

(2007) 06 DEL CK 0012

In the Delhi High Court

Case No : Writ Petition (C) 2472 of 1987

Rajdhani Park Kalyan Karini Samiti

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 15-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151

Constitution of India, 1950 — Article 226

Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 — Rule 5, 6

Delhi Land Reforms Act, 1954 — Section 5, 81

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14, 2, 21, 21(4), 26

Citation : (2007) 142 DLT 226 : (2007) 97 DRJ 38

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

Bench : Single Bench

Advocate : Ravi Gupta, Ankit Jain and Rajender Dutt, for the Appellant; Avnish Ahlawat, Latika Chaudhary and Nidhi Gupta for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.

Introduction

1. Writ Petition (C) No. 2472 of 1987 has been filed by the Rajdhani Park Kalyan Karini Samiti and seven others challenging an order dated 7.4.1986 passed by the Settlement Officer (Consolidation). The companion Writ Petition (C) No. 1689 of 1988 has been filed by Smt. Aruna Rani and 12 others challenging an order passed on 18.5.1987 by the Financial Commissioner dismissing Case No. 119/1986, a revision petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ("Holdings Act"). By the impugned order the Financial Commissioner affirmed the order dated 7.4.1986 passed by the Settlement Officer (Consolidation) which order has been challenged by the Rajdhani Park Kalyan Karini Samiti in the first mentioned petition.

2. The Rajdhani Park Kalyan Karini Samiti (hereinafter referred to as the "petitioner society") claims to be a society of about 1000 plot holders, including petitioners No. 2 to 8 in the first petition, who purchased plots of land of various sizes in village Mundka from the Respondent No. 6 M/s. Prakash Land and Housing Corporation by way of registered sale deeds. Respondent No. 6 in turn had purchased the lands from the recorded Bhumidars and sub-divided it into smaller plots before selling them to the petitioners. In time, constructions were made on these plots and an unauthorised colony by the name of Rajdhani Park has come into existence. The present dispute, however, concerns land admeasuring around 10 bighas and 16 bids was in the post- consolidation Khasra No. 74/4/2,5,6,7 and Khasra No. 74/15 allotted to the Respondent No. 4 M/s. Rajinder Singh Lakra Memorial Trust ("Trust") and Shri Lal Chand respectively. The plea of the petitioners in these petitions is that allotment of land in favor of the Respondent No. 4 Trust was illegal and that the said land ought to be allotted to their vendor M/s. Prakash Land and Housing Corporation i.e. Respondent No. 6.

Background Facts

3. The events leading to the filing of these writ petitions began in the year 1972, when Respondent No. 6, M/s. Prakash Land and Housing Corporation purchased agricultural lands in pre- consolidation Khasra Nos. 558, 3391/599, 867/678/581, 582, 583 etc in the revenue estate of village Mundka, from the original bhumidars through registered Sale Deeds. It appears that soon after purchasing the lands from the original bhumidars, Respondent No. 6 through its partner Shri Nandlal sub-divided them into small plots of 50, 100 and 200 sq. yds. and began selling them to individuals, including the petitioners 2 to 8 in the first petition and the petitioners in the second petition, by executing sale deeds. The plots were sold for the purpose of construction of dwelling units although the land being agricultural could not have been used for that purpose. However, Respondent No. 6 commenced construction on the lands and this led to proceedings being initiated against it u/s 81 of the Delhi Land Reforms Act 1954 (DLRA). The said lands consequently came to be vested in the Gaon Sabha.

4. On 29.9.1975, a notification was issued u/s 14 of the Holdings Act by the Lt. Governor of Delhi announcing the intention to frame a scheme for consolidation. A draft scheme was prepared on 16.11.1975 and it was confirmed by the Settlement officer (Consolidation) on 27.5.1976. Re-partition in terms of Section 21 of the Holdings Act took place between 26.6.1976 to 15.9.1976.

5. Since Respondent No. 6 was not a recorded bhumidar, it was not entitled to any land during the consolidation proceedings. As already noticed, the lands which had been purchased by it vested in the Gaon Sabha as a result of being used for non-agricultural purposes. The vesting came to an end on 24.4.1977 and the land stood again vested in the name of original bhumidars. It was only thereafter that some of these lands came to be mutated in the name of Prakash Land and Housing Corporation.

6. It appears that on 19.12.1980, an application was filed before the Consolidation Officer by the Respondent No. 4 Trust through its Secretary Shri S.S. Verma praying for allotment of land under the consolidation scheme. By an order dated 29.4.1981 the Consolidation Officer made allotment of lands in the names of some of the original bhumidars, and not in favor of the Trust. It was only afterwards, by registered gift deeds that the original bhumidars gave away the lands to the Trust and the lands then stood mutated in the name of the Trust.

7. Respondent No. 6 through its partner Shri Nand Lal filed an application for allotment of land as per its entitlement under the consolidation scheme. By an order dated 27.6.1981, the Consolidation Officer recorded the statement of Shri Nand Lal about his willingness to accept land in rectangles Khasra Nos. 74 and 48 (post consolidation numbers) admeasuring 26 bighas and 10 biswas.

8. Aggrieved by the orders dated 29.4.1981 and 27.6.1981, Respondent No. 6 through Shri Nand Lal filed an appeal before the Settlement Officer on the ground that the allotment of the land in the abadi was not made at their first centre where the original holdings of Respondent No. 6 stood. The appeal was dismissed on 16.11.1981. Thereafter Respondent No. 6 filed two revision petitions before the Financial Commissioner u/s 42 of the Holdings Act, through its partner Shri Prakash Chander. The first revision petition Case No. 353/1985-CA was directed against the order dated 29.4.1981. The second revision petition, Case No. 354 was against the order dated 16.11.1981 passed by the Settlement Officer (Consolidation). By an order dated 15.11.1984, the Financial Commissioner dismissed both revision petitions. The Respondent No. 6 did not file any further writ petition challenging the said order date 15.11.1984 which, Therefore, became final.

9. In the meanwhile, the petitioner society and five others including its office bearers filed W.P.(C) No. 722 of 1982 in this Court challenging the scheme of consolidation. The prayer was that the land under the scheme was allotted to the original bhumidars overlooking the fact that members of the petitioner society had purchased the land through registered sale deeds from Respondent No. 6. By an order dated 11.2.1983, a Division Bench of this Court dismissed the said writ petition as withdrawn. It recorded the statement by the Consolidation Officer that "We are considering the allotment of plots to the erstwhile purchasers of the land. This consideration will be completed within two months." After recording the statement, this Court passed the following order:

In view of the above statement, Mr. Chaudhary prays that the petitioners may be granted leave to withdraw the petition with liberty to take such action at law as the petitioners may be advised, after the consolidation officer has complete his proceedings. Leave granted as prayed. Petition dismissed as withdrawn.

10. According to the respondents, pursuant to the above statement, lands were allotted in the post-consolidation phase to Respondent No. 6 as well as the petitioners No. 2,3,6 and 7.

11. On 11.2.1985, the petitioner society again filed two revision petitions before the Financial Commissioner challenging the orders dated 29.4.1981, 27.6.1981 and 16.11.1981. By an order dated 9.7.1985, the Financial Commissioner once again examined the said impugned orders and this time remanded the matter to the Settlement Officer (Consolidation) for a fresh determination after setting aside the three impugned orders. The Settlement Officer was directed to give notice to all the persons affected and thereafter decide the issues involved. In the concluding portion of the Order dated 9.7.1985, the Financial Commissioner directed that "All out efforts should be made not to disturb the settled persons unnecessarily."

12. On 21.2.1986, the Consolidation Officer completed the allotment of the remaining lands in the post-consolidation phase to individual land holders whose names appeared in the records. He allotted some lands in favor of Respondent No. 6. Thereafter the Settlement Officer considered the objections filed by the petitioner society as well as Respondent No. 6. By his order dated 7.4.1986, the Settlement Officer rejected the claims of the petitioner society after noticing that some of the members of the petitioner Society as well as Respondent No. 6 had in fact been allotted land by the Consolidation Officer on 21.2.1986 and that on some of these lands "houses are built up conveniently." As regards the disputed land admeasuring around 20 bighas, he carried out a spot inspection and came to the conclusion that the land in question which had been allotted to the original bhumidars by the order dated 29.4.1981 was only being used for agricultural purposes and that there were no houses built thereon. He thereafter proceeded to make allotment of the disputed lands to three entities in the following manner: 9 bighas and 14 bids was to Respondent No. 6, 9 bighas and 7 bids was to Respondent No. 4 Trust and 1 bigha and 6 bids was to Shri Lal Chand.

13. The said order dated 7.4.1986 was challenged before the Financial Commissioner by the petitioner society. By the impugned order dated 18.5.1987, the Financial Commissioner dismissed the revision petition after observing that the land had been allotted to Respondent No. 6 as well as the individual plot holders and that there was no infirmity in the order dated 7.4.1986 of the Settlement Officer into which the Order dated 21.2.1986 of the Consolidation Officer stood merged. The revision petition of Respondent No. 6 on the ground that they should have been allotted land of a better value was also rejected.

14. Interestingly, no interim relief was sought by the petitioner society before this Court that the Respondent No. 6 should be restrained from selling the plots during the pendency of the proceedings before the Settlement Officer. In fact, Shri Nand Lal on 29.3.1990 applied to the Settlement officer and got some other land exchanged with his brother. The respondents No. 1 to 3 contend that this land which stood transferred by way of exchange was further sold to third parties and now there are certain industries running on the said land. It transpires that the Consolidation Scheme was closed on 25.6.1988 and the records were consigned.

Submissions of Counsel for the parties

15. Appearing for the petitioners in the first writ petition, Mr. Ravi Gupta, learned Advocate submitted as under:

i) Once the Financial Commissioner had by his order dated 9.7.1985 set aside the orders dated 29.4.1981 and 27.6.1981 of the Consolidation Officer and the order dated 16.11.1981 and Settlement Officer, those orders could not be relied upon any longer by Respondents Nos. 1 to 3 or Respondent No. 6 in support of their respective cases. Reliance was placed on the judgment in *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others*,

ii) The scope of the proceedings thereafter was confined to examining the merits of the subsequent orders dated 21.2.1986, 7.4.1986 of the Consolidation Officer and the Order dated 18.5.1987 of the Financial Commissioner.

iii) The Respondent No. 4 Trust was formed only on 19.12.1980 and on the same day it filed an application before the Consolidation Officer for allotment of land in the post consolidation phase. When admittedly the gift deeds under which the lands stood transferred to the Trust were executed by the original bhumidars subsequent to the date of the application, the Trust lacked the locus standi to file an application for allotment of land under the consolidation scheme. Reliance was placed on the judgment of the Punjab and Haryana High Court in *Nasib Kaur v. Addl. Director, Consolidation CXX (1998) PLR 713*.

(iv) The allotment made on 29.4.1981 was obtained by fraud and collusion and was unsustainable in law. Therefore, it could be avoided at any subsequent stage notwithstanding the fact that the Financial Commissioner had by his Order dated 15.11.1984 upheld the order dated 29.4.1981 of the Consolidation Officer. Reliance was placed on the judgment of the Privy Council in AIR 1948 168 (Privy Council) and *Rajlakshmi Dassi and Others Vs. Banamali Sen and Another*,

(iv) Once the allotment in favor of Respondent No. 4 trust stood vacated, the land in question had to be allotted to Respondent No. 6. The principle of res judicata would not apply vis a vis Respondent No. 6 since Shri Nandlal, the partner of Respondent No. 6, was an illiterate man and was not authorized to agree to the allotment of lands made in favor of Respondent No. 6 by the Order dated 27.6.1981. Therefore notwithstanding the fact that the Order dated 15.11.1984 became final vis-a-vis respondent No. 6 it could not bind the petitioner society.

(v) On the other hand the Trust having filed Writ Petition (C) No. 6586 of 2005 in this Court against the order dated 9.7.1985 passed by the Financial Commissioner, could not seek to overcome the logical consequence of that order which has attained finality.

(vi) Respondent No. 7, the Consolidation Officer after retirement became the Secretary General of Respondent No. 4 Trust and the nexus between the Consolidation Officer and the Trust at the time the order dated 29.4.1981 was

passed stood established. Therefore, the allotment in favor of the Trust was mala fide and ought to be set aside by this Court.

(vii) The entire Rajdhani Park was an unauthorised colony in respect of which an application for regularisation was pending before the Central Government. The disputed lands should nevertheless be allotted to Respondent No. 6 and through it to those who had purchased the plots in question.

16. The petitioners' submissions were supplemented by Mr. Manoj Goel, learned Advocate appearing for petitioners in the companion writ petition filed by Smt. Aruna Rani and others. Mr. Goel submitted as under:

(i) In the post-consolidation phase, only the bhumidars and transferees were entitled to be allotted land. While Respondent No. 6 could have validly made a claim for allotment of land, Respondent No. 4 Trust could not have so claimed since the gift deeds under which it claimed title to certain lands were not in existence. He relied upon the judgment in *Firm Mukand Lal Veer Kumar and Another Vs. Purushottam Singh and Others*, and *Smt. Gomitibai (dead) through LRs. and others Vs. Mattulal (dead) through LRs.*, to contend that the registration of the gift deed was essential and in its absence no right accrued to Respondent No. 4 Trust.

(ii) The allotment in favor of the Trust took place in collusion with the officials and Therefore the order dated 29.4.1981 of the Consolidated Officer stood vitiated. The subsequent statement of Nand Lal whereby he agreed to accept the allotment of certain land in the post-consolidation phase was only to cover up the illegal order dated 29.4.1981.

(iii) Since the order dated 29.4.1981 was obtained by collusion and fraud, it was possible to once again file revision petitions before the Financial Commissioner to challenge that order even though the earlier Financial Commissioner had on 15.11.1984 affirmed the said order. Reliance is placed upon the judgments in *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, , *Budhia Swain and Others Vs. Gopinath Deb and Others*, and *Ram Chandra Singh Vs. Savitri Devi and Others*,

(iv) The Trust having filed a writ petition to challenge the order dated 9.7.1985 and having withdrawn it without reserving liberty to challenge it later, could no longer be heard to say that the order dated 9.7.1985 was bad in law. Reliance is placed on the decision in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, ; *The Bhopal Sugar Industries v. The Income Tax Officer (1961) 1 SCR 475* and finally *Lacchman Singh Vs. State of H.P. and Others*,

(v) Shri Nand Lal was an illiterate person and was not in a position to give undertaking on behalf of the partnership firm Respondent No. 6. Such a statement was not valid and could not bind the firm. He relied upon the decision of the Madras High Court in *Chainraj Ramchand Vs. V.S. Narayanaswamy and*

Others,

17. Mr. Rajender Dutt, learned Advocate appearing for Respondent No. 6, Prakash Land and Housing Corporation made following submissions:

i) The question of title is not decided under the Holdings Act. The definition of land u/s 2 (b) of the Holdings Act has a different connotation.

ii) Grant of mutation does not amount to conferring title. Reliance is placed on judgment of Hon"ble Supreme Court in Smt. Sawarni Vs. Smt. Inder Kaur and Others,

(iii) The right to invoke the revisional jurisdiction u/s 42 of the Holdings Act is available to every individual land holder and can be invoked at any time.

(iv) u/s 26 of the Holdings Act the expression "land owners" would including the holder of a registered sale deed and such person would also be entitled to be allotted land in the post-consolidation phase.

18. Appearing for the respondents No. 1 to 3, Ms. Avnish Ahlawat, learned Advocate submitted as under:

(i) Essentially this appears to be a dispute between the petitioner society, petitioner Nos. 2 to 13 on the one hand and Prakash Land and Housing Corporation on the other. A private dispute such as this was not amenable to adjudication in the jurisdiction of this Court under Article 226 of the Constitution.

(ii) Having been allotted land in the post-consolidation proceedings after remand by the Financial Commissioner, neither the petitioners No. 2,3,6 and 7 nor Respondent No. 6, who also has been allotted land could have filed the present petition challenging the allotment to respondent No. 4. She referred to the application filed in these proceedings by Respondent No. 6 under Order 1 Rule 10 CPC seeking impleadment in which the revenue record entries confirm the above allotments in their favor.

(iii) The Financial Commissioner, who entertained the revision petitions of the petitioner society, lacked the jurisdiction to review the order dated 15.11.1984 of his predecessor. Therefore, the subsequent order dated 9.7.1985 passed by the Financial Commissioner was entirely without jurisdiction. Reliance was placed on the decision of this Court in Smt. Bimla Devi and Others Vs. The Financial Commissioner and Others,

(iv) It was a mistake to proceed on the basis that the order dated 29.4.1981 passed by the Consolidation Officer resulted in land being allotted to the Trust. In fact, till such time the land did not stand vested in the Bhumidars the question of allotting the land to the Trust did not arise. The Trust was now holding the land subsequently through valid registered gift deeds and for only agricultural purposes.

(v) The attempt now to explain away the consent given by Shri Nand Lal before

the Consolidation Officer was untenable since it was only with a view to reopening the challenge to the order dated 27.6.1981 by the firm which challenge had already failed with the dismissal of its revision petition by the earlier order dated 15.11.1984 of the Financial Commissioner. That order had become final as Respondent No. 6 did not challenge it.

(vi) As regards Aruna Rani and other petitioners she submitted that no sale deeds were produced to show whether and when they had purchased lands from Respondent No. 6 and whether they formed part of the disputed lands.

(vii) Finally it was pointed out that the object of the Holdings Act being prevention of fragmentation, the present petitions if allowed would result in further fragmentation. It was prayed that the writ petitions ought to be Therefore dismissed.

19. Appearing on behalf of Respondent No. 4 Trust, Mr. R.P Bansal, learned Senior Advocate referred to the counter affidavit filed by the Trust and submitted that the land in question was still used as agricultural land by the Trust and there were no construction on the said land. Therefore, the said land was not part of the unauthorised colony in respect of which the decision of the government concerning regularisation was awaited. In fact, a road was recently constructed on a part of the said land. Even today the disputed land allotted to the Trust remains vacant as has been rightly observed by the Settlement Officer in his impugned order dated 7.4.1986. He questioned the locus of the petitioners to challenge the allotment in favor of the Trust. Whatever may have been the reasons for the earlier order dated 9.7.1985, the entire matter was examined de novo by the Settlement Officer by a spot verification. The order dated 7.4.1986 did not suffer from any illegality. Counsel for Shri Lal Chand (Dead) through LRs, Respondent No. 5 supported the plea of Mr. Bansal that the petitions should be dismissed.

Issues arising for consideration

20. On a consideration of the pleadings and the submissions advanced, the issues that arise for determination in this case are:

A. What is the true scope of the revisional powers and jurisdiction of the Financial Commissioner in terms of Section 42 of the Holdings Act? Does it include the power to review an order passed by same authority?

B. Within the scheme of the Holdings Act, who is entitled to be allotted land in the post-consolidation phase? Are the allotments made by the order dated 29.4.1981 of the Consolidation Officer valid?

C. Do the petitioners have the locus standi to challenge the allotments made by the Consolidation Officer by the impugned order dated 7.4.1986 in so far as Respondent No,4 Trust and Shri Lal Chand are concerned?

D. Are the impugned order dated 7.4.1986 passed by the Settlement Officer and

the order dated 18.5.1987 passed by the Financial Commissioner sustainable in law?

Issue A: Can the Financial Commissioner exercise the power of review?

21. This question arises in the background of three orders having been passed by the Financial Commissioner in exercise of his powers u/s 42 of the Holdings Act in the instant case. The first was the order dated 15.11.1984 whereby he dismissed the revision petitions filed by Respondent No. 6 firm thereby affirming the orders dated 29.4.1981 and 27.6.1981 passed by the Consolidation Officer and the order dated 16.11.1981 passed by the settlement Officer. This order was not challenged by Respondent No. 6 and thereby became final.

22. The finality of this order was disturbed when the Financial Commissioner again entertained the two revision petitions filed by the petitioner society challenging these very orders. By the second order dated 9.7.1985 the revision petitions were allowed and the matter remanded to the Settlement Officer for a de novo adjudication of the issues. The challenge to the second order by the Respondent No. 4 Trust was negated by this Court by the dismissal of the writ petition as withdrawn. Further, the logical outcome of the remand order dated 9.7.1985 was the passing of the two impugned orders: the order dated 7.4.1986 by the Settlement Officer and the later (and third) order dated 18.5.1987 of the Financial Commissioner affirming the said order.

23. One possible approach to adopt is that in view of the subsequent orders dated 7.4.1986 and 18.5.1987, the question whether the order dated 9.7.1985 is without jurisdiction is academic. The other approach is to examine whether the remand order dated 9.7.1985, which reopened the issue of the validity of the already affirmed orders dated 29.4.1981 and 27.6.1981 of the Consolidation Officer, was itself without jurisdiction.

24. This Court is adopting the latter approach for the reason that the question whether the Financial Commissioner, exercising statutory judicial function u/s 42 of the Holdings Act, can repeatedly entertain revision petitions challenging the very same orders on which his predecessor or he himself has already expressed a view, is an important question of law. By entertaining the subsequent revision petitions and allowing them by the order dated 9.7.1985, the Financial Commissioner has, without saying it in so many words, reviewed the earlier order dated 15.11.1984 of his predecessor. That is how the question framed as issue A arises.

25. It is a fairly well-settled legal proposition that powers of review of any statutory judicial tribunal have to be specifically enumerated in the very statute that confers such powers of adjudication on the authority or Tribunal. In *Drew v. Willis* (1891) 1 QB 450 Lord Esher, M.R. stated:

no court (and I would add "no authority") has a power of setting aside an order which has been properly made, unless it is given by statute.

In *Hession v. Jones* (1914) 2 KB 421 it was said that a court exercising powers under a statute had no power "to review an order deliberately made after argument and to entertain a fresh argument upon it with a view to ultimately confirming or reversing it." The Madras High Court in *Anantharaju Shetty v. Appu Hegada* AIR 1919 Mad 244 observed:

It is settled law that a case is not open to appeal unless the statute gives such a right. The power to review must also be given by the statute. Prima facie a party who has obtained a decision is entitled to keep it unassailed, unless the Legislature had indicated the mode by which it can be set aside. A review is practically the hearing of an appeal by the same officer who decided the case. There is at least as good reason for saying that such power should not be exercised unless the statute gives it, as for saying that another tribunal should not hear an appeal from the trial court unless such a power is given to it by statute.

26. Specific to the Holdings Act and the power u/s 42 thereof, the decision of the Hon^{ble} Supreme Court in *Harbhajan Singh Vs. Karam Singh and Others*, is instructive. The facts are succinctly set out in the judgment itself (SCR, p.818):

Harbhajan Singh had filed two copies of the application u/s 42 of the Act and on one copy the Director of Consolidation of Holdings passed an order on 17th February, 1958 that the application should be put up with previous papers. On the second copy of the application the Director passed an order on 3rd April, 1958 to the following effect:

The order of Assistant Director, Consolidation of Holdings, u/s 21(4) need not be amended. File. Inform.

On the copy of the application on which the order of 17th February, 1958 was passed, the Director heard the parties and passed his order on 29th August, 1958 by which he allowed the application of Harbhajan Singh and set aside the order of the Assistant Director. Respondent 1 thereafter moved the Punjab High Court under Article 226 of the Constitution for quashing the order of the Director, Consolidation of Holdings, made on 29th August, 1958. The application was allowed by the High Court on 11th January, 1960 on the ground that the Director, Consolidation of Holdings, was not competent to pass the order dated 29th August, 1958 in view of his previous order dated 3rd April, 1958 dismissing the application of Harbhajan Singh. The appellant took the matter in appeal under Letters Patent but the appeal was dismissed on 19th April, 1960.

The Hon^{ble} Supreme Court then framed the following question for determination:

The question of law presented for determination in the appeal is whether the Director, Consolidation of Holdings, had power to review his previous order dated 3rd April, 1958 dismissing Harbhajan Singh's application, and whether his subsequent order made u/s 42 of the Act dated 29th August, 1958 is legally

valid?

After reviewing the case law on the topic, the Court concluded (SCR, p.819)

There is no provision in the Act granting express power of review to the State Government with regard to an order made u/s 42 of the Act. In the absence of any such express power, it is manifest that the Director. Consolidation of Holdings, cannot review his previous order of 3rd April, 1958 dismissing the application of Harbhajan Singh u/s 42 of the Act. It follows Therefore that the order of the Director dated 29th August, 1958 is ultra virus and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Article 226 of the Constitution.

27. Therefore, the decision in Harbhajan Singh is a complete answer to the question framed in Issue A. It is held that the Financial Commissioner, exercising powers u/s 42 cannot review an order passed earlier by him or the predecessor on the very same subject matter. To the same effect is the judgment of this Court in *Bimla Devi v. Financial Commissioner* (supra) which this Court respectfully concurs with and follows.

28. An attempt was made by the counsel for the petitioners to show that since the earlier order dated 29.4.1981 of the Consolidation Officer was obtained by collusion, they were entitled to indirectly seek a review of the Order dated 15.11.1984 of the Financial Commissioner which affirmed that order. It was in support of this extremely strained logic that reliance was placed on a series of judgments which hold that an order obtained by fraud and collusion can be reviewed by a court or Tribunal. Some of those decisions are examined to see if they apply to the facts of the present case.

29. In *Indian Bank v. Satyam Fibres (India) (P) Ltd.* (supra) the legal position was explained thus (SCC, p. 562):

The judiciary in India also possesses inherent power, specially u/s 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behavior. This power is necessary for the orderly administration of the court's business.

However, the Court hastened to point out, by referring to the observations of the Privy Council in *Satish Chandra Chatterji v. Kumar Satish Kantha Roy* AIR 1923 PC 73 that:

Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them - proved by established

facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape.

30. Likewise in *Budhia Swain v. Gopinath Deb* (supra) the Supreme Court, after reviewing the case law, held (SCC, at p. 401):

8. In our opinion a tribunal or a court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party, or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

31. It is difficult to see how the above decisions help the case of the petitioners here. It is nobody's case that the order dated 15.11.1984 of the Financial Commissioner, the review of which was sought, was obtained by either collusion or fraud. No such plea has been taken even in the revision petitions filed by the petitioner society. What was argued was that the order dated 29.4.1981 of the Consolidation Officer was obtained by collusion, which of course is a very different thing. Secondly, the allegation of fraud and collusion will have to be pleaded and responsibly proved before a court or tribunal can be persuaded to review its order. Nothing of that sort has been done here. Thirdly, since the allotment of the lands was not in fact made in favor of the Trust by the order dated 29.4.1981, the very basis of the revision petitions by the petitioner society was non-existent. Fourthly, it is again nobody's case that the order dated 15.11.1984 of the Financial Commissioner was without jurisdiction.

32. In view of the above settled position in law, there was no occasion for the Financial Commissioner to have once again entertained the two revision petitions filed by the petitioner society against the very same orders dated 29.4.1981 and 27.6.1981 passed by the Consolidation Officer and the order dated 16.11.1981 passed by the Settlement Officer.

33. In any event there is no question of entertaining any such plea at the instance of respondent No. 6. The only course available to Respondent No. 6 which unsuccessfully challenged the said orders by way of the revision petition before the Financial Commissioner was to challenge the order dated 15.11.1984 by way of a writ petition, However, that was never done, and Therefore, against Respondent No. 6, the order dated 15.11.1984 became final. This was an important factor which appears to have been overlooked by the second order dated 9.7.1985 of the Financial Commissioner.

34. Even as regards the petitioner society, the principles of res judicata were attracted in this context. When it filed Writ Petition (C) No. 722 of 1982 in this Court, the three orders, which it challenged by way of revision petitions subsequently, had already been passed. The validity of the said orders were certainly put in issue in the said writ petition although the prayer itself was a challenge to the consolidation scheme. This is clear from para 7 of the said writ petition which reads as under:

That the consolidation proceedings went on for years before the consolidation officer and without applying with the provisions of East Punjab Holdings and prevention of fragmentation Act, the Respondent No. 1 has prepared a Scheme of the Consolidation of holding of Village Mundka and under the said Scheme the land of the petitioners and other members of the petitioner No. 1 has not been fixed at the site of their plots and it is learnt that the land under the Rajdhani Park has been, in fact, allotted to the respondents No. 5 and 17 to 39, but now under the garb of the said allotment they are threatening to take illegal and forcible possession of the land and also to demolish the houses of the plot holders who are members of the petitioner No. 1 at Rajdhani Park, Delhi. The respondents No. 5 to 16 are the persons who have sold their land to about 700 persons who are plot holders of Rajdhani Park and are members of the petitioner No. 1 and the respondents No. 5 & 17 to 39 are the persons who have been newly allotted the land at the site of Rajdhani Park, Delhi in the consolidation proceedings by the consolidation Officer, Delhi.

35. The respondents referred to in the above paragraph are those in whose favor the allotment was made by the Consolidation Officer by his order dated 29.4.1981. The aforementioned writ petition, as already noticed, was dismissed as withdrawn on the statement made by the Consolidation Officer that they were considering the allotment of plots to erstwhile purchasers of the land. This Court then gave the petitioners "Liberty to take such action on law as the case may be advised after consolidation officer has completed its proceedings." With the dismissal of the above writ petition, it was inconceivable how revision petitions could have been filed by the petitioner society before the Financial Commissioner challenging those three orders.

36. For all of the above reasons, this Court answers the questions in issue A in favor of the respondents and against the petitioners by holding that the Financial Commissioner lacks the power to review his order made u/s 42 of the Holdings

Act. Consequently, in the context of the present case, the Financial Commissioner ought not to have entertained the two fresh revision petitions filed by the petitioner society challenging the against the very same orders dated 29.4.1981 and 27.6.1981 passed by the Consolidation Officer and the order dated 16.11.1981 passed by the Settlement Officer.

37. Notwithstanding this conclusion, the Court examines the other questions that arise in view of the elaborate arguments advanced.

Issue B: The validity of the allotments made by the order dated 29.4.1981

38. This issue concerns the scope of the proceedings under the Holdings Act. In order to appreciate the scope of the dispute in the present matters a look at the provisions becomes necessary. As far as the Holdings Act is concerned, the word "land" is defined in Section 2 (b) to mean:

land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land.

The word "owner" has been defined u/s 2(f) to mean:

in the case of unalienated land the lawful occupant and when such land has been mortgaged, owner means the mortgagor; in the case alienated land, owner means the superior holder

Under Section 2(k), it is stated that "words and expression used in this Act but not defined, have the meanings assigned to them or to their equivalents in the Punjab Land Revenue Act, 1887 or the U.P. Land Revenue Act, 1901 as the case may be."

39. u/s 26 of the Holdings Act, a land owner who leases, mortgages or other wise creates any other encumbrance of his holding would cease to have any right and such transferee of the right would be entitled to make a claim before the consolidation officer. The expression "land owner" not having been defined in the Holdings Act, recourse has to be taken Punjab Land Revenue Act 1887.

40. The expression "land owner" under the Punjab Land Revenue Act reads as under:

(2) "land-owner" does not include a tenant or an assignee or land-revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate;

41. In addition to the above, Section 5 of the Delhi Land Reforms Act, 1954

(DLRA) defines a bhumidar as including a person who has acquired ownership by way of sale.

42. Reverting to the Holdings Act, the above position makes it clear that in order to find out who would be entitled to make a claim and be allotted land in the post consolidation phase, it would have to be first ascertained whether the person claiming is a land owner in terms of the Act. In the first place, the Consolidation Officer will have to examine the Revenue Records in order to determine who the land owner is. Of course, in terms of the Delhi Holdings Rules, 1959, and in terms of Rules 5 and 6 thereof, agricultural labourers and village artisans also are intended to be allotted land in the post consolidation phase. It is for the person making a claim to show that he is entitled to allotment of land in the post consolidation phase. If any of the claimants seek to rely upon any conveyance deed that would have to be produced before the Consolidation Officer. In the absence of any such document being produced before him, the Consolidation Officer will have to proceed according to the record of rights. Usually, this exercise will have to be performed at the stage of filing claims and objections to the scheme.

43. As far as the present case is concerned, the stage for filing objections was between 16.11.1975 and 27.5.1976. If the names of any of these petitioners who claim to be holders of registered sale deeds have not been entered in the records during this period and if the sale deeds purported to have been executed in their favor were not produced before the Consolidation Officer, then it is difficult to appreciate how the Consolidation Officer could have considered their claims to allotment of land. The Court finds that the approach of the Consolidation Officer in making allotments by the order dated 29.4.1981 cannot be faulted since he only went by what the position in the records was. Although, the application/claim for allotment was made by Respondent No. 4 Trust, no allotment was made in its favor by the said order dated 29.4.1981. Not one of these petitioners or even Respondent No. 6 produced any sale deeds before the Consolidation Officer to show that the lands in question belonged to them.

44. This Court finds no infirmity in the order dated 29.4.1981 of the Consolidation Officer. Nevertheless, in view of the subsequent developments where the entire matter has been gone into de novo pursuant to the remand order dated 9.7.1985 of the Financial Commissioner, the question of the validity of the order dated 29.4.1981 does not survive. Issue B is answered accordingly.

Issue C: Locus standi of the petitioners

45. A serious argument has been made on behalf of Prakash Land and Housing Corporation that the order 29.4.1981, even if it did not need to make any allotment of land to the Trust was even otherwise erroneous since the holders of disparate plots could not get together to form a group by clubbing their scattered lands and then ask for allotment of contiguous land at the centre of the holdings of the original owners. It is submitted that the original owners in this context

here would be Respondent No. 6 and it had a superior right to ask for the land in the post-consolidation phase at the centre where the original bhumidars who gifted their land to Respondent No. 4 Trust have been allotted by the order dated 29.4.1981.

46. This argument is without merit for several reasons. In the first place the petitioners here have no locus standi to question the order dated 29.4.1981 since they did not produce before the Consolidation Officer any sale deed executed in their favor by Respondent No. 6. That happened only in the second round of litigation. The point is that in any event these sale deeds do not pertain to the disputed land which ultimately came to be gifted to respondent No. 4 Trust. Secondly, Prakash land and Housing did challenge the order dated 29.4.1981, but its revision petitions were dismissed on 15.11.2004 by the Financial Commissioner. That order became final. Thirdly, the claim of these petitioners is for land on which they want to construct housing which is a purpose not permissible under the DLRA or the Holdings Act. Fourthly, against the Consolidation Scheme the petitioners filed Writ Petition (C) No. 722 of 1982 which was dismissed as withdrawn after the Consolidation Officer made a statement that they would be considered for allotment of land. Pursuant to this, not only Respondent No. 6 but some of the petitioners in the first mentioned writ petition were in fact allotted lands. In fact even in the earlier round land was allotted to Respondent No. 6 through its partner Shri Nand Lal. To permit the Respondent No. 6 at this stage to argue that Shri Nand Lal acted without authority of the firm, would clearly be an abuse of the process of law. This Court is not prepared to permit the Respondent No. 6 to avoid the legal consequences of the order dated 15.11.1984 passed by the Financial Commissioner which negated its plea. Therefore, it is not open to the Respondent No. 6 to challenge the allotments made by the order dated 29.4.1981 any longer.

47. The locus standi of the petitioners too is not established. As far as the first writ petition is concerned, it requires to be noticed that nowhere in the petition has the locus standi of petitioner Nos. 2 to 8 in the first writ petition been explained. Mr. Ravi Gupta learned Counsel was at pains to refer to paras 1,2 and 3 of the writ petition in which it is only stated that the petitioners 2 to 8 "are plot holders in Rajdhani Park having regular registered sale deeds in their favor from M/s. Prakash Land & Housing Corporation...." In para 2 it is stated "that there are about 1000 plot holders in the colony known as Rajdhani Park and all of them are interested in the outcome of the present petition and Therefore, petitioner No. 1 is instituting the petition in the representative capacity." However, not even one sale deed in support of these averments is produced. A reference is being made to a solitary sale deed filed in the earlier Writ Petition (Civil) No. 722 of 1982 in favor of petitioners 6 and 7 by respondent No. 6 here.

48. There are other difficulties too. The disputed land is only to the extent of 10 bighas and is vacant whereas the plots that have been purchased by the petitioners have constructions. The plot holders already having unauthorized

constructions cannot obviously be interested in these vacant lands. It can only be persons who have purchased this very vacant land which have been gifted to Respondent No. 4 trust by the original allottee/bhumidar of this land and can have a locus standi. It is inconceivable that 1000 plot holders would be interested in getting the allotment of these 10 bighas of land lying vacant when they already have plots on which they have constructions. Finally, the plot holders on which there are unauthorized constructions, cannot possibly be aggrieved by the deprivation of any land which they obviously require for further unauthorised construction. This Court cannot be seen to be issuing a mandamus that the land should be allotted to any party for the purpose of an unauthorized construction. Viewed from any angle, it is difficult to say what legal right the petitioners have to the lands in question.

49. As far the petitioners in the companion writ petition are concerned, along with their written submissions they have for the first time produced photocopies of seven sale deeds of some of the petitioners executed in their favor by Sri Nand Lal representing Respondent No. 6. These were executed on various dates between 21.3.1972 and 10.5.1972. The Khasra numbers do not match those of the lands held by the original bhumidars to whom land was allotted by the Consolidation Officer on 29.4. 1981. Therefore, it is not as if the lands which were meant to be allotted to them in the post-consolidation phase, in lieu of the lands held by them, has been allotted wrongly to someone else. The only grievance is about the centre where the bhumidars mentioned in the order dated 29.4.1981 have been allotted land. On this aspect, there are two difficulties in their way. In the first place, their claim will succeed only if the plea of their vendor, i.e. Respondent No. 6 succeeds, for they cannot have a higher right than respondent No. 6. As regards this as already noted, Respondent No. 6 through Sri Nand Lal had agreed to accept land elsewhere during the earlier round of proceedings. Secondly, there cannot be a right to claim that the centre of a person's holding in the post-consolidation phase should remain unchanged from what it was prior to consolidation.

50. Further, on this aspect, the order dated 7.4.1986 passed by the Settlement Officer has explained in great detail why those lands cannot be allotted to either Respondent No. 6 or the petitioners. It is difficult to see how and why the petitioners would be prejudiced if those lands were allotted to any one else. Moreover, may of them have in fact been allotted lands in the remanded proceedings by the Settlement Officer which has been affirmed by the Financial Commissioner. Therefore, they cannot insist that the land in dispute should be allotted to them in the post consolidation phase.

51. The respondent is also correct in contending that the post remand proceedings have been taken to their logical conclusion and that some of the petitioners and Respondent No. 6 have already been allotted lands. There cannot be endless craving for more and more land.

52. Issue C is accordingly answered against the petitioners. Notwithstanding the

conclusion of this Court that the petitioners do not have locus standi to question the allotment made to the Bhumidars by the order 29.4.1981 of the Consolidation Officer, the need to examine the validity of that order does not survive any longer in view of the remand proceedings where the entire matter has been examined de novo. By the order 7.4.1986 the Settlement Officer has made allotments of land in the post consolidation case in favor of Respondent No. 6, the Respondent No. 4 Trust and Shri Lal Chand. This order has been affirmed by the Financial Commissioner. The validity of these orders are examined next.

Issue D: Validity of the impugned orders dated 7.4.1986 and 18.5.1987

53. There is considerable force in the submission made on behalf of Respondent No. 1 to 3 that the Settlement Officer in his order dated 7.4.1986 has considered all the objections filed individually as well as jointly by the petitioner society and Respondent No. 6. He made a spot inspection and noted as under:

Learned Financial Commissioner secondly directed that site should be inspected. I, accompanied with the consolidation officer and Patwari went to inspect the site. After site inspection it revealed that in Khasra No. 74/4 5,6,7, and 15 there are no residential houses built but this land being used for agriculture purposes

He further observed as under:

Learned Financial Commissioner thirdly directed that the persons-lived/settled may not be dispossessed. After site inspection and pursuing record it has come to knowledge that Shri Lal Ram, Smt. Hadei, Sh. Daryao singh, Samey Singh, Partap Singh, Sh. Lal Chand, Om Parkash, Nihale, Rishale etc. and Rajender Singh Lakra Trust were allotted are 10-14 Bighas detailed given at page 15 above. As there found deficiency of Hakdars this area was allotted to them at this site as the area was available only that site. As regards question of Parkash Land and housing and Plot Holders they have been allotted area, as detailed above, at place where houses are built up conveniently. Besides this they have been allotted killa Nos. 50/21, 50/22/1 North and 51/25, area 7-18 Bighas by Consolidation Officer, vide order dated 2.2.1986, has been adjusted which adjacent to aforesaid land. This area has been only allotted so that remaining plot holders demand of area can be fulfilled and these people be save from complications.

54. The Settlement Officer also considered in a great detail the objections filed by 31 persons who were affected by the allotment of the land in dispute. He also heard the objections of the persons who were "not affected" and these included some of the petitioners. As regards the Respondent No. 4 Trust he found that pursuant to the gift deed in his favor mutation has been carried out and its name had been entered in the revenue record in respect of the lands which were earlier allotted to the Bhumidars by the order 29.4.1981. He also found that the possession of the land in question was with the Respondent No. 4 Trust. Negating the contention that the land was built up he held that "it is baseless

to say that there are built up houses on the site. The 26 persons who have filed their objections, their houses on land Khasra No. s 579-80, 581...." He detailed the lands allotment to the Respondent No. 6 and other plot holders and found that in those allotted plots "houses are built up conveniently." Finally, he followed the mandate of the order dated 9.7.1985 of the Financial Commissioner that persons who have already been settled should not disturbed. This Court is unable to find any infirmity in the order dated 7.4.1986 of the Settlement Officer. He has gone entirely by the records of the case and arrived at the correct conclusion.

55. There is an element of contradiction in the submissions made by the petitioners as regards the scope of the remand proceedings consequent upon the order dated 9.7.1985 of the Financial Commissioner. On the one hand they seek to sustain that order for the purpose of showing that the earlier orders dated 29.4.1981 and 27.6.1981 of the Consolidation Officer and 16.11.1981 of the Settlement Officer stood nullified. However what the remand order actually did was to ask the Settlement Officer to find out the factual position after carrying out a spot inspection. The Settlement Officer has in his order dated 7.4.1986 done just that. It is strange that the petitioners are not prepared to accept this order although it is the logical extension of the order dated 9.7.1985 of the Financial Commissioner.

56. The elaborate arguments assailing the order dated 29.4.1981 is really to no purpose since the entire exercise has been directed to be performed de novo in the remand proceedings. As regards the Respondent No. 4 Trust, it is clear that it was not allotted any land by the order dated 29.4.1981. In that view of the matter, this Court does not find it necessary to examine if the order dated 29.4.1981 stood vitiated on the ground of bias or malafides alleged against the Respondent No. 7. It also matters little that the Trust did not have gift deeds in its favor when it filed an application before the Consolidation Officer in December 1980 for allotment of land. The allotment in its favor of the disputed land was made not by the order dated 29.4.1981 but by the subsequent order dated 7.4.1986. For the reasons already explained, this Court does not find any infirmity in the said order. In the circumstances, this Court is unable to accept the plea of the petitioners that the allotment of the disputed land in favor of the Respondent No. 4 Trust is illegal.

57. Issue D is accordingly answered by holding that the order dated 7.4.1986 of the Settlement Officer and the impugned order dated 18.5.1987 of the Financial Commissioner do not call for any interference by the Court.

58. For all the above reasons, there is no merit in either of these writ petitions and they are dismissed as such. The interim orders stand vacated and all the pending applications are disposed of.