, Delhi. They are aggrieved by an order dated 21.5.1991 passed by the Financial Commissioner allowing a revision petition filed by Respondent No. 3 Mange Ram against an order dated 10.9.1990 passed by the Consolidation Officer whereby a warrant of possession in respect of plot number 848/1 measuring 5 bids was issued in favor of the petitioners.

2. The facts leading to the filing of this petition are that on 22.3.1953 a notification was issued u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948 ("Act") in respect of the Estate of Village Mundka. The right holders were asked to make the demands for allotment of plots in the extended Laldora between April 1st and 30th 1976. The deceased father of petitioners 1 to 3, Sri Deep Chand and the father of Petitioners 4 to 6, Sri Sajjan Kumar and the petitioners herein made demands for allotment of plots in the extended Laldora on 14th, 15th and 16th April 1976. The petitioners are petty land holders. Their total holding before the consolidation operation was a little less than three and a half bighas. In fact, they were joint Khatedars with

others. Shri Deep Chand, deceased father of petitioners 1 to 3, had, Therefore, asked for allotment of plot only in lieu of the agricultural land. The petitioners and Shri Sajjan Kumar asked for ex gratia allotment of plots for residence.

3. On 27.5.1976 the scheme of consolidation was confirmed u/s 20 of the Act. Obviously, some of the persons who had laid claims had not been considered in the scheme of consolidation that had been confirmed. A resolution was passed by the panchayat on 29.4.1979 suggesting variations in the scheme and on 8.5.1979 the Settlement Officer suggested, inter alia:

1. Applicants allowed by the predecessors may be included in the Scheme.

2. In addition to the applicants indicated in Annexure II there are some more applications which were submitted by the Haqdars in April, 1976 but have not been included in the Scheme. These may also be included in the Scheme.

4. On 28.4.1980 the petitioners herein were allotted land to an extent of 5 bids was in Plot No. 848/1 and an extent of 11 bids was land in the extended Laldora in Plot No. 848/1 min west.

5. Meanwhile, on 6.8.1880, the Settlement Officer decided to drop the proposal to amend the original scheme. This order was set aside on 8.10.1982 by Shri D.K.Das the learned Financial Commissioner who held as under:

The law of the land requires that a right holder has legal prerogative to seek allotment of residential plots within his Revenue Estate. The abadi plots in such matter are not allotted as an ex-gratia gesture by the Consolidation authorities. Allotment of plots is made in lieu of the land which the right holder had to surrender out of his own agricultural land. In dealing with such rights of individual right holders it was incumbent upon the Settlement Officer (Consolidation) to scrutinise the applications before him by holding proper enquiry about each of right holder concerned separately and then pass speaking orders relating to every individual case specifying cogent reasons for its acceptance or rejection. To deal with the demand in such a casual perfunctory and general manner tantamounts to arbitrary denial of rights to the concerned applicants.

...This is very unfortunate that the learned Settlement Officer has dropped the proposed amendment on flimsy ground without even caring to enquire as to whether any rightful claimant of abadi land had been deprived such right.

Although the Financial Commissioner passed the above order no relief was granted to the aggrieved persons and they filed writ petitions in this Court.

6. Even while the above writ petitions were pending the Consolidation Officer by an order dated 30.5.1984 withdrew the allotment of 11 bids was of land in plot number 848/1 min from the petitioners without assigning reasons.

7. A batch of writ petitions came up for hearing before a learned Single Judge of this Court who by an order dated 23.11.1984 upheld the order dated 8.10.1982

of the Financial Commissioner. The authorities were directed to proceed with the proposal to amend the Scheme in accordance with the observations made in the judgment.

8. Meanwhile, an appeal filed by the petitioners against the order dated 30.5.1984 passed by the Consolidation Officer was dismissed on 30.7.1985 by the Settlement Officer. On 9.9.1986 the Financial Commissioner dismissed the revision petition of the petitioners taking the view that the demand of the petitioners was not included in the list attached to the scheme of consolidation and Therefore the withdrawal of land measuring 11 bids was of plot was not open to challenge.

9. Another set of writ petitions by the residents of village Mundka came up for hearing before another learned Single Judge of this Court who by an order dated 22.10.1986 allowed the writ petitions. The Court recorded the submission of the petitioners in those cases that they would not insist on being accommodated at the same place.

10. Pursuant to an application by the petitioners, the Consolidation Officer on 10.9.1990 issued a warrant of possession in their favor in respect of plot number 848/1 measuring 5 bids was after passing the following order:

Present Shri Om Prakash applicant. Also present Shri Mange Ram respondent. The applicant Shri Om Prakash filed an affidavit that plot of which possession to be taken over is vacant. This point was opposed by the respondent. The respondent could not produce any documentary proof of built up area.

However on examination of revenue record, the plot stands in the name of Shri Om Prakash etc. In the totality of the circumstances, when the plot's right goes in favor of applicant, other things go secondary. The respondents also protested that their advocate is as strike. Since this matter is pending only for possession, no legitimate right is being encroached of the respondents. Moreover natural justice is covered when fair opportunity is given to both the parties.

I order that the possession be given to the applicant as he states that land is vacant. Announced.

11. Aggrieved by the order dated 10.9.1990 passed by the Consolidation Officer, the Respondent No. 3 herein Shri Mange Ram filed a revision petition before the Financial Commissioner, Delhi who by the impugned order dated 21.5.1991 allowed the said revision petition holding that the Consolidation Officer had misread and misinterpreted the order dated 9.9.1986 of his predecessor. Accordingly the order dated 10.9.1990 of the Consolidation Officer was set aside.

12. Shri O.N. Vohra, learned Senior counsel appearing for the petitioner, submitted that the allotment of 5 bids was of land in Plot No. 848 was distinct from the allotment of the 11 bids was of land in Plot No. 848/1 min, both in favor of the petitioners. He pointed out with reference both to the documents as well as the orders passed by the authorities below that there was no confusion about

the fact that what stood withdrawn by the order dated 30.5.1984 was only the 11 bids was of land allotted to the petitioner under 848/1 min. He further submitted that the petitioners are entitled not only to the restoration of the 5 bids was of land which rightfully belonged to them but they should also be given 11 bids was wrongly withdrawn earlier by the Consolidation Officer.

13. Despite service, none appeared for the respondents.

14. The first question to be considered is whether the Consolidation Officer correctly understood the true effect and purport of the order dated 9.9.1986 of the Financial Commissioner. Para 4 of the said order reads as under:

It is borne out from the records that the petitioners have no demand. However they have been allowed to retain allotment of plot number 848 measuring 5 biswas. According to the field staff this allotment was allowed to the petitioners due to the fact that they had not put-forth any demand as such they have been allotted this piece of land to the extent of 5 biswas. Now the sequence of the compromise is that the respondents No. 23 to 30 wish to leave the allotment of plot 848 for making over to the petitioners subject to the condition that they should be given allotment of plotted area to that extent meaning thereby that this would automatically result into the creation of demand in favor of the petitioners which is not permissible. This being the position, I do not consider it a fit case to be decided upon on the basis of the compromise arrived at in between the parties. On merits I have examined the papers. I do not find any ground to accede to the prayer of the petitioners. The petition having no force is hereby dismissed. The compromise as sought to be enforced stands refused to be acted upon.

Mr. Vohra appears to be right in his contention that the said order dated 9.9.1986 did not contemplate interfering with the allotment of 5 bids was of land in Plot No. 848/1 in favor of the petitioners. A careful reading of para 4 along with its preceding paragraphs would indicate that that part of the allotment was actually left untouched by the Financial Commissioner. The discussion essentially was as regards the allotment of 11 biswas, in respect of which the proposed compromise between the parties was not accepted.

15. In that view of the matter the Consolidation Officer correctly understood this order and passed an order on 10.9.1990 giving possession of the 5 bids was of land to the petitioners.

16. The order dated 21.5.1991 by the Financial Commissioner overlooks the fact that there were two distinct allotments in favor of the petitioners, one to the extent of 5 bids was in plot No. 848 and the other to the extent of 11 bids was in plot No. 848/1 min. It was the latter allotment that could not fructify ultimately in favor of the petitioners with the dismissal on 9.9.1986 of the revision petition. The petitioners may have got this 11 bids was had the compromise come through but for some reason the Financial Commissioner did not approve the compromise. As a result the petitioners did not get the 11 bids was of land. That

is not however to say that the petitioners would stand to lose the 5 bids was of land already allotted to them earlier and which allotment has been recognised in the order dated 9.9.1986 passed by the Financial Commissioner. By overlooking that there were two separate allotments, the Financial Commissioner erred in observing in the impugned order dated 21.5.1991 that the Consolidation Officer had misread the earlier order dated 9.9.1986 of the previous Financial Commissioner.

17. The Financial Commissioner also erred in observing that no demand had been made by the petitioners herein. The petitioners have placed on record copies of the letters of demand made by them on the 14th, 15th and 16th of May of 1976, which indicate to the contrary. The previous orders of this Court had specifically directed the revival of the proposal dated 8.5.1979 to amend the Scheme that had earlier been finalised. The petitioners' demands which were not included when the Scheme was first finalised had to necessarily be considered consequent upon such proposal to amend the Scheme. Therefore, both factually and legally, the Financial Commissioner erred in holding that the petitioners' right and entitlement to the 5 bids was stood extinguished by the order dated 9.9.1986 and further that the petitioners had not made any claims.

18. However, the Court is not inclined to entertain the plea of the petitioners that they should be restored 11 bids was of land which had been withdrawn on 30.5.1984 by the Settlement Officer and the challenge to which had been negatived by the Financial Commissioner on 9.9.1986. The petitioners chose not to challenge the said order dated 9.9.1986 of the Financial Commissioner till the filing of the present petition in 1991. Therefore, on the ground of laches, this plea of the petitioners for restoration of 11 bids cannot be accepted.

19. For all the above reasons the impugned order dated 21.5.1991 passed by the Financial Commissioner cannot be sustained in law and is hereby set aside. The order dated 10.9.1990 of the Consolidation Officer is restored to file. The petitioners are entitled to retain possession of the 5 bids was of land and if they have not already been put in possession, the respondents are directed to do so and make necessary entries to that effect in the records within a period of two months from today.

20. With the above directions, the writ petition is allowed with costs of Rs. 5000 which will be paid by the Government of National Capital Territory of Delhi to the petitioners within a period of four weeks from today.