
(2005) 08 DEL CK 0099
In the Delhi High Court
Case No : Writ Petition (C) 2708 of 2000

R.K. Industries

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42, 43A

Citation : (2005) 08 DEL CK 0099

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Sunil Goel, for the Appellant; P.S. Vats and R.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Instant writ petition shows the bureaucratic and mindless functioning by the Financial Commissioner in Delhi. Actions of the Financial Commissioner borders on senility. A simple issue which was brought to the notice of the Financial Commissioner time and again by the petitioner was deflected by the Financial Commissioner on reasoning which is totally untenable in law.

2. Consolidation commenced in Village Mundka. During consolidation proceedings land comprised in khasra No. 458 measuring 2 bigha and 1 biswa was purchased partly by M/s. R.K. Industries and partly by respondent No. 3, Ganga Bishan. M/s. R.K. Industries and Ganga Bishan also purchased land comprised in adjoining khasras No. 456 and 457. Joint mutation was effected in the name of Ganga Bishan and the petitioner qua the lands comprised in Khasra No. 456, 457 and 458. It was recorded in the mutation entry that share of Ganga Bishan was 32/129 and share of petitioner was 97/127.

3. It may be noted that the aforesaid khasra numbers were the new khasra numbers allotted to the land during repartition proceedings.

4. In the proceedings register pertaining to repartition, a joint khata of Ganga Bishan and the petitioner as right holder No. 454 was entered.

5. Consolidation proceedings were concluded by the Consolidation Officer somewhere around 1983-84. However, due to certain aggrieved parties being in litigation either in appeal, revision or writ petitions in this court, consolidation proceedings were not formally closed. All of a sudden, in the year 1998, Consolidation Officer proceeded to act u/s 43A of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948.

6. Reasons why Consolidation Officer so acted are to be found in his order dated 25.6.1998. The order records as under:-

"Time and again steps were taken to amend the scheme for the purposes of providing residential plots in the phirni. Some of the right-holders had also taken up the matter against the amended scheme up to the level of the Hon"ble High Court. Some cases are subjudice in the court. It is considered reasonable to consign the records as such portal of the proceedings shall have to be got done with a view to ascertain the factum of any errors either on calculation of the area or any other arithmetical errors resulting into deficiency or excess in the khata of the right-holders."

7. Indeed, mandate of Section 43A of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 empowers the Consolidation Office to correct clerical or arithmetical mistakes which have arisen from any accidental slip or omission.

8. Purporting to act u/s 43A, Consolidation Officer effected withdrawal of land and as a consequence effected changed allotments.

9. Relevant for the purposes of the present decision are the following 3 changes effected by the Consolidation Officer:

-----	Name
of holder Haqdar No. Excess area Allotment to make withdrawn up deficiency	-----
-----	Suraj
Bhan 387 1036/(1-0) 458 West (1-0) Ganga Bishan 454 458 West (1-0) 450/1/2	
(1-0)and Ors. Ram Kala 454 450/1/2 (1-0) 13/5 (1-0)	

10. Petitioner was aggrieved by the order dated 25.6.1998 for the reason it purported to correct arithmetical errors resulting in deficiency or excess allotment to the right holders, but was in fact changing one bigha of land inter se Suraj Bhan, Ram Kala and Ganga Bishan and petitioner.

11. Petitioner filed a revision u/s 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 before the Financial Commissioner. Grievance of the petitioner was that the Consolidation Officer had a limited power u/s 43A to correct arithmetical mistakes arising out of accidental slips or

omissions. He had no power to change the land inter se the land holders. Petitioner pointed out in the revision that one bigha land was withdrawn from Suraj Bhan and sow as one bigha withdrawn from the khata of Ganga Bishan and the petitioner. Likewise one bigha land was withdrawn from the khata of Rama Kala. Each was recompensed with one bigha land. Accordingly, petitioner stated that the Consolidation Officer had actually changed the location of the land, post repartition, an act which fell outside the mandate of Section 43A.

12. Surprisingly, the Financial Commissioner raised, which to my mind is a foolish objection, being that the petitioner had no locus standi to maintain the revision petition for the reason its name was not to be found in the order dated 25.6.1998. Submission of the petitioner that the order dated 25.6.1998 recorded name of the right holder as "Ganga Bishan and others" pertaining to Haqdar No. 454 and that petitioner would be "others" was brushed aside. Learned Financial Commissioner passed an order on 5.10.1998. Order reads as under:-

"Present Sh. Mahipal Singh, Adv. for the petitioners, Sh. P.S. Vats, Adv. for the respondent No. 1 and Sh. Davinder Verma, Adv. for the respondent No. 4. Respondent No. 2 is C.O. a proforma party. Ex-parte proceedings have already been ordered against respondent no. 3. On the query put by the court to the learned counsel for the petitioner that the name of the petitioner is not exist in the impugned order, the counsel has replied that petitioner"s name is at s. no. 54 of the impugned order in the Col. no. 2as mentioned Ganga Bishan and Ors. and that the petitioner comes in "others". This however is not clear from the impugned order. Hence, the counsel for the petitioner requests to withdraw the petition and seek permission of the court to file afresh properly. Request is allowed. The revision petition is, Therefore, dismissed as withdrawn."

13. Petitioner obtained a copy of the proceeding register showing that vide Seriall No. 14 under the column right holder, name of Ganga Bishan and the petitioner was entered. Annexing the same, petitioner filed fresh revision petition challenging the order dated 25.6.1998. Learned Financial Commissioner passed and order on 25.1.2000. The order reads as under:

"This revision petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948 has been filed by the petitioner against the order dated 25.6.1998 passed by the Consolidation Officer (Mundka), Nangloi, Delh. It is added here that this case had been earlier dismissed as withdrawn as the petitioner"s name did not figure anywhere in the impugned order.

2. I have heard the learned counsel for the petitioner on this present petition again and have also gone through the impugned order as well as other papers filed with this petition.

3. I find that there is no change in the situation as no mention of the petitioner"s name is there in the impugned order. Hence, I hold that the petitioner has no locus to file any such petition. The petition is, Therefore dismissed for want of

the petitioner's locus in the matter."

14. The poor petitioner was at its wits end. It obtained a complete certified copy of the proceedings register to show that large number of Haqdar was clubbed together against one khata and were shown by listing the first holder along with others under the caption "and others". Foolishly again, Financial Commissioner dismissed the revision petition vide order dated 4.5.2000. Learned Financial Commissioner dismissed the review sought vide order dated 10.7.2000.

15. Driven to the wall, petitioner had no option but to file the present petition praying that the orders passed by the Financial Commissioner as also the order dated 25.6.1998 passed by the Consolidation Officer be set aside.

16. Facts noted above hardly need any adjudication. Legal consequences have to flow on the strength of the facts noted above. I may however deal with the objection raised by Shri P.S. Vats advocate. Counsel argued that Ganga Bishan did not challenge the order dated 25.6.1998. Counsel urged that the land comprised in khasra No. 458 was the joint holding of the petitioner and Ganga Bishan. Counsel urged that unless Ganga Bishan joined in the challenge, petitioner had no locus standi to challenge the order dated 25.6.1998.

17. Having noted the objection, the same has to be rejected for the reason, Ganga Bishan was imp leaded as a respondent in the revision petition filed before the Financial Commissioner. Ganga Bishan has been imp leaded as respondent No. 3 in the present petition.

18. It is trite that a co-owner has a right to maintain legal proceedings to save the joint holding. It is enough if the other co-owner is imp leaded as a respondent.

19. Turning to the merits. It is not in dispute that repartition was effected somewhere around 1982-83. It is also not in dispute that in the repartition register, name of the petitioner and Ganga Bishan was recorded as Haqdar No. 454. It is also noting dispute that land comprised in khasra No. 458 measuring 2 bigha and 1 biswa was allotted to them. It is further not in dispute that while passing the order dated 25.6.1998 Consolidation Officer did not find any deficiency in the khata of Ganga Bishan ad the petitioner or in the khata of Suraj Bhan or Ram Kala. Further, no excess allotment was found in the khata of the said persons. Undisputably, under order dated 25.6.1998, Consolidation Officer has withdrawn 1 bigha of land from each of the 3 khatasnd in lieu thereof has allotted 1 bigha of land but in a different khasra. What has been withdrawn from the khata of Ganga Bishan and the petitioner has been allotted to Suraj Bhan. What has been withdrawn from the khata of Ram Kala has been allotted Ganga Bishan and the petitioner.

20. u/s 43A of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 the Consolidation Officer is empowered to correct clerical or arithmetical mistakes arising from accidental slip or omission. Power is

limited.

21. Impugned order dated 25.6.1998 does not reveal correction any clerical or arithmetical mistake, much less arising from an accidental slip or omission. The Consolidation Officer has acted wholly without jurisdiction in withdrawing 1 bigha land from the holding of Ganga Bishan and the petitioner and in lieu thereof allotting 1 bigha land in a different khasra.

22. It appears that the land comprised in khasra No. 458 towards the western side has a better location for the reason it abuts a road. Impugned order appears to be passed at the behest of Suraj Bhan who has got the benefit of a better located land at the cost of Ganga Bishan and the petitioner who have been pushed back from the road.

23. Writ petition is accordingly allowed. Impugned order dated 25.6.1998 passed by the Consolidation Officer is quashed. Impugned orders dated 5.10.1999, 25.1.2000, 4.5.2000 and 10.7.2000 passed by the Financial Commissioner are also quashed. Original allotment to the petitioner and Ganga Bishan as entered in the revenue record is restored.

24. Petitioner would be entitled to cost in the sum of Rs.10,000/- against respondent No. 4.