(2018) 10 DEL CK 0152

In the Delhi High Court

Case No : Civil Writ Petition No.10471 OF 2009

Rajeev Dhingra APPELLANT

Vs

Fiancial Commissioner & Ors RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959 — Rule 6(k)
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 42

Citation : (2018) 10 DEL CK 0152

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Petitioner is aggrieved by impugned order of 26th June, 2009 wherein the finding returned is as under:-

â??In fact, as per the Scheme, for allotment of the land within the Lal Dora, there is a provision that the person should be the resident of the Village

for more than 20 years and the respondent No.5 is not the resident of the Village and as such he is not entitled for allotment of any land. In lieu of

withdrawal, he can be easily allotted agricultural land. After all, he cannot be given any benefit of allotment of the land within the Lal Dora. If he is

being given the benefit of allotment of the land within the Lal Dora then it will amount to violating the Scheme or with the gazette notification issued by

the Government of NCT of Delhi, which is the guiding principle for allotment of the land to the persons, who are residents of the Village for more than

20 years or so.â??

2. The stand of petitioner, as noticed in the impugned order, is as under:-

â??That the basic claim of Petitioners is based on the provisions of consolidation Scheme and the same has been admitted during the course of

arguments by the counsels for the respondents. It is specific submission of the petitioners that his pre-consolidation land bearing Khasra No.29/8/2(1-

14) was included within the extended Lal Dora of the Village during the process of reparation as per the Scheme and there is a provision in the

Scheme that the land which has been included within the Lal Dora will be allotted to the persons, who are the owners of the said land before

consolidation. Now it is on the basis of this provision of the Scheme, the Petitioners are claiming allotment of this land, being their preferential right

thereupon.â??

3. The challenge to the impugned order by petitionerâ??s counsel is on the ground that order of 11th November, 2004, which was assailed by third

respondent herein, did not pertain to subject land i.e. Khasra No.106/359/2 of village Khera Kalan. Petitionerâ??s counsel submits that order of 11th

November, 2004 was in respect of inter se dispute between third respondent and one â?"Jagat Singh.It is submitted that 08 biswasof land out of

subject land was withdrawn from the predecessor-in-interest of petitioner and was allotted to Jagat Singh and third respondent herein was allotted 08

biswas of land, after withdrawing it from Jagat Singh and one bigha in Plot No.106/359/2 was never the subject matter of consideration in the order of

11th November, 2004 and therefore, the Financial Commissioner, Delhi was not justified in holding that in lieu of withdrawal of subject plot from

petitioner, he can be easily allotted agricultural land.

4. It is submitted by petitionerâ??s counsel that requirement of being a resident of village for more than twenty years would not apply to the case of

petitioner, as he had stepped into the shoes of Ashok Kumar, who was predecessor-in-interest of petitioner in relation to the subject plot. It is further

submitted by petitionerâ??s counsel that third respondent had challenged consolidation proceedings in the year 2001 and so, it cannot be said that he

had come to know about inclusion of subject plot in extended Lal Dora in the year 2006 and so, the revision petition filed by third respondent is

hopelessly barred by time and Financial Commissioner has erred in entertaining third respondentâ??s revision petition. It is submitted that Rule 6(k)

of The Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959

(henceforth referred to as Prevention of Fragmentation Rules)

cannot bar petitioner because he had stepped into the shoes of Ashok Kumar, who was predecessor-in-interest in respect of subject plot. Thus, it is

submitted that the impugned order deserves to be set aside and allotment of subject plot deserves to be restored to petitioner.

5. On the contrary, counsel for third respondent supports the impugned order and submits that petitioner has been rightly excluded as Rule 6(k) of

Prevention of Fragmentation Rules bars petitioner from allotment of subject plot and his interest has been taken care of, as he would be allotted

agricultural land, which would be of double the value. Nothing else is urged by either side.

6. Upon hearing and on perusal of impugned order of 26th June, 2009 and the material on record, I find that preferential right of allotment in

consolidation proceedings has to be considered in light of Prevention of Fragmentation Rules. Rule 6(k) of aforesaid Prevention of Fragmentation

Rules makes it abundantly clear that for allotment of plot in the extended Lal Dora, allottee has to be a resident of village for last twenty years.

Undisputedly, petitioner herein had purchased the subject land in December 2005 and prior thereto, on application of respondent â?" Jagat Singh, 08

biswas out of subject plot, was allotted to said Jagat Singh. Since petitioner is ranked outsider and not resident of village for last twenty years,

therefore, occasion to challenge petitionerâ??s right arose after December, 2005, as petitioner had purchased the subject plot in December, 2005

only. Respondent-Jai Bhagwan had filed a revision petition against order of 11th November, 2004 of Consolidation Officer in May, 2006. So, it cannot

be said that respondent â?"Jai Bhagwan had belatedly challenged petitionerâ??s entitlement to the subject plot. Otherwise also, Section 42 of East

Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 gives unfettered right to Financial Commissioner, Delhi to examine the

legality or propriety of an order passed, even if the consolidation scheme is confirmed. The only rider in aforesaid Section 42 of East Punjab Holdings

(Consolidation and Prevention of Fragmentation) Act, 1948 is that any variation of order has to be after notice to the affected parties. In the instant

case, violation of principles of natural justice is not the plea put-forth by petitioner. It is a matter of record that consolidation proceedings in the village in question are still continuing. That is to say, consolidation scheme in question is not confirmed.

7. In the considered opinion of this Court, petitioner is not resident of the village for a period of twenty years, as required by Section 6(k) of the

Prevention of Fragmentation Rules and therefore, withdrawal of plot No. 106/359/1 and 106/359/2 from petitioner and its allotment to respondent â?

Jai Bhagwan cannot be faulted with. The conclusion arrived at, by Financial Commissioner in the impugned order of petitioner being subsequent

purchaser and so, cannot be allowed to take undue benefit of the scheme, is fully justified. In view of withdrawal of subject plot from petitioner, the

Revenue Authorities have been directed vide impugned order to allot agricultural land to petitioner as per his entitlement.

8. In light of the aforesaid, finding no illegality or palpable error in the impugned order, this petition is dismissed.