
(2014) 12 DEL CK 0182
In the Delhi High Court
Case No : Writ Petition (Civil) 7657/2009

Rajpal

APPELLANT

Vs

GNCT of Delhi

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 19, 20, 3(13)(b), 36, 42

Citation : (2014) 12 DEL CK 0182

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : R.S. Rana, Advocate for the Appellant; Yogesh Saini for V.K. Tandon, Geetika Sharma and D.V. Khatri, Advocate for the Respondent

Judgement

Suresh Kait, J.—Vide the present petition, petitioners seek directions for setting aside the impugned order dated 17.08.2007 passed by the Financial Commissioner in Revision Petition No. 67/02-CA, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred as "the Act") , titled as "Ram Chander & Anr. Vs. Dharam Singh & Ors.", whereby Gaon Sabha (village Khera Khurd) lands meant for common purpose "Chargah Maveshian" (Pasture) bearing Khasra Nos. 51/22 min. South (1-13) , 51/23 (4-08) & 78/20/1(1-03) allotted to respondent No. 8 and bearing Khasra No. 51/17 min. West (1-05) and 51/18 (5-0) allotted to respondent No. 7 respectively situated in the Revenue Estate of Village Khera Khurd. Further seek directions to withdraw the said land from the aforesaid respondents and return to respondent No. 5/Gaon Sabha.

2. Learned counsel for the petitioners submitted that respondent Nos.7 and 8 had no right to have the allotment of Gaon Sabha land which was developed by respondent Nos.1 and 6 as Forest/Horticulture Plantation in lieu of residential plot. The land in question was allotted based upon a false pretext that the land was not available in the Lal Dora. The land allotted to respondent Nos. 7 and 8

outside Lal Dora (extended) is more precious than the land of Extended Lal Dora as per the market value. Vide impugned award dated 17.08.2007, Gaon Sabha land bearing Khasra No. 51/22 min. South (1-13), 51/23 (4-8) and 78/20/1 (1-3) was allotted to respondent No. 8 and Gaon Sabha land bearing Khasra Nos. 51/17 min. West (1-05) and 51/18 (5-00) was allotted to respondent No. 7 on the back of Gaon Sabha. The aforesaid chunk of Gaon Sabha land meant for Charagah/Maveshian Plantation was allotted to the respondent Nos. 7 and 8 in lieu of residential plot bearing Khasra Nos. 460/2 (0-7) and 460/1 (0-7). The proposal report dated 25.08.2000 is contrary to the Consolidation Act, Rules and Scheme as no agricultural land in lieu of Lal Dora (Extended) can be allotted to any right holder in any manner whatsoever that too in the absence of another Bhumidar (Gaon Sabha Village Khera Khurd). Thus, conversion of community land into the individual use is contrary to the interest of village community at large and the same is against the Consolidation Act, Rules and Scheme. Accordingly, total land measuring 13-05 biswas in lieu of 0-14 biswas smells extraneous reasons and considerations. Thus, the said allotment is in violation of Consolidation Act, Rules and Scheme, is liable to be set aside being illegal, unlawful as has no sanction of law.

3. Vide the impugned order, deficiency of 13 bighas 9 biswas had been caused to the respondent No. 5/Gaon Sabha and since the consolidation proceedings have already been consigned to the record, in the absence of direction of the learned Financial Commissioner with regard to deficiency caused in the Khata of respondent No. 5/Gaon Sabha, impugned order is arbitrary, unlawful, illegal and not sustainable.

4. Learned counsel further submitted that Khasra No. 88/24 being in Gaon Sabha (Play Ground) has been left out from allotment to the individuals being common use for public, but unfortunately, subject land measuring 13 bighas 5 biswas meant for Chargah Maveshian (Pasture Land) for the common use of villagers had been withdrawn and that too causing deficiency to the respondent No. 5/Gaon Sabha.

5. Learned counsel further submits that respondent Nos. 7 and 8 have been illegally and unlawfully benefitted by the benefits of consolidation of which they were not entitled to and that the benefit is more than twenty times of 0-14 biswas land and the allotted land is more valuable than the Lal Dora land.

6. However, the Financial Commissioner ignored the valuable rights of the respondent No. 5/Gaon Sabha and as per Section 42 of the Act; there was no notification under Section 36 of the Act for the said land.

7. On the other hand, learned counsel appearing on behalf of the respondent Nos. 7 and 8 submits that the Financial Commissioner passed the order dated 17.08.2007 in favour of the respondents, under suo moto proceedings under Section 42 of the Act. The learned Financial Commissioner sought objections from all concerned and thereafter passed the order. He submits that

consolidation of Village Khera Khurd was held in the year 1971 and the respondent Nos. 7 and 8 were offered land in Khasra Nos. 460/1 and 460/2, i.e., 7 bighas each in the Extended Lal Dora. Accordingly, vide order dated 24.10.1988, the Financial Commissioner directed the Settlement Officer to do the needful for demarcation. Thus, the Settlement Officer directed the Deputy Commissioner to do the needful. Accordingly, vide order dated 17.06.1994, the Settlement Officer further directed the concerned officer to do the needful and hand over the possession to the respondent Nos. 7 and 8.

8. Vide report dated 25.08.2000, land in question was offered to respondent Nos. 7 and 8, which was accepted as under:-

(I) Respondent No. 8 was allotted land bearing Khasra Nos. 51/22 min. 1 bigha 13 biswas, 51/23 min. 4 bighas 8 biswas and 78/20/1 min. 1 bigha and 3 biswas, total measuring 7 bighas and 4 biswas.

(II) Respondent No. 7 was allotted land bearing Khasra Nos. 51/17 min. 1 bigha 5 biswas and 51/18 min. 5 bighas, total measuring 6 bighas 5 biswas.

9. On acceptance of the aforesaid land, proposal was sent to the Deputy Commissioner concerned to make reference under Section 42 of the Act for the suo moto power of the Financial Commissioner and said proposal was accepted and accordingly the land was allotted to respondent Nos. 7 and 8.

10. Moreover, learned counsel for the respondents argued that during proceedings before the Financial Commissioner, numerous objections were filed by the villagers and after considering all the objections, the Financial Commissioner passed the order dated 17.08.2007 and subsequently, allotted the land in favour of the respondent Nos. 7 and 8 and the possession of the same was also handed over. Accordingly, till date, the said respondent Nos. 7 and 8 are in cultivation of the said land and it is recorded in Khasra Girdawari in their favour since then. He submits that 45 years have been passed on the aforesaid Khasra and numbers of other persons are also in possession on the same land as was allotted to them also.

11. During proceedings, Halka Patwari Ashwani Kumar and Tehsildar Raj Kumar of the concerned area were present, who confirmed this fact that in the same Khasra which was allotted to respondent Nos. 7 and 8, other persons are also in possession. The same are:-

1. Jai Dutt S/o Bhanu
2. Chand Ram S/o Ram Swaroop
3. Bal Kishan S/o Ram Swaroop
4. Ved Pal S/o Ram Swaroop
5. Jai Bhagwan S/o Sahi Ram
6. Satbir S/o Sahi Ram

7. Dilbag S/o Sahi Ram

8. Virender S/o Sahi Ram

9. Vijay S/o Sahi Ram

12. Learned counsel for the respondents has fairly conceded that though proceedings before the Financial Commissioner were suo moto under the powers vested therein; objections were invited before passing the order of allotment of land and the said land was allotted in lieu of consolidation of the land of the petitioners. The respondents had a legal right to receive and accordingly they are in possession.

13. Learned counsel has drawn attention of this Court to annexure P-15 at page No. 128 of the paper book, whereby a request made by the petitioners raising objections which received on 11.04.2001. The said objections were also considered and thereafter the land was allotted to the respondent Nos. 7 and 8. Moreover, vide report dated 25.08.2000, it was brought to the notice of the Financial Commissioner that Khasra Nos. 460/1 and 460/2 have been removed from the Field Book. Therefore, in lieu of the said land, the land in question was offered to the respondent Nos. 7 and 8 on which they are in possession.

14. Learned counsel for the petitioners has disputed this fact and submitted that the report was taken in collusion and accordingly, the respondent Nos. 7 and 8 got the land in question.

15. This fact has been verified by this Court from Halka Patwari Ashwani Kumar and Tehsildar Raj Kumar, who were present in the Court. Both of them have submitted that to ascertain the fact that the said Khasra Nos. 460/1 and 460/2 are available, the same has to be verified from the spot.

16. Learned counsel for the respondent Nos. 7 and 8, on instructions from the said respondents, who were personally present in Court and representative of respondent No. 8, submitted that they are concerned about the land as they are entitled for. Also submitted that if another land is available, the respondent Nos. 7 and 8 have no objection if the same is allotted in their favour. However, submitted that if suo moto proceedings are initiated under Section 42 of the Act by the Financial Commissioner, eventually, notification under Section 36 of the Act is not required.

17. To strengthen his arguments, learned counsel has relied upon Johrimal Vs. Director of Consolidation of Holdings, Punjab, , wherein the Apex Court held as under:-

"On behalf of the appellant Mr. Bishen Narain put forward the argument that the order of the Director of Consideration dated March 8, 1957 was an order varying para 7 of the confirmed scheme and no such variation could be made without following the procedure laid down under s. 36 of the Act. viz. the requirement with regard to the publication and hearing of objections contemplated in Sections

19 and 20 of the Act. To put it differently the contention of the appellant was that the power of the State Government under s. 42 was controlled by the procedure prescribed under s. 36 if it is involved a variation of the confirmed scheme and the order of the Director dated March 8, 1957 was ultra vires since the procedure contemplated by s. 36 of the Act has not been followed. In our opinion there is no justification for this argument. Section 42 of the Act as amended by Act 27 of 1960 authorised the State Government to interfere with the scheme of consolidation or repartition made under the Act. What the amending Act has done is to substitute for the words "any order passed by any officer under this Act", the words "any order passed, scheme prepared or confirmed or repartition made by any officer under this Act". Section 36 of the Act on the other hand authorises the authority confirming a scheme to alter or revoke it and in that case the new scheme must be published, objections heard and decided and the scheme has to be confirmed once again in accordance with the procedure under Sections 19 and 20 of the Act. In our opinion the power conferred on the State Government under s. 42 is a separate power independent of s. 36 of the Act which deal with the power of the authority confirming the scheme. There is hence no force in the contention that the scheme of consolidation cannot be varied by the State Government under s. 42 of the Act except in accordance with s. 36 of the Act. The reason for the two different provisions in Sections 36 and 42 of the Act is also clear for if a scheme is varied or revoked by the authority confirming it, then the new scheme has to be published so that interested parties may object and their objection decided by competent authorities set up under the Act, those decisions being finally appealable to the State Government. But when a scheme is to be varied by the State Government itself under s. 42 of the Act there is no requirement of the statute that the varied scheme should be published for the State Government is required to give notice and to give an opportunity to the interested parties to be heard before the variation is made. We are therefore of the opinion that the power conferred on the State Government by S. 42 is not controlled by s. 36 and the procedure of publication and hearing objections contemplated by Sections 19 and 20 of the Act is not necessary. Section 36 and 42 envisage two different situation and the intention of the Act is to give powers respectively to the Confirming Authority and to the State Government to act under these sections in their discretion in any particular case. We accordingly hold that Mr. Bishen Narain is unable to make good his argument on this aspect of the case."

18. Also relied upon the case of Chand Sharma and Others Vs. Lt. Governor of Delhi and Others, , wherein held that:-

"Held that functions and duties of Gaon Panchayats are enumerated in S. 156 of the Act and sub-clause (c) thereof enjoins upon the Gaon Panchayat" the maintenance and development of abadi sites and village communication". So, obviously the extension of the village abadi can be made by Gaon Sabha only from the land vesting in it and pasture land cannot be an exception to this power of the Gaon Panchayat and consequently the Gaon Sabha was fully competent to

allot the land in question as residential sites for the extension of village abadi from the land vested in it including the pasture land.

Held further that S. 6(a)(iii) includes pasture land. So, reading together S. 3(13) (b) and S. 74(1)(b) and S. 6(a)(iii) of the Act and the Amended Rule 178(2) of the Delhi Panchayat Raj Rules set out above goes to show that the Gaon Sabha had the right to allot housing sites from the land in question to various persons as lessees (Asamis) and the contention of the learned counsel for the petitioners vehemently urging that there are only two tenure-holders-Bhumidhar and Asami-created by the Act and those who tenure-holders are meant for the cultivation of the land only for agriculture purposes or purpose subsidiary thereto and for no other purpose for which reason the allotment of the land in question as housing sites is barred by the Act, cannot be accepted."

19. Accordingly, Halka Patwari Ashwani Kumar and Tehsildar Raj Kumar were directed to carry out the demarcation and find out whether Khasra Nos. 460/1 and 460/2 are available at the spot or not. During demarcation, both the parties were directed to remain personally present at the spot.

20. Pursuant to order dated 16.09.2014 passed by this Court, the respondent No. 2 has filed the status report dated 31.10.2014, whereby stated that Khasra Nos. 460/1 and 460/2 are not physically existing at site. As per Sizra, Khasra Nos. 460/1 and 460/2 falls in the area of adjoining of Khasra No. 461. However, as per measurement carried out at site Khasra Nos. 461 and 459 are available and Khasra Nos. 460/1 and 460/2 are not physically found at site.

21. It is further stated that as per site inspection, Khasra Nos. 459 and 461 are built up and are in physical possession of the respective land owners. It is also stated that Khasra Nos. 460/1 and 460/2 exist in Sizra and Field Book, which was prepared at the time of consolidation of village Khera Khurd. However, during the scrutiny of record, it is revealed that non- existence of Khasra Nos. 460/1 and 460/2 was also found by the field staff in demarcation proceedings conducted on 27.02.2012 in connection with Khasra No. 461. Accordingly, the Revenue Assistant/Settlement Officer, Narela, sent a reference to the Financial Commissioner, Delhi, through Deputy Commissioner, North-West, on 07.03.2001 in this regard.

22. I note, the learned counsel for the respondent Nos. 7 and 8, on instructions, have submitted before this Court that they are concerned about the land as they are entitled for and if another land is available, the respondent Nos. 7 and 8 have no objection if the same is allotted in their favour.

23. Be that as it may, during proceedings, the Halka Patwari Ashwani Kumar and Tehsildar Raj Kumar of the concerned area were present, who confirmed that in the Khasra in question which was allotted to respondent Nos. 7 and 8, the following persons are also in possession:

1. Jai Dutt S/o Bhanu

2. Chand Ram S/o Ram Swaroop
3. Bal Kishan S/o Ram Swaroop
4. Ved Pal S/o Ram Swaroop
5. Jai Bhagwan S/o Sahi Ram
6. Satbir S/o Sahi Ram
7. Dilbag S/o Sahi Ram
8. Virender S/o Sahi Ram
9. Vijay S/o Sahi Ram

24. Keeping in view the report filed in pursuance of the order dated 16.09.2014, Khasra Nos. 460/1 and 460/2 are not in existence and the facts recorded above, I am not inclined to interfere with the decision taken by the Financial Commissioner vide its order dated 17.08.2014 in Revision Petition No. 67/02- CA under Section 42 of the Act, titled as "Shri Ram Chander & Anr. Vs. Shri Dharam Singh & Ors.

25. Accordingly, the instant petition is dismissed with no order as to costs.