
(2013) 01 DEL CK 0241
In the Delhi High Court
Case No : LPA No. 197 of 2009

Rishi Prakash and Others

APPELLANT

Vs

Dayawati

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 2 AD 270 : (2013) 134 DRJ 29

Hon'ble Judges : V.K. Jain, J;D. Murugesan, J

Bench : Division Bench

Advocate : Ravinder Sethi with Mr. Rajiv Kumar Ghawana, for the Appellant;
Sudhir Nandrajog, with Mr. Rohit Sharma, for the Respondent

Judgement

V.K. Jain, J.—Pursuant to the notification issued u/s 14(1) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act"), followed by notification u/s 14(2) of the Act, a scheme for consolidation of the land comprised in Village Poothkhurd was framed and announced by the Consolidation Officer. The appellants and the respondent, being the Khata holders of the said Village demanded 2 bighas 2 biswas and 19 biswas (61 biswas) respectively of the residential land in the said Village. Initially, the appellants were allotted residential plot number 814 to the extent of 2 bighas 2 biswas. The allotment was later on changed to land measuring 2 bighas and 2 biswas (2-2) out of Plot No. 154/819 on 26.7.2000. The land allotted to the appellant formed part of a bigger plot measuring 3 bighas and 1 biswas (3-1). The remaining land in the said plot, measuring 19 biswas was allotted to the respondent. The case of the appellants is that at the time of allotment to them, directions of the allotted land was not specified by the Consolidation Officer, whereas the case of the respondent is that direction of the said land was specified as "Dakshin" (south) in the consolidation proceedings. Admittedly, no direction with respect to the land allotted to the respondent was indicated during the consolidation proceedings. Vide letter dated 13.1.2003 addressed to the SDM (Narela), the respondent complained that though she had

been allotted land on the northern side facing main Ganga Toli Road, the appellants were trying to erect a boundary wall on the whole of the plot. The SDM was accordingly requested to give demarcation of the plot of the respondent after earmarking the same. Vide proceedings dated 3.1.2003, the Consolidation Officer recorded that he had called both the parties for demarcation of sides of residential plot number 154/819 (3 bighas and 1 biswas), and that the Halqa Patwari had reported that in the record of consolidation, no sides were mentioned. He further noted that the appellants wanted plot on the western side. The husband of the respondent, who appeared before the Consolidation Officer on her behalf, stated that at the time of allotment an impression was given that sides of the plot were clearly stated in the file. He requested that the concerned file be located and if the sides are not found mentioned therein, the respondent be given land having frontage on Ganga Toli Road. The proceedings before the Consolidation Officer were therefore held on various dates and vide order dated 9.4.2003, the Consolidation Officer, after hearing the parties and considering their written arguments and purporting to act u/s 43A of the Act, inter alia, passed the following order:

During the proceedings, it has been pointed out that Haqdar no. 454 was allotted his share (2-2) on Southern side (certified copy at Annexure-A) which seems overwriting in the first stance. However, I am not going into these facts. Only southern side mentioning is incomplete unless it is accompanied by other sides like south-west or south east.

This is a clerical mistake which needs to be rectified now u/s 43A of E.P.H. Act, 1948. After going through the case in detail, following facts has come to notice that haqdar no. 454 was allotted the plot no. 154/819 first. Haqdar no. 1192 was allotted a part of it later. Haqdar no. 454 was allotted bigger part of plot i.e. 2 bigha 2 biswas while haqdar no. 1192 was allotted 19 biswas land only. Keeping in view the provision of two rastas for every plot in consolidation scheme and other factors like Haqdar no. 454 was allotted plot first and he is allotted bigger chunk of plot 154/819. It will be right if haqdar no. 454 is given piece of plot on bigger side i.e. western side which 25 gatha long. Hence, Haqdar no. 454 is given their piece of plot on western side with a rasta of two gatha wide on northern side and another rasta of three gatha width on southern side. Haqdar no. 1192 is given their piece of plot on eastern side with two gatha rasta on northern side and three gatha rasta on southern side, this makes the piece of plot of haqdar no. 1192 rectangular.

2. Being aggrieved from the order passed by the Consolidation Officer on 9.4.2003, the respondent preferred a revision petition before the Financial Commissioner, Delhi u/s 42 of the Act. Allowing the revision petition filed by the respondent, the Financial Commissioner, inter alia, held as under:

12. The impugned order shows that it was seeking to rectify a clerical mistake. The order acknowledges that Haqdar No. 454, who as allotted a bigger size of the plot, had not been given 2 rastas to the plot in accordance with the

provisions of the consolidation scheme and concludes that it would be right if the Haqdar No. 454 (respondent No. 2 to 4), is given a piece of plot on the western side so that they get a rasta each, on the northern and southern side. In order to do this, the said order has relocated Haqdar No. 1192, (present petitioner) by re-allotting a plot on the eastern side. A reading of the impugned order shows that the case before it was for indicating the sides of plot No. 154/819 and, therefore, it should have been a straight forward case of indicating the directions, in the existing allotment. However, the impugned order shows that it also considered the request of respondent no. 3 for a plot, I find that it has in fact gone further and has adjusted the plots, to ensure that allotment conformed with the provisions of the scheme-of giving 2 rastas to each plot.

13. I have gone through the rulings relied upon and they are clear in their judgment with regard to the power that can be enjoyed u/s 43A of the Act and the circumstances under which a rectification done can be termed as an error, omission or accidental slip. The rulings relied upon in this regard have gone uncontroverted. If there was an omission which was causing a confusion regarding determination of the sides of each plot, a mere mention of the directions in the same holdings would have sufficed. However, the efforts to unsettle the earlier partition, on the grounds that it did not conform to a specific provision of the scheme, would not be covered as rectification u/s 43 of the Act. Such a grievance should have appropriately been addressed when proceedings u/s 21(2) were underway. In fact, perhaps, unintendedly, the order has resulted in a revision of the earlier order, since it has relocated the plots. Without going into the merits of the claim, I conclude that the impugned order has resulted in a virtual re-allotment.

3. W.P.C. No. 17691-93/2006 was then filed by the appellants impugning the order passed by the Financial Commissioner. The writ petition filed by the appellant was dismissed holding that the order passed by the Consolidation Officer on 9.4.2003 tantamount to review of the earlier order and such revision was not permissible u/s 43A of the Act. The learned Single Judge was of the view that while passing the order dated 9.4.2003, the Consolidation Officer had afresh applied his mind to determine location of the area allotted to the appellants on the one hand and the respondent on the other, by reference to the Consolidation Scheme, which cannot be termed to be correction of a mere clerical or arithmetical error, rectification of which was permissible u/s 43A of the Act. It is the order dated 08.04.2009 passed by the learned Single Judge which is under challenge in this appeal.

4. It is an admitted position that one part of the plot of land measuring 3 bighas 1 biswa (3-1), to the extent of 2 bighas and 1 biswa, was allotted to the appellants, whereas the remaining part of the said plot, measuring 19 biswas, was allotted to the respondent. It is also not in dispute that since the plot could be divided into more than one ways, the order of allotment passed by the Consolidation Officer could not have been implemented on the ground that

unless direction either in respect of the part allotted to the appellants or of the part allotted to the respondent was given in the order of allotment. It is an admitted position that no directions with respect to the part allotted to the respondent was given in the order of allotment. As regards, the part allotted to the appellants, the case of the respondent is that the direction was specified as Dakshin (south) in the file whereas the case of the appellants is that no direction at all was indicated. This is also the case of the appellants that one Sidhartha Sharma, son of the respondent, applied for certified copy in the name of the appellant Chander Bose and at that time he interpolated the original file by writing the word "Dakshin" in the record of re-partition proceeding. An FIR was lodged against Mr. Sidhartha Sharma and according to the appellants it was opined by the handwriting expert of CFSL, Hyderabad that the application for certified copy in the name of the appellant Mr. Chander Bose was in the hand of Shri Sidhartha Sharma. The case of the respondent on the other hand is that there has been no interpolation in the proceedings of re-partition and the directions in respect of the land allotted to the appellant was specified during the course of repartition proceeding itself. This is also the contention of learned senior counsel for the appellants that even if it is assumed that the direction in respect of the land allotted to the appellants was specified as "Dakshin" (south) in the re-partition proceedings, that also would not be sufficient for demarcation of the land allotted to the appellants, on the ground, since the allotment could be either on south eastern side or on the south western side. In reply, the learned senior counsel for the respondent submitted that the Consolidation Officer, while specifying the direction as "Dakshin" (south) in respect of the land allotted to the appellants, contemplated horizontal division and not vertical division of the plot measuring 3 bighas 1 biswas (3-1) and the division of the plot was very much possible if carried out horizontally, taking the side of the part allotted to the appellants, to be "Dakshin" (south).

5. It would be seen from the proceedings of the Consolidation Officer dated 13.1.2003 that Halqa Patwari had reported to him that in the record of consolidation, in respect of the allotment made to the appellants and the respondent, no sides were mentioned. The Consolidation Officer while passing the order dated 9.4.2003 did not record any finding as to whether direction in respect of the land allotted to the appellants was specified by him as "Dakshin" (south) or not, though he did observe that there was some overwriting in the first instance. He was of the view that mere mention of the south side would be incomplete, unless it was accompanied by other side like south-west or south-east. This view taken by the Consolidation Officer indicates that he did not contemplate horizontal division of plot measuring 3 bighas 1 biswas (3-1). Had the horizontal division of the plot been in the contemplation of the Consolidation Officer, he would have recorded a finding of fact, as to whether any direction with respect to the land allotted to the appellant was given in the re-partition proceeding or not.

6. Even the Financial Commissioner did not record a categorical finding of facts

that during the course of re-partition proceedings, the direction in respect of the land allotted to the appellants was actually recorded as "south" and that the Consolidation Officer contemplated horizontal division of the plot measuring 3 bighas 1 biswas (3-1). The Financial Commissioner did observe that in Resolution No. 120 dated 28.7.2000, there was a mention of the word "Dakshin" against Plot No. 154/819, but he did not examine the allegations of the appellants that mention of the word "Dakshin" in the record was an act of interpolation attributable to the respondent. He also did not take any view on the contention of the appellants that mere mention of the direction as Dakshin "(south)" would be incomplete in the absence of indication of the other side such as south-west or south-east. The order passed by the Financial Commissioner was based upon the premise that if there was omission with respect to proceedings, which was causing a confusion regarding determination of the sides of each plot, a mere mention of the direction would have sufficed, but the Consolidation Officer could not have revisited the earlier partition, on the ground that it did not confirm to the provisions of the Scheme.

7. The learned Single Judge also did not go into the question as to whether the direction in respect of the land allotted to the appellant was actually recorded during re-partition proceedings or not and whether mention of the direction as "south" was sufficient for physical division of the plot measuring 3 bighas 1 biswas into two portions or not. In Para 30 of the impugned order, the learned Single Judge specifically recorded that it was not essential for him to go into the question as to whether the direction "Dakshin" (south) was mentioned or not, in the original re-partition proceedings dated 26.7.2000. He, however, noted that the appellants had produced photocopy of the certified copy of the re-partition proceedings which do not show mention of "Dakshin" against the relevant entry, whereas the respondent had produced several documents showing mention of the word "Dakshin" (south) in various proceedings.

8. The factual position which emerges from the above discussion is that if the plot measuring 3 bighas 1 biswa (3-1) is to be physically partitioned on the ground, this would require specifying of at least two directions in case the plot is to be divided vertically and at least one direction if it is to be divided horizontally. The physical division of the plot without specifying any direction was just not possible.

9. The next question which comes up for consideration is as to whether the Consolidation Officer, in exercise of the powers conferred upon him by Section 43A of the Act, could have determined the direction(s) of the respective parts allotted to the parties during the consolidation proceedings. Section 43A cloths the Consolidation Officer with power to correct certain errors and/or omissions in the Scheme made and the order passed by him and reads as under:-

Section 43A. Correction of clerical errors-Clerical or arithmetical mistakes in a scheme made, or an order passed by any officer under this act arising from any accidental slip or omission may at any time be corrected by the authority

concerned either of its own motion or on the application of any of the parties.

10. It would be seen from a perusal of the Section that the Consolidation Officer was competent inter alia to rectify such clerical errors which were attributable to an accidental slip or omission. Since giving direction(s) either of the part allotted to the appellants or of the part allotted to the respondent, was necessarily required for physical division of the plot measuring 3 bighas 1 biswa (3-1) on the ground, it was incumbent upon the Consolidation Officer to do so at the time of allotment. This is nobody's case that omission to give the direction(s) was a deliberate act on the part of the Consolidation Officer. It is thus quite obvious that not giving the direction(s) either of the part allotted to the appellants or of the part allotted to the respondent, was an act of accidental slip or omission on the part of the Consolidation Officer, which he was competent to rectify in exercise of the powers conferred upon him by Section 43A of the Act. Taking a contrary view would result in a situation where neither the allotment made to the appellants nor the allotment made to the respondent can be given effect to by physical division of the plot measuring 3 bighas 1 biswa (3-1). The lapse committed by the Consolidation Officer in not giving direction(s) either of the part allotted to the appellants or to the remaining part allotted to the respondent was something apparent on the face of the record since it could be noticed merely from a perusal of the re-partition proceedings and did not require an elaborate scrutiny of the record. As observed by Supreme Court in *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, , the slip or omission may be attributed to the Judge himself since he may say something or omit to say something which he did not intend to say or omit. This, in the view of Apex Court, can be described as a slip or omission in the judgment itself. In the case before us, considering the fact that giving of direction(s) was necessary to effectuate the allotment on the ground, we are of the view that omission to give direction during re-partition proceedings, assuming such a direction was not given, would be a clerical error which can be corrected by the Consolidation Officer in exercise of the powers conferred upon him by Section 43A of the Act. In *Shri Leo Puri v Consolidation Officer & Ors.* [LPA No. 1734/2006], decided on 30th September, 2008, the order of the Consolidation Officer, withdrawing excess land from the holder of the land, to whom excess land was allotted, was assailed inter alia on the ground that the Consolidation Officer having become functus officio, could not have passed such an order. Rejecting the contention, it was held that a mistake having been committed by him by allotting excess land, such mistake was capable of being rectified u/s 43A of the Act. If withdrawal of excess land is an error capable of being rectified, it is difficult to say that an omission to specify the direction(s), without which the allotment order was incapable of being given effect to, cannot be rectified under the said provision.

11. In case the Consolidation Officer did not contemplate horizontal division of the plot measuring 3 bighas 1 biswa (3-1), indicating only one direction in respect of the allotment made to the appellants would not be sufficient for giving effect to the allotment and in that case, the omission on the part of the

Consolidation Officer to give the other direction of the plot would be a clerical error on his part, which he was capable of rectifying, in exercise of the power conferred by Section 43A of the Act. In fact, even the Financial Commissioner recognized the competence of the Consolidation Officer to specify the direction of the plot in exercise of the power conferred upon him by Section 43A of the Act, when he observed, in para 13 of his order, that if there was an omission which was causing a confusion regarding determination of the sides of each plot, a mere mention of the directions in the same holdings would have sufficed. The learned Single Judge also observed in para 32 of the order that "it would have to be examined in the facts of each case whether the failure to mention any or detailed directions is an omission". He thus acknowledges that in a given case, failure to give directions may amount to an omission. Once it is acknowledged that the failure to give the direction(s) can, in the facts and circumstances of the case, amount to an omission, it can hardly be disputed that such an error being a clerical error arising out of an accidental act on the part of the Consolidation Officer is capable of being rectified in exercise of the powers conferred by Section 43A of the Act.

12. During the course of arguments before us, it was not disputed that under the provisions of the Scheme for consolidation of village Poothkhurd, it was necessary to make provision for two rastas (passages) for every plot. It was, therefore, obligatory on the part of the Consolidation Officer to provide for two passages in respect of the land allotted to the appellants and similar number of passages in respect of the land allotted to the respondent. The failure of the Consolidation Officer to provide for requisite passages, in the order of allotment, is nothing, but an inadvertent omission which he was capable of rectifying in exercise of powers conferred upon him by Section 43A of the Act. For the reasons stated hereinabove, we are of the view that the impugned judgments need to be set aside and the matter has to be remitted back to the Financial Commissioner to determine as to whether the plot measuring 3 bighas 1 biswa (3-1) should be divided horizontally or vertically and to specify one or more directions, as he may deem necessary, in respect of the land allotted to the appellants as well as in respect of the land allotted to the respondent. The Financial Commissioner shall also indicate, in his order, two passages in respect of the land allotted to the appellants and two passages in respect of the land allotted to the respondent, as per the requirement of the Scheme. A fresh order in terms of these directions shall be passed by the Financial Commissioner within three months of the parties appearing before him, after hearing them or their counsel, as the case may be. Ordered accordingly.

The appeal stands disposed of. There shall be no order as to costs.