(2008) 09 DEL CK 0293

In the Delhi High Court

Case No : LPA No. 777 of 2006

Rakesh Dabas APPELLANT

Vs

Financial Commissioner and Others RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 — Rule 6
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14, 21(2)

Citation : (2008) 09 DEL CK 0293

Hon'ble Judges : Mukul Mudgal, J;Manmohan, J

Bench : Division Bench

Advocate : Deepak Dhingra, for the Appellant; Jayant Bhushan B.S. Mann and Jai Prakash for Respondents 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This Letters Patent Appeal challenges the judgment dated 17th April 2006 passed by the learned Single Judge in Writ Petition(C) No. 2615/2006. The aforesaid judgment while quashing the impugned order dated 16th February 2006 rejected the appellant''s prayer for impalement and held as follows:

I have carefully considered the submissions made by the Ld. Counsels. I find it is true that during the hearing of the application for impalement of Gaon Sabha, it was contended on behalf of Gaon Sabha that it would not be in a position to give double the agricultural land in case the petition of the applicant was allowed and his land included in Phirni. It is also true that on the request of Gaon Sabha, the applicant had given an affidavit that he would not claim double the agricultural land in lieu of his land in case it was included in Phirni. In any case, he has to be given residential and industrial plot out of the suit land. The remaining land could then be available for distribution to others only if he is given double the value of agricultural land in lieu thereof. However, if the Gaon Sabha is unable to give him the requisite value of agricultural land as was indicated during the impleadment application of the Gaon Sabha, the entire suit land in Khasra No. 38/6 and 38/7 belonging to the applicant may have to remain with him.

2. The brief facts of the case are as follows:

(a) The appellant (respondent No. 3 in the writ petition) is a native of village Kanjhawala, Delhi and family of the appellant owned various lands in Delhi and said land was ancestral land from time immemorial.

(b) The consolidation proceedings were held in village Kanjhawala, Delhi in year 1951/52 and again Notification dated 8th September, 1993 was issued by the Government u/s 14 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 for Consolidation of holdings in Village Kanjhawala.

(c) The draft scheme of Consolidation was announced by the Consolidation Officer on 14th November, 1996 and same was confirmed on 24th April 1997 by the Settlement Officer.

(d) The respondent No. 3 was co-owner with his brother Sh. Ajit Singh and they both executed the sale deed dated 22nd January 1998 in favour of their sons namely Sh. Surinder Singh, Sh. Jitender Singh and Sh. Virender Singh sons of Sh. Tarif Singh and Sh. Anil Kumar, Sh. Sunil Kumar sons of Sh. Ajit Singh and Smt. Birmati W/o Sh. Ajit Singh and same were registered at Bombay. They filed an application dated 23rd January 1998 for mutation of the said land in their favour and the said land was mutated in their favour on 5th March 1998.

(e) The Respondent No. 3 along with some other persons filed WP(C) No. 3082/1998 and obtained the interim orders dated 10th July 1998 in respect of land covered by the Consolidation Scheme against the Consolidation proceedings in respect of the whole village.

(f) The said Writ Petition (C) No. 3082/1998 was decided vide order dated 13th September, 2002. Other similar petition WP(C) No. 3081/1998 which was almost identical and which was heard along with WP(C) No. 3082/1998 and other writ petitions were dismissed later.

(g) The respondent No. 3, his brother and their sons filed objections u/s 21(2). The said objections were decided by the Consolidation Officer vide order dated 28th February 2000.

(h) However, the respondent No. 3 filed a Revision Petition No. 231/2002/CA against the said order. The said Revision Petition was later given case No. 62/2003-CA and at present the case No. is 103/2004-CA. Similarly, his son Surinder Singh filed Revision Petition No. 250/2000-CA and later on, the said Revision Petition was given case No. 63/2003-CA and thereafter, case No. 262/2004-CA. Both the said Revision Petitions are pending.

(i) In the said Revision petitions except the Consolidation Officer no other person was impleaded as party. Initially, the said Revision petitions were adjourned sine die in view of pendency of WP(C) No. 3082/1998. Thereafter, the Financial Commissioner allowed the Revision Petition filed by the Respondent No. 3 vide order dated 20th June 2003 passed in case No. 72/2003-CA and directed to allot plot No. 142/194/15 and passed other directions. The Revision Petition filed by his son was also allowed vide order dated 20th June 2003 passed in case No. 63/2003-CA and it was directed that Plot No. 142/94/14 be allotted to Sh. Surinder Singh.

(j) The plot No. 142/94/15 was owned by Sh. Mahender Kumar Jain on record who is also the respondent No. 4 herein. Similarly, Plot No. 142/94/14 was owned by one Smt. Sumitra and Sh. K.R. Bagadia.

(k) Sh. Mahender Kumar Jain, the respondent No. 4 herein filed WP(C) No. 4473/2003 and this Court vide order dated 20th April 2004 disposed of the said Writ Petition. The matter was remanded back to the Financial Commissioner with a direction that respondent No. 4 be heard.

(l) The Respondent No. 4 was accordingly impleaded as a party before the Financial Commissioner. In the remanded proceedings one Ratan son of Sh. Net Ram sought impleadment. Vide order dated 5th April 2005, the Financial Commissioner dismissed the application for impleadment filed by Ratan, for being impleaded as a party. The said order dated 5th April 2005 was challenged before this Court by Writ Petition (C) No. 8600/2005.

(m) When WP(C) No. 8600/2005 was pending, Revision Petition No. 43/2003-CA filed by appellant was disposed of by the Financial Commissioner vide order dated 5th August 2005.

(n) In his Revision petition, the appellant had sought inclusion of land comprised in Khasra No. 38/6 and 38/7 (pre-consolidation) within the extended abadi. Vide Order dated 5th August 2005 the Financial Commissioner accepted the request of the appellant and the aforesaid lands were included within the extended phirny.

(o) Writ Petition (C) No. 8600/2005 was disposed of on 17th November, 2005 directing the Financial Commissioner to dispose of revision petition filed by the respondent No. 3 after taking note of the fact that additional land was available within the extended abadi.

(p) In the said revision petition filed by the respondent No. 3, the appellant moved an application under Order 1 Rule 10 praying that he should be impleaded as a party in the revision.

(q) The basis of his claim was that he was the recorded owner of the land comprised in khasra No. 38/6 and 38/7 and since the respondent No. 3 claimed allotment of a plot on said land, he ought to be impleaded as a party.

(r) The respondent No. 3 opposed the said application by pleading that the land comprised in khasra No. 38/6 and 38/7 was in the pre consolidation holding of the appellant. The aforesaid fact did not entitle him to be impleaded as a party for the reason that after the inclusion of the land within the extended phirni it had to be allotted to those whose claims remained unsatisfied for allotment of residential plots. The claim of the appellant for allotment of a residential plot was fully satisfied when 3 bighas and 8 biswas of land comprised in khasra No. 142/94/6 (2-2), 143/241 (0-6), 142/311 min (0-4) and 142/210 min (0-16), was allotted. The respondent No. 3 stated that as per the scheme and the Consolidation Rules, no person could be allotted more than 2 bighas and 8 biswas of land within the village abadi. He pointed out that the appellant had already been allotted land in excess of that limit within the abadi by one bigha.

(s) By the order dated 16th February 2006, the Financial Commissioner impleaded the appellant as a party.

3. The writ petitioner/respondent No. 3 herein filed the Writ Petition (C) No. 2615/2006 against order dated 16th February 2006 passed by the Financial Commissioner impleading the appellant. By his order dated 17th April 2006, the learned Single Judge allowed the Writ Petition No. 2615/2006 filed by the respondent No. 3 and dismissed the application filed by the appellant under Order 1 Rule 10 for impleadment in Revision Petition filed by the respondent No. 3.

4. The learned Single Judge had rightly framed the question requiring consideration that as to whether after including pre consolidation holding comprised in khasra No. 38/6 and 38/7 within the extended abadi, merely because said lands belonged to appellant, could he join the proceedings pending before the Revenue Authorities, when the claim of the applicant before the Revenue Authorities was that his claim for land within the extended abadi should be satisfied.

5. The learned Single Judge inter alia held as follows:

(a) Under no circumstances, the respondent No. 3 in the writ petition/appellant herein, i.e., Mr. Rakesh Dabas could be given land more than 2 bighas and 8 biswas within the extended phirny as he had already got more than said share. Consequently, the appellant could not be allotted the land in question.

(b) The order passed by the Revenue Authorities including the land in question within the extended phirny, i.e., amendment of the scheme of consolidation had attained finality.

(c) The appellant himself wanted the aforesaid land to be included within the phirny and it was at that stage, that Gaon Sabha could have objected by pleadings that if the land in question was included within the phirny, to satisfy the requirement of law and the claim of the appellant, twice the value of land outside had to be allotted to the appellant and that so much land was not available. At this stage, the matter would have been decided with a reference to availability of land outside the phirny. But this had not happened.

(d) The inclusion of the said land within the extended phirny having attained finality, and under no circumstances could the appellant get any further land within the extended phirny. The above factors had been lost sight by the Financial Commissioner. Under no circumstances could the appellant have had any interest left in the writ land.

(e) The appellant was neither a necessary or a proper party in the revision petition filed by the writ petitioner.

6. Consequent to the above findings, the order dated 16th February 2006 was quashed and the application filed by the respondent No. 3/appellant under Order 1 Rule 10 to be impleaded in the revision filed by the writ petitioner was dismissed. The appellant has challenged the above order.

7. The learned Counsel for the appellant has placed reliance on Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules 1959, East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948. The relevant Clause J of Rule 6 of the Rules reads as follows:

(J) (i) Bhumidar whose land has been included in the extension of the village abadi may be given agricultural land worth two times the value of land surrendered.

(ii) Bhumidar who has applied for allotment of plot in the extension of the village abadi shall surrender in exchange during consolidation two times the size of agricultural land subject to the size of plot and his eligibility.

(iii) The maximum size a residential plot to be provided in the extension of the village abadi to a bonafide resident of the village be two bighas and eight biswas out of which the "bhumidar" can take industrial plot upto a maximum size of six biswas. Allotment of such plot shall be done through draw of lots.

8. The learned Counsel for the appellant has stressed on Sub clause (i) by highlighting the fact that since his land had been included in the extension of village abadi, he had to be given agricultural land worth two times of the value of the land surrendered. This not having been done, the appellant was said to be a vitally interested party in the revision petition filed by the writ petitioner.

9. The learned Counsel for the appellant contended that the land comprising Khasra No. 38/6 and 38/7 in the extended abadi belongs to him and since the agricultural land two times of the value of the land surrendered was not given to him, he was entitled to be heard in the proceedings preferred by the writ petitioner.

10. In our view, the learned Single Judge has rightly held that the maximum size provided in the extension of the village abadi to a bonafide resident of the village shall be 2 bighas and 8 biswas, out of which the "bhumidar" can take an industrial plot upto to maximum size of six bigha. The appellant has no interest left in the proceedings preferred by the respondent. The learned Single Judge is right in holding that the appellant having accepted 3 bighas and 8 biswas of land,

cannot lay any further claim to any other land in the extended abadi. In our view, the plea based on Sub Section (ii) is not relevant in view of the fact that the maximum size of the residential plot to be provided to the appellant, i.e., 2 bighas 8 biswas has been shown to already been received by the appellant. In such a situation, the reliance on the plea of two times of the value of the land surrendered cannot come to the rescue of the appellant.

11. Accordingly, there is no merit in this appeal and the judgment of the learned Single Judge does not warrant any interference. The appeal is accordingly dismissed but with no orders as to costs.