

(2006) 11 DEL CK 0219
In the Delhi High Court
Case No : Writ Petition (C) 2912 of 1981

Ram Sarup and Another

APPELLANT

Vs

Nathan and Others

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 5
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 11, 13, 26, 31, 40

Citation : (2006) 11 DEL CK 0219

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : J.K. Jain, for the Appellant; Rajesh Yadav, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The writ petitioner claims a quashing order in respect of an order of the Financial Commissioner, dated 13-7-1981, u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1949 (hereafter called "the Act").

2. The petitioners were bhumidars of pre-consolidation khasra numbers 196 min measuring 9 bighas 8 bids was situated in revenue estate village Pandwala Kalan. During consolidation proceedings in the Village they were allotted post-consolidation Killa Nos. 43/6, 7 and 14 in lieu of their pre-consolidation holdings. The petitioners had a dispute with the first two respondents regarding possession of pre-consolidation khasra number 196 min, which had been shown as disputed in the khasra girdawari. Previously, they had instituted eviction proceedings against the first two respondents, which was decreed. This was occasioned by the respondents being shown as occupying the lands, till 1963. The petitioners later instituted a civil suit for permanent injunction against the said respondents, claiming that the latter had trespassed on the lands, to disturb their possession.

The suit was decreed by the Sub Judge, Delhi on 25.8.1969. An appeal filed by the respondents against that judgment and decree was dismissed by the Appellate Court by judgment and order dated 20.3.1970. Consolidation proceedings in village Pindwala Kalan commenced in 1970.

3. Though the post-consolidation khasra numbers had been allotted to the petitioners in lieu of their pre-consolidation holdings, possession of the newly allotted land was not handed over to them by the consolidation authorities; it was given to the respondents. Consequently they moved an application before the Consolidation Officer for possession of the post-consolidation killas. Notice of the application was issued to the respondents who objected to delivery of possession of the lands. They resisted on the grounds that since they (respondents) had been in possession of pre-consolidation khasra numbers 196 min immediately prior to the commencement of consolidation proceedings in the village, they were correctly put in possession of the post-consolidation land. Therefore, they were entitled to retain possession of the lands. Since the factum of possession over the pre-consolidation land at the time immediately prior to the commencement of the consolidation proceedings in the village was in controversy between the parties, the Consolidation Officer called upon both of them to lead evidence in support of their respective claims.

4. The petitioners, to support their contentions relied upon the copies of the judgment/decrees passed by the Civil Courts in the suit for permanent injunction. They also relied upon the report of the SDM, No. 461 dated 28-6-1965 evidencing handing over of possession, consequent to the order in the eviction proceeding. On the other hand the respondents tendered in evidence copy of khasra girdwari for the fasli year 1970-71 and an affidavit of Nathan, respondent No.1. The Consolidation Officer by his impugned order concluded that the respondents were in possession of the pre-consolidation holdings during the harvest immediately prior to the commencement of the Consolidation proceedings. Accordingly the application of the petitioners seeking possession of the post-consolidation holdings was rejected. Being aggrieved by the aforesaid order of the Consolidation Officer the petitioners appealed to the Settlement Officer (Consolidation) which was subsequently withdrawn; an appeal was filed by the petitioners before the Additional Collector challenging the order of the Consolidation Officer. That appeal was ultimately dismissed by the Addl. Collector by his order dated 30.9.80 on the ground that it did not lie there. As a result, the petitioners approached the Financial Commissioner.

5. The Financial Commissioner, by his order dated 13-7-1981, dismissed the revision petition. He held as follows:

9. The sole point for determination in this case is as to which of the two parties was in possession of pre-consolidation khasra No. 196 min immediately prior to the commencement of the consolidation proceedings in the village. These proceedings were started in village Pandwala Kalan in December, 1970. Admittedly, the petitioners are the bhumidhar of this land. The respondents claim

to have been in continuous adverse cultivatory possession since the year 1956-57. Their possession has been proved to have been recorded up to the year 1963-64 vide copies of khasra girdawaries placed on record. The report of the Naib Tehsildar dated 30.9.66 also supports the case of the respondents. It is also a fact that during the year 1970 the aforesaid land was recorded as "disputed" in the matter of possession by the patwari. This appears to be the reasons that the names of the respondents were not added in the list of unauthorised occupants prepared and attached with the scheme of consolidation. The petitioners have based their claim of possession on the basis of the decree of the civil court passed in the suit for permanent injunction filed by the petitioners against the respondents. As against this, the respondents claim that their possession is proved throughout regardless the entries in khasra girdawari and the decree of the civil court on the basis of the presumption of continuity of possession. I have given my careful consideration to the issue at hand. It has not been pleaded on behalf of the petitioners that the possession of the respondents has wrongly been recorded up to the year 1963-64. It thus stands confirmed that the respondents were in undisturbed possession up to this period. Now it is for the petitioners to prove through cogent evidence that the respondents were ever ejected or they had surrendered possession during the subsequent period. There is nothing on record to prove dispossession. Even there is no suggestion on behalf of the petitioners. That being so, I am led to hold that the respondents had continuously been in undisturbed possession of the pre-consolidation khasra no. 196 min and the learned Consolidation Officer has rightly disallowed the contention of the petitioners.

6. The petitioners challenge the order of the Consolidation officer and the Financial commissioner. They rely on the decree of ejectment against the respondents 1 & 2 and the handing over of possession of the land in question which was handed over at the spot to them by report No. 461 dated 28.6.1965 by the order of Shri R.S. Dewan, the then learned S.D.M./Revenue Assistant, Delhi. It is alleged that again, the respondents No.1 and 2, in 1967, tried to dispossess the petitioners by force from the land in question, but they filed a suit for permanent injunction and secured a decree, dated 26.8.1969, whereby the respondents 1 and 2 were permanently restrained from interfering in the peaceful possession of the petitioners. The Respondents No. 1 and 2 had preferred an appeal against the decree, but the same was dismissed on 20.3.1970, by the learned Senior Sub Judge, Delhi and as such the possession of the petitioners upon the land in question was confirmed by the appellate court. No further appeal was filed by the respondents Nos. 1 & 2. It is Therefore averred that due to the litigation, the factum of possession of the land in question was disputed that is why the possession upon the suit land was shown as ?disputed? in the revenue records. In 1970, consolidation proceedings took place. At the time of framing of Scheme in 1970, a list of unauthorised occupants (Najaiz Kabizan) was prepared and attached with the scheme file; the names of the respondents No. 1 and 2 have not been shown in that list.

7. The Consolidation officer it is averred, after hearing the parties, dismissed the petitioner's application arbitrarily and without exercising jurisdiction properly, vested in him. It is averred that he totally disregarded the decree passed by the civil court in which the possession of the petitioners was held upon the pre-consolidation Khasra No. 196 min, and failed to follow the provision of the Scheme of the village. Once the consolidation Officer found that the name of the respondents 1 & 2 were not shown in the list of unauthorised occupants, he no jurisdiction to act contrary to the scheme.

8. It is claimed that the first two respondents, in proceedings before the Financial Commissioner, produced certain documents, being

(a) Copies of Khasra girdawaries from the year 1956-57 to 1963-64 marked.

(b) Copies of orders and decrees which were passed in the suit filed after repartition proceedings and the same in respect of the new Kila numbers.

The petitioners objected the entertainment of the above stated documents filed on behalf of the respondents, but the same were accepted subject to the cost of Rs.50/-. It is alleged that the report of Naib Tehsildar dated 30.9.1966 upon which the Financial Commissioner placed reliance, in the order was neither filed by the respondents along with their other documents nor it was brought to the notice of the petitioners even at the stage of arguments and the same might have been placed on record after arguments which has prejudiced their case.

9. The first two respondents, in their reply deny the claim of the petitioners. They state that they were in possession of the pre-consolidation holdings. They do not dispute that the petitioners were declared bhumidars, but strongly refute that they were not in possession. It is claimed by them that they were in possession of the lands from 1955-56. The averment that the lands were handed over pursuant to the eviction proceedings, has been disputed. They submit that their names were not reflected in the revenue records at the relevant time in 1965, due to a misunderstanding over the said alleged possession proceeding. The decree against them has been characterized as an ex-parte decree.

10. The first two respondents strongly rely upon the proceedings of the Revenue officer dated 30-9-1966, when, they claim, their possession was found. Therefore, the consolidation officer, after being appraised of all these materials, rightly upheld their objections and decided to allot the post consolidation kila numbers.

11. Mr. J.K. Jain, learned Counsel for the petitioners, submitted that the petitioners were Bhumidars, being entitled in terms of the Delhi Land Reforms Act, 1954, of the lands they had been tilling. They had sought, and obtained an eviction decree which was lawfully executed against the first two respondents, in 1965. The said respondents, erstwhile owners, were always trying to get back possession of the lands. They again attempted to disturb possession, which led to filing of a suit; the suit was decreed in 1969; the respondent's appeal was

dismissed, and the matter became final. The injunction against the said respondents was a permanent one, not to interfere with the petitioner's possession. In the meanwhile, the revenue records reflected the possession as disputed, on account of the pending civil proceeding. That continued till 1970, during commencement of consolidation proceedings. All the authorities below misdirected themselves in ignoring the proceedings of 1965, which led to delivery of possession of the land to the petitioners, and the civil proceedings, which became final.

12. Counsel relied upon the judgment of the Punjab and Haryana High Court reported as *Amar Chand -vs- Piara Singh XVI 2nd Punj. 872* and stated that decrees in respect of lands, issued for pre consolidated holdings, attached to the post consolidation entitlements of the litigants. He also relied upon the decision of the Supreme Court in *Mange Ram Vs. Financial Commissioner and Others*, and submitted that even mere possession, unless shown to be authorized or lawful, could not confer rights on the person, to claim entitlements in re-partition proceedings, as per Section 26 of the Act.

13. Mr. Rajesh Yadav, learned Counsel submitted that the lower authorities acted within bounds of law, in concluding that the first two respondents were entitled to the post consolidation kila numbers. It was submitted that the Revenue Assistant, by his order dated 30-9-1966, had, after conducting an enquiry concluded that the possession had not been handed over to the petitioners in 1965. This established that the respondents were always in possession of the lands. The Financial Commissioner rightly took this into account. As far as the decree was concerned, it was submitted that it was ex-parte. During course of hearing, counsel sought to place reliance on a decree of the civil court obtained by the first two respondents, dated 5-8-1975, against the petitioners. In the suit, the respondents had sought an injunction against the petitioners from interfering with their possession.

14. Since the respondents sought to rely on a new fact during course of hearing, they were permitted to place the documents on record. The petitioners filed their reply. Mr. Jain, resisted the plea, and urged that the suit filed in 1975 could not obliterate the effect of the permanent injunction granted earlier against the respondents; it merely recorded the petitioner's statement that they would not dispossess the respondents without due process of law. It was submitted that the consolidation authorities could not have ignored the earlier eviction proceedings, the fact that the petitioner was a Bhumidar, and had obtained an injunction. The mere fact that the respondents succeeded in disturbing their possession would not clothe them with an entitlement to secure lands, in consolidation proceedings.

15. The above factual matrix would disclose certain salient, admitted facts. They are that the first two respondents were erstwhile landlords of the properties; the petitioners, their tenants, who secured Bhumidari rights, in terms of the Delhi Land Reforms Act. The first respondents admittedly were shown to be in possession, till 1963. The petitioners filed eviction proceedings, which were

admittedly allowed. The petitioners also filed a suit, later, to injunct the respondents from interfering with their possession; it was decreed. Although much was made about the ex-parte nature of the decree, I am of the opinion that the respondents cannot be heard to complain about this, because they indisputably carried the decree in an unsuccessful appeal. The only question, then, is as to the status of the "disputed" SDM report of 1965, and the effect of the subsequent decree.

16. The report relied upon by the first respondents, does not dispute the existence of the earlier report handing over possession, pursuant to eviction proceedings filed by the petitioners. The respondents also do not dispute that the eviction proceeding had been decreed against them. The report, relied on by them, of 30-9-1966, also records that the witnesses who had deposed to the handing over of possession earlier on 28-6-1965, was indeed seen by them. The official witness again spoke of the regularity of the proceeding. In these circumstances, the Revenue Assistant recorded the evidence of witnesses on behalf of the parties; two witnesses spoke of the possession being with the first two respondents, and two others deposed that possession of the lands was with the petitioners. The earlier report was disbelieved as handing over of possession was not witnessed by respectable or "leading" persons of the village, and other revenue officials were not produced before the Revenue Assistant. The latter recorded that he visited the site, and was satisfied that the respondents No. 1 and 2 were in possession.

17. In *Umrao Singh Vs. Man Singh and Others*, , this Court had outlined the mode of acquisition of Bhumidari rights, in the following terms, after examining Section 5 of the Delhi Land Reforms Act, and other provisions:

It would appear from the perusal of this Section that under Clauses (a) and (b) a person becomes entitled to be a Bhumidhar immediately on the commencement of the Act and may be declared as such under Sections 11 and 13. In other words these two Clauses deal with the case of persons who possessed the necessary qualifications on or before the commencement of the Act and did not apply to those who might acquire such qualifications after the commencement of the Act. Those cases are provided for in Clause (c) which lays down that every person who after the commencement of the Act is either admitted to land as Bhumidhar or acquires Bhumidhari rights under any of the provisions of the Act shall also be a Bhumidhar having all the rights and liabilities of a person bearing that character. In order that such a person may also qualify for holding the character of a Bhumidhar he must either be admitted to that character as such or he should acquire those rights under any provisions of the Act.

12. The declaration under Sections 11 and 13 of the Act as already stated, being in terms restricted to those persons who had earned the necessary qualification before the commencement of the Act one has to look to some other provisions of the Act dealing with the case of such a person. An examination of the provisions of the Act, shows that in this case Bhumidhari rights may be acquired by him by

means of transfer inter vivos in his favor from an existing Bhumidhar u/s 31 or by bequest from a Bhumidhar u/s 48 or by exchange or partitions be between Bhumidhars under Sections 40 and 55. Likewise a person may be admitted to Bhumidhari rights by the Gaon Sabha u/s 73, of the Act or where the land is of the type mentioned in Section 74, an Asami may be admitted to such rights under Sub-section (4) of that Section. Similar rights may also be acquired by an Asami u/s 79 of the Act. Bhumidhari rights will also accrue to a person taking or retaining possession of land against whom no suit is brought fly the Gaon Sabha u/s 84 or if a decree obtained in any such

suit is not executed within the period of limitation providing for the filing of the suit or the execution of the decree.

18. The materials on record clearly establish that the petitioners were granted bhumidari rights in the wake of the Delhi Land Reforms Act; that has not been denied. They had to file eviction proceedings to secure their lands; which culminated in a decree in their favor. The plea of the respondents has been that they were in possession, in spite of the eviction decree, and in spite of the injunction decree (which restrained them from interfering with the possession of the petitioners) which had become final after their appeal was rejected. Their main plank is the inquiry report of the Revenue Assistant of 1966.

19. I am of the opinion that the lower authorities clearly misdirected themselves as to the nature of the first two respondents entitlements in the consolidation proceedings. Neither the consolidation officer, nor the Financial Commissioner, even cared to analyze the effect of the eviction decree, which had established the petitioner's rights, and the injunction granted by the competent civil court, which had the effect of restraining the respondents from interfering with the petitioners' possession. The Financial Commissioner was swayed by the report of 1966, which it was alleged, was not part of the proceedings before the consolidation officer, or even in the revision proceeding, and appears to have been placed on file. Without commenting on the regularity of such a proceeding, the report, to my mind, cannot be conclusive as to the nature of the first respondent's possession. They do not deny that the petitioners were bhumidars; they do not put forth any argument as to how their possession (even assuming it to be there) was lawful, after suffering an eviction decree, and after being bound by an injunction. If their contentions were to be accepted, mere possession, without any other semblance of legality, would be sufficient for anyone to claim rights u/s 26 of the Act. This is not a case where bona fide dispute as to entitlement of the land existed; on the contrary, the first two respondents ceased to have rights, as conferment of Bhumidari rights to the petitioners meant that they were in cultivation. This view is also supported by the decision of the Supreme Court in *Mange Ram* (supra). Recognition of the possession of such persons, solely on the basis of an inquiry report, without reference to binding decrees, would be lending a premium on lawlessness, rendering revenue and land reforms measures meaningless and ineffectual.

20. I am Therefore of the opinion that the petitioner is entitled to succeed. The writ petition is accordingly allowed; the respondents are directed to take steps to ensure that the disputed, post-consolidation plots/lands in question are handed over to the petitioners, within 3 months from today.

21. Rule made absolute in the above terms; no costs.