

(2009) 04 DEL CK 0408

In the Delhi High Court

Case No : Writ Petition (C) 17691-93 of 2006

Rishi Prakash and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0408

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Ravinder Sethi, Rajiv Kr. Ghwana and Sunil Chauhan, for the Appellant; Purbali Bora, for Aruna Tikku for Respondent Nos. 1 and 2, V.P. Singh and Siddharth Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—Under challenge in this petition is the order of Financial Commissioner (FC) passed in Case No. 91/03 dated 14.11.2006 whereby the FC has allowed the Revision Petition preferred by respondent No. 3 Smt. Dayawati u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1978 (the Act), and set aside the order dated 09.04.03 passed by the Consolidated Officer (C.O.) in the proceedings initiated u/s 43A the Act. Section 43A permits the correction of clerical or arithmetical mistakes made in a scheme or an order passed by any officer under the Act, arising from any accidental slip or omission. The learned F.C. concluded that the C.O. by resort to Section 43A had not merely corrected a clerical or arithmetical mistake arising from an accidental slip or omission in his earlier order (whereby land measuring (2-2) was allotted to the petitioners), but had reviewed his earlier order thereby relocating the plots allotted to the petitioners on the one hand, and respondent No. 3 on the other. Consequently, the learned F.C. held that the C.O. had passed the order dated 09.04.2003 u/s 43A without jurisdiction, as the C.O. had no jurisdiction to review his earlier order of repartition.

2. Briefly stated the facts of the present case are that consolidation proceedings

in Village Pooth Khurd were started vide notification dated 1st September, 1998. The scheme of consolidation was announced and the Khata Haqdars were asked to submit their demand for allotment of plots in the extended Lal Dora/ Abadi. Initially the petitioners (having Khata No. 454) had been allotted residential plot out of Khasra No. 154/814 as per their entitlement of (2-2) simple and (2-3) standard. Not satisfied with this initial allotment, they objected against this allotment u/s 21(2) of the Act before the C.O. On 26.07.2000 the C.O. allotted them land in Khasra No. 154/819 thereby also withdrawing the earlier allotment. Respondent No. 3 (having Khata No. 1192) as per her entitlement was initially allotted residential plot No. 154/500-501 jointly with other Khata Haqdars having Khata Nos. 1191, 1193 and 1195. Some time in 1998-1999 a joint application was made by all these Khata holders to the C.O requesting for division of the plot separately to each khata holder, since earlier they were holding separate khata and had been wrongly clubbed under the scheme. Proceeding was initiated in this regard on 10.9.99 and on 12.12.2000 respondent No. 3 was allotted remaining land measuring 19 biswas in Plot No. 819, Khasra No. 154. Vide public notice dated 23rd February 2001, the proceedings on objections u/s 21(2) of the Act were completed.

3. The Respondent No. 3 made an application dated 31.03.2003 to the SDM, Narela for demarcation of the sides of Plot No. 154/819 in Village Pooth Khurd. It is stated that at this stage the C.O. suo moto initiated the proceedings u/s 43A of the Act that culminated in the order dated 09.04.2003 whereby the C.O. held that the omission to mention either "South-East" or "South-West" and the mere mention of "Dakshin" or "South" in the allotment made to the petitioners, was a clerical mistake which needed to be rectified u/s 43A of the Act. Further, by this order the C.O. relocated the petitioner and respondent No. 3 by re-allotting the plots. Aggrieved by this order of the C.O., Respondent No. 3 moved a revision petition before the F.C. challenging the said order as being illegal and without any jurisdiction under the Act. The F.C. allowed the Revision Petition vide his order dated 14.11.2006. The petitioner in this petition has assailed the order of F.C. and has sought for issuance of writ of certiorari/mandamus for setting aside the same.

4. The submission of the petitioner is that at the time of allotment of the plot to the petitioner, which was made in their case No. M-294/CO/99, the C.O. did not mention any direction of the portion of plot No. 154/819 allotted to the petitioner. The direction was required to be determined as Plot No. 819 had a bigger area than what was allotted to them. Thus, a clerical mistake had occurred as there were no sides mentioned by the C.O. at the time of allotment of the residential plot No. 154/819 (2-2) and therefore, it was rightly rectified by the C.O. by his order dated 09.04.2003.

5. Petitioner points out that even the report of Halqa Patwari dated 31st January 2003 which was sought by the C.O. for ascertaining the position with regard to the direction of allotment made to the petitioners, clearly states that the record

available with the department does not disclose the directions of the allotment to any of the right holder. Mr. Sethi, the learned Senior Counsel refers to the consolidation proceeding dated 31.07.2000 to show that as per resolution 120 dated 28.07.2000, no direction was mentioned when Plot 154/814 was withdrawn from the petitioner and Plot No. 154/819 was allotted to him. Petitioners also submit that physical possession of plot No. 514/819 was handed over on the spot in the year 2003 and thereafter they started raising construction of boundary wall and room.

6. Petitioner alleges that allotment made to the respondent No. 3 is illegal. It is pointed out that the Respondent No. 3 at the time of repartition u/s 21 (1) of the Act had been allotted residential plot No. 154/500 to the extent of two bighas and two biswas (2-2), and residential plot No. 501 to the extent of two bighas and two biswas (2-2). She did not prefer any objection under 21(2) of the Act against her allotment within the period of limitation, and even in the time barred objection, she did not claim that Plot Nos. 500 & 501 be withdrawn from her, and some other residential plot be allotted to her. Hence, her subsequent allotment made on 12.12.2000 in Plot No. 819 is illegal. Reliance is placed on the objection filed by the Respondent No. 3 and the proceedings sheets of the CO dealing with the said objection, which is annexed as Annexure P-5 (Colly) to the petition.

7. It is also submitted that total demand of the Respondent No. 3 was 19 Biswas. She had already been allotted 1 bigah 15 biswas of land, which is 16 biswas in excess of her entitlement. Therefore, it is argued that allotment of 19 biswas in Plot No. 819 made to her u/s 21(1) was illegally made in the year 2000.

8. It is also submitted by the petitioner that one Siddharth Sharma, who is the son of the Respondent No. 3, had fraudulently applied for the certified copies of Case No. 14-294/99 in the name of Sh. Chander Bose i.e. the petitioner No. 2 herein, pertaining to the allotment of the residential plot No. 819 (2-2) to the petitioner. It is alleged that while getting the certified copy under the name of the Petitioner No. 2, Siddharth Sharma had interpolated the original file by writing the word "South" over the word min, in the repartition proceedings record against the plot admeasuring (2-2) allotted to the petitioners from out of the larger plot No. 819, which is apparent from the certified copy of the original file M-294/CO/99 annexed as Annexure P7. The copy of the application for certified copy applied for in the name Sh. Chander Bose is annexed as Annexure P6 to the petition. An FIR was lodged and registered against Sh. Siddharth Sharma on 03.02.2002. Report of the CFSL, Hyderabad sought by the Police authorities has established that the handwriting on the abovesaid application was that of Sh. Siddharth Sharma.

9. Petitioners have assailed the impugned order of the F.C. by submitting that F.C. completely ignored the original record, which was interpolated and let himself be swayed by the tampered entries. As a result of the said tampering, all the subsequent records automatically mention the direction "Dakshin" or "South" against the petitioners' allotment.

10. Petitioners further submit that under the scheme a right holder has a preferential right of allotment of the plot at his / her owned major centre. The centre of Respondent No. 3 was nowhere near the Plot No. 819. Therefore, it is argued that her subsequent allotment in Plot No. 819 is in complete violation of scheme of consolidation.

11. Mr. Sethi, learned Senior Counsel for the petitioner points out that the proceedings before the C.O., which resulted in the order dated 09.04.2003 being passed, had in fact been initiated by Respondent No. 3 herself through application filed by her in the office of SDM, Narela on 31.03.03 for demarcation of her plot No. 154/819 in village Pooth Khurd. Hence it cannot be said that the C.O. had taken suo moto action.

12. Mr. Sethi contends that clerical/typographical error as envisaged in Section 43A of the Act will also include "omissions". He submits that the scope of Section 43A of the Act is same as that of Sections 151 & 152 of the CPC and hence, calls for similar interpretation.

13. Respondent No. 3 in her counter affidavit submits that C.O. under the grab of invoking Section 43A of the Act has in fact reviewed the earlier repartition order and has unsettled the issues which were settled earlier by his predecessor. It is contended that there is no provision under the Act which allows the C.O. or any authority to review its earlier order. Reliance in this regard is placed on decision of Supreme Court in Harbhajan Singh Vs. Karam Singh and Others, .

14. It is further alleged that the CO has acted suo moto and without jurisdiction after the completion of repartition proceedings as well completion of the stage of Section 21(2). As per resolution No. 269 dated 24.02.2001, annexed as Annexure R-1 to the counter affidavit, it is clear that vide General Notice it was informed that proceeding in respect of objections u/s 21(2) of the Act were over. He clarifies that the application dated 31.01.03 of the respondent, which is relied by the petitioners to say that it resulted in the proceeding before the C.O. u/s 43A, was addressed to the SDM, Narela, keeping in view the fact that after notice dated 24.02.2001 the C.O. had become functus-officio. Reliance is placed on to the decision of this Court in Ram Saroop Vs. Ram Nath and Another, to contend that C.O. does not have suo moto power to change the scheme or the holdings allotted to landholders.

15. It is also submitted that in the original repartition order dated 26.07.2000 passed by the predecessor C.O. u/s 21(2) of the Act recording allotment of the plot 154/819 (which was earlier allotted to khata Haqdar No. 1373) to the petitioners, the word "Dakshin" is originally mentioned against the plot 154/819. It is also pointed out that in all at seven places the word "Dakshin" has been indicated in various revenue records contemporaneously. It is found mentioned at 2 places in register consolidation proceedings vide Resolution S. No. 120 Annexure R-2 of the Counter Affidavit; at 2 places in register consolidation proceedings vide Resolution S. No. 120 Annexure R3 of the counter affidavit; at 2

places in original record of M-294/CO/99 which approved the proposal of the petitioner u/s 21(2) of the Act annexed as Annexure P7 to the petition; and in Annexure R-4 of the counter affidavit showing relevant entries in Khata No. 1373, regarding Plot No. 154/819 under Resolution S. No. 120 dated 26.07.2000.

16. Mr. V.P. Singh, Senior Counsel further submits that even in the order dated 09.04.2003 passed by the C.O. u/s 43A of the Act, the C.O. has specifically recorded the fact that the word "Dakshin" has been found mentioned in the records. The aforesaid fact has also been admitted by the petitioners in their reply to the revision petition before the Financial Commissioner in para 3.

17. Allegation of tampering of revenue records by the son of the respondent No. 3 is refuted as being false and misleading. It is stated that the said aspect is pending trial before the Court. Reliance is placed on the affidavit furnished by the concerned Patwari duly sworn before his concerned SDM stating that no such tempering and impersonation was done or tried to be done by anybody in the record room as alleged.

18. Respondent No. 3 categorically denies that on the spot possession of plot 154/819 was handed over to the petitioners. It is pointed out that in petitioner's application dated 15.03.03 addressed to C.O., BDO Office Complex, Narela, a specific request to the revenue authorities to handover the possession of the said plot in dispute was made. Therefore, it is argued their contention that they were handed over possession of the said plot on spot on 19.01.2003 can not be sustained.

19. It is also alleged that the report of Halqa Patwari dated 31.1.03 is false and fabricated as neither he visited the record room Kanjhawala on that day nor inspected the records pertaining to the plot No. 154/819 at the record room Kanjhawala. Even the said report finds no mention of any proceedings in this respect.

20. Respondent No. 3 specifically denies that any clerical mistake had occurred at the time of consolidation by writing only "Dakshin" in revenue record, and the description of the allotted plot as falling in "Dakshin" is incomplete. It is submitted that this manner of describing the land allotted is based on past practice and established procedure of revenue proceedings in vogue. Reference is made to the order dated 25.01.03 passed by the CO in case No. M-4/Misc/CO/2002-03; Proceeding register consolidation vide resolution No. 350 dated 09.04.03; and order passed in case No. M-25/TN/CO/20002-2003 to indicate the usual practice of recording the pattern of allotment by mere use of one word without detailing the specific directions such as "South-East" or "South-West". Reliance is placed on Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, ; Smt. Sooraj Devi Vs. Pyare Lal and Another, and M/S. Karan and Co. Vs. Income Tax Appellate Tribunal, to demonstrate the settled law on what amounts to a clerical or arithmetical error in an order.

21. The only issue which falls for my consideration is whether the Financial

Commissioner has rightly held that order passed by the C.O. on 09.04.2003 tantamounts to a review of the earlier order, which either did not mention any direction in respect of the petitioners' allotment of (2-2) in Khasra No. 154/8919 (as contended by the petitioners) or mentioned only "Dakshin" or "South" as the direction in which the aforesaid plot was allotted out of Khasra No. 154/819 (as contended by respondent No. 3). The decision of this issue depends on the determination of the issue whether the omission to mention any direction in the allotment made to the petitioners, or the mention of only "Dakshin" as the direction amounts to an accidental slip or omission which has resulted in a clerical or arithmetical mistake in the earlier order dated 26.07.2000.

22. Having heard the learned senior counsel for the parties and upon perusal of the record I am of the view that there is no illegality in the order passed by the Financial Commissioner. The C.O. in his order dated 09.04.2003 observed that petitioner was allotted his share on southern side, and mentioning of southern side is incomplete, as it is not accompanied by other sides like "South-West" or "South-East". This omission was held by him to be a clerical mistake that needed to be rectified. He thereafter proceeded to re allot the plots to the parties. The relevant part in the order is reproduced as under:

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 is 25 gatha long, side on eastern side is 22 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.

23. Section 43A of the Act under which the C.O. purported to correct the clerical mistake in the repartition order 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.

24. By virtue of Section 43A, the C.O. has authority under the Act to rectify any "clerical or arithmetical mistake" arising from any "accidental slip or omission" in the scheme made or an order passed by him. A perusal of Section 43A shows that for invoking the same two things are required. Firstly, there should be an "accidental slip or omission" made by the authority concerned. Secondly, the accidental slip or omission should result in only a "clerical or arithmetical mistake" in the scheme or the order, as the case may be. A mistake which requires for its resolution fresh application of mind to the respective contentions of the parties, in such a manner as to practically re-determine the inter se rights

of the contesting parties, such a mistake cannot be termed as a clerical or arithmetical mistake. A clerical or arithmetical mistake would be one which is obvious and can be corrected merely by reference to the order or the scheme, without resort to a fresh process of reasoning. In *Master Construction Co. (P) Ltd.* (supra), the Supreme Court observed:

An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. There is another qualification namely, such an error shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, on elaborate arguments on W.P.(C) No. 17691-93/06 Page 13 of 19 questions of fact or law. The accidental slip or omission is an accidental slip or omission made by the Court. The obvious instance is a slip or omission to embody in the order something which the Court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake. But, however wide the said expressions are construed, they cannot countenance a re-argument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance....

25. In the present case, the C.O. while passing the order dated 09.04.2003 does not merely say that the accidental slip or omission to mention the specific direction "South-East" or "South-West" has led to a clerical or arithmetical mistake, which could be said to be obvious. The mistake, for it to be clerical or arithmetical mistake, should be obvious, unintentional and should not require an elaborate process of reasoning. In a case where the underlying basis and the fundamental premise of allotment itself is put in question, on account of a so-called accidental slip or omission, the same cannot be said to be a clerical or arithmetical mistake.

26. In the present case, the C.O., as would be evident from the aforesaid extract, has afresh applied his mind to determine the location of the area allotted to the petitioners on the one hand, and respondent No. 3 on the other, by reference to the consolidation scheme. This, in my view, cannot be termed to be the correction of a mere clerical or arithmetical mistake, assuming that the failure to mention any direction, or to mention only "Dakshin" or "South" as the direction of the plot allotted to the petitioners was an "accidental slip or omission" as contended by the petitioners. By purporting to rectify the mistake the C.O. could not have altered the settled allotment.

27. The Financial Commissioner in his order has rightly held that the C.O. was only expected to indicate the sides of plots allotted to the parties out of Khasra

No. 154/819 and, therefore, it should have been a straightforward exercise for him if it were merely a case of a clerical or arithmetical mistake. Instead, the C.O. has, by a fresh process of reasoning sought to re-determine the rights of the parties.

28. The effect of the order dated 09.04.2003 is that the C.O. on its own, and without any authority under the Act, has reviewed the repartition order. There is no provision in the Act empowering the authorities under the Act to review their order. The observation of Supreme Court in Harbanjan Singh (supra) in this regard are relevant, and read as follow:

There is no provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act granting express power of review to the state Government with regard to an order made u/s 42 of the Act. In the absence of any such express power, it is manifest that the Director, Consolidation of Holdings, the Director, cannot review his previous order of 3rd April 1958 dismissing the application of Harbajan Singh under section 42 of the Act. It follows therefore that the order of the Director dated 29th August, 1958 is ultra vires and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Article 226 of the Constitution.

29. The C.O., without receiving any objection u/s 21 of the Act, has no power to suo moto change the holdings allotted to the parties. This is not at all envisaged under the Act. In Ram Saroop (supra) this Court after taking note of the decision in Nazar and Ors. v. Additional Director and Ors. 1966 CRI. LJ 755 has clearly held that if the aggrieved persons have not filed objections before the C.O. or preferred appeals before the higher authorities specified in Section 21, such authorities do not have suo moto power to change the scheme or the holdings allotted to landholders in repartition.

30. For the view that I am taking, it is not essential for me to go into the issue as to whether the direction "Dakshin" or "South" was, or was not, mentioned in the original repartition proceedings dated 26.07.2000. I am also not required to decide whether or not either the omission to mention any direction, or merely to mention "Dakshin" tantamounted to an "omission" within the meaning of Section 43A. For the present purpose, I am assuming that the submission of the petitioner that there was no mention of any direction in the repartition proceedings of 26.07.2000 is correct and also that the mere mention of "Dakshin" in those proceedings was an "omission" since either "South-East" or "South-West" was not mentioned.

31. As observed earlier, not every omission leads to a clerical or arithmetical mistake. An "omission" may lead to much more than a mere clerical or arithmetical mistake. There is much to be said on both sides with regard to the mention of the direction "Dakshin" in the repartition proceedings of 26.07.2000. While on the one hand the petitioner has produced photocopy of the certified copy of the said proceedings, which do not show the mention of "Dakshin"

against the relevant entry, respondent No. 3 has produced various documents to show that "Dakshin" was mentioned consistently in various proceedings from 26.07.2000 onwards contemporaneously. In my view, these are disputed questions of fact, which neither arise from the order of the Financial Commissioner nor fall within the scope of the proceedings for me to determine. Pertinently, despite repeated directions to the revenue authorities given on 15.01.2008 and 18.07.2008, to produce the original records, the same has not been produced. These issues would be determined by the competent authorities before whom they are pending. No observation made by me in these proceedings should influence the determination of these factual issues.

32. I may also note that the submission of the petitioner, that the mere mention of "Dakshin" by itself is not sufficient and that the omission to mention "South-East" or "South-West" is an omission, does not arise for consideration in the present case, as I am of the view that even if it were to be assumed to be an "omission" the same has not led to a mere "clerical or arithmetical mistake". However, I may add that respondent No. 3 has pointed out various instances from the proceedings filed on record which show that the direction "Dakshin" and "Uttar" have been mentioned in various other cases and it is not that in every case directions have been further elaborated as "South-East", "South-West", "North-East" or "North-West". It would really depend on the facts of each case as to whether the directions have been sufficiently disclosed or not, and it would have to be examined in the facts of each case whether the failure to mention any or detailed directions is an "omission". There can be no generalized hard and fast rule in this regard.

33. I cannot accept the assertion of petitioners that they were allotted plot No. 154/819, and were put in possession of the said plot. As evidenced from the letter dated 15.03.2003 of the petitioner addressed to the C.O., B.D.O. Office complex, Narela, it is clear that till date no authority has handed over possession of the plot to the petitioners. A request was made to the C.O. for allotting the plot No. 819 in "West" direction as per the scheme of consolidation. In the said application it is also admitted that till date the said plot was not shown in their Khata.

34. The submission of the petitioner that the subsequent allotment of 19 biswas to respondent No. 3 in plot No. 154/819 is illegal since no objection was preferred by her u/s 21(2) of the Act, is also not well founded and is beyond the scope of these proceedings, which is to determine whether the F.C. was justified in his view that the C.O. incorrectly invoked his powers u/s 43A of the Act while passing the order dated 09.04.2003. If the petitioners were aggrieved by the allotment of the said plot to respondent No. 3 as being illegal, they should have taken appropriate steps before the concerned revenue authorities in the manner prescribed by law. I may only note that from a perusal of the joint application made by the respondent No. 3 along with khata holders 1191, 1193 and 1195, it is seen that an objection was raised by all these khata holders against joint plot

of plot No. 500-501. A request was made to separately allot plots to these khata haqdars independently. This application resulted into a proceeding u/s 21(2) of the Act. Thereafter, respondent No. 3 was allotted 19 biswas in plot No. 154/819 on 12.12.2000. The proceedings u/s 21(2) of the Act were, prima facie, not time barred, as it was only vide public notice dated 23.02.2001 that proceedings in relation to Section 21(2) of the Act were declared to be over.

35. I do not accept the submission of respondent No. 3 that the petitioners admitted in their reply before the F.C. that the direction "Dakshin" was mentioned in the repartition proceedings dated 26.07.2000. A careful reading of the pleading shows that the petitioner has not made any such admission as attributed to them.

36. In view of the legal position emerging from the authorities cited above, I am of the opinion that the view taken by the Financial Commissioner that the order of the C.O. resulted in a review of the earlier order, as it has relocated the plots is correct. It has rightly been held by him that if there was any grievance regarding the allotment, it should have been addressed in appropriate proceedings. The power of C.O. u/s 43A of the Act is only to remove the obvious clerical or arithmetical mistake as a result of an omission in the scheme or order. In my view Section 43A of the Act, in no circumstance, gives jurisdiction to the C.O. to review his earlier order and relocate the plots allotted under the scheme.

Dismissed.