(2010) 03 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (C) 23498-501 and 23917 of 2005

Parminder Singh and Others APPELLANT

Vs

Financial Commissioner and Others
 Jitender Singh Vs Govt. of NCT of Delhi and Others RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14, 21(2), 42

Citation : (2010) 171 DLT 220

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : N.S. Dalal, in W.P. C 23498-501/2005 and V.P. Rana, in W.P. C 23917/2005, for the Appellant; Som Dutt Kaushik and S. Kumar Srivastava for R-1, 2, 9, 15 and 16 in W.P. (C) 23498-501 and 23917/2005 and V.P. Rana, for R-8 in W.P. (C) 23498-501/2005, for the Respondent

Judgement

Sanjiv Khanna, J.—On 20th December, 1996, a notification u/s 14 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 was issued in respect of revenue estate in the village of Khera Kalan, Delhi. Subsequent thereto, the repartition was effected during the period 7th December 1999 to 10th December, 1999.

2. The grandfather of the petitioners herein, namely, Mr. Khazan Singh was a recorded co-bhumidar in respect of land measuring 94 bighas 9 biswa in the said village. His undivided share in the said land was 1/3. Mr. Khazan Singh died on 1st October, 1994.

3. On 8th February, 1995, the petitioners on the basis of will dated 4th July, 1994 applied to revenue authorities for mutation of assets/holding in their favour. The said application was moved before the notification u/s 14 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 was issued. This application was allowed and mutation was made in the revenue records in

favour of the petitioners on 17th December, 1999 i.e. few days after the re-partition was implemented during the period 7th December, 1999 to 10th December, 1999.

4. The allegation of the petitioners is that they have not been given any residential or industrial plot as per the consolidation scheme though they had submitted an application before the cut of date, i.e. 18th June, 1999, for surrender of agricultural land and allotment of residential plot/industrial plot.

5. Learned Financial Commissioner in the impugned order dated 24th November, 2005 has rejected the revision petition filed u/s 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 recording as under:

7. I have carefully considered the submissions made by the Ld. Counsels. It is true that during the consolidation proceedings from 20.12.1996 to 10.12.1999, the petitioners were not bhoomidars. They become bhoomidars only on 17.12.99. As only a bhoomidar could have asked for residential and industrial plot, obviously, the petitioners had no locus standi to ask for them. Evidently, one of their brothers on behalf of all of them raised objections but subsequently on being explained by the CO, withdrew the same. It is also true that appeal was time barred before the SO(C) and he has rightly observed it.

6. It is not possible to agree with the observations and findings of the Financial Commissioner that the petitioners were not entitled to ask for residential and industrial plot because they were recorded as bhumidar only on 17th December, 1999. What is relevant is that date on which the petitioners had made the application for being recorded as bhumidar after the death of Mr. Khazan Singh. In case of death inheritance is immediate and takes place by law of transmission and there is no gap. The property is inherited immediately on death. Further, the petitioners cannot be blamed for the delay in the mutation they cannot be penalized, and punished if their application for recording of mutation had remained pending and consideration with the revenue authorities. Mutation once allowed will relate back to the date when the application was filed unless there is a reason or ground to prescribe another date. Therefore, the Financial Commissioner was not justified in not examining the contentions raised by the petitioners on merits only on the ground that the petitioners were recorded as bhumidars on 17th December, 1999 and the repartition was implemented during the period 7th December, 1999 to 10th December, 1999.

7. The Financial Commissioner has also recorded in the impugned order that one of the petitioners, namely, Mr. Jitender Singh, who is brother of the other petitioners, had withdrawn his objections before the Consolidation Officer u/s 21(2) of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 and had belatedly filed an appeal before the Settlement Officer (Consolidation).The aforesaid facts appear to be correct in view of the documents, which have been placed on record to show that the objections filed u/s 21(2) of the aforesaid Act were withdrawn by Mr. Jitender

Singh on 30th August, 2001 and thereafter no appeal was filed till 30th August, 2002. Other petitioners, is can be presumed, were aware about the said withdrawal and had not taken any step to file an appeal. To this extent, the order of the Financial Commissioner appears to be correct and merits no interference.

8. Counsel for the petitioners have submitted that even if they had not filed or withdrawn their objection u/s 21(2), they were entitled to and had invoked revisionary power of the Financial Commissioner u/s 42 of the of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 as they were wrongly denied allotment of residential or industrial plot and even otherwise as per the scheme itself they were entitled to allotment at a specific location. Counsel for the petitioner have drawn my attention to the revision petition filed u/s 42 of the aforesaid Act in which various contentions and issues have been raised. This aspect has not been examined by the Financial Commissioner. Accordingly, the matter is remanded back to him to examine this aspect and contention. The Financial Commissioner will examine and consider whether any direction or prayer can be granted u/s 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948, even if the objections u/s 21(2) of the aforesaid Act were withdrawn or not filed. All contentions are left open except to the extent indicated above. The writ petitions are accordingly disposed of. In the facts and circumstances of the case, there will be no order as to costs. Parties will appear before the Financial Commissioner on 19th April, 2010, when a date of hearing will be fixed. Separate notice for hearing need not be issued to the parties.