

(2011) 02 DEL CK 0002
In the Delhi High Court
Case No : Writ Petition (C) No. 133 of 2008

Sardar Singh

APPELLANT

Vs

Financial Commissioner Delhi and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21(2), 21(4), 42

Citation : (2011) 02 DEL CK 0002

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Anand Yadav and Anita Tomar, for the Appellant; Abhinav Tandon, for V.K. Tandon, for R-1 to R-3 and Rajendra Dutt, for R-4 to R-7, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 13th December, 2007 of the Financial Commissioner dismissing the revision petition filed by the Petitioner u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The petition came up before this Court first on 14th January, 2008 when the Petitioner made a statement that the Petitioner, though in the writ petition has challenged but was not challenging the order insofar as with respect to 12 Bighas 18 Biswas of land which had vested in the Gaon Sabha. Notice of the petition was issued on other aspects only and status quo in respect of Khasra Nos. 28/13(2-8) and 28/14(2-8) and post consolidation of Khasra Nos. 154/874(2-2) and 154/875 (2-2) directed to be maintained. The said interim order has continued in force.

2. Pleadings have been completed. The counsel for the Petitioner and the counsel for the Respondents 4 to 7 have been heard.

3. The Respondents 1 to 3 though have filed a short affidavit dated 19th January, 2009 but in spite of the arguments having stretched from pre-lunch to post-lunch, the counsel for the Respondents 1 to 3 has chosen not to argue.

4. The counsel for the Petitioner contends that the grievance of the Petitioner is two fold - firstly of non allotment of any residential plot, though required to be allotted under the Scheme of consolidation and the Rules and secondly of the claim of the Petitioner of the deficiency in post consolidation allotment having not been made up. Connected to the first contention aforesaid, if found tenable, is the claim of the Petitioner for allotment of residential plot in the pre consolidation holding of the Petitioner and of which now the Respondents 4 to 7 claim to be owners. The counsel for the Petitioner however states that the Petitioner is still in possession of the same under the interim orders in this petition. The counsel for the Respondents 4 to 7 controverts and states that the Respondents 4 to 7 are in possession.

5. As far as the claim for residential plot is concerned, the impugned order which deals mostly with 12 Bigha 18 Biswas of land aforesaid, towards the end records that the prayer of the Petitioner for allotment of plot carved out of pre consolidation holding comprised in Khasra Nos. 28/13 & 28/14 has been held by the Consolidation Officer to be belated since the proceedings u/s 21(2) of the Act already stood completed well before the receipt of the objection. The Financial Commissioner has thus confirmed the order of the Consolidation Officer of the Petitioner being not entitled to a residential plot out of pre consolidation Khasra Nos. 28/13 & 28/14 for the reason of objection with respect thereto having been made belatedly.

6. The counsel for the Petitioner at the outset has contended that the Financial Commissioner has erred in not returning an independent finding with respect to the claim of the Petitioner for a residential plot out of his pre consolidation holding. It is contended that even if the objection of the Petitioner in that regard before the Consolidation Officer was belated, the Financial Commissioner was still required to decide the said claim on merits. Reliance in this regard is placed on the order dated 3rd February, 2003 of this Court in W.P.(C) No. 877/2003 titled Rakes Dabas v. Financial Commissioner, Delhi holding that action u/s 42 of the Act can be taken both suo moto or at the instance of some interested parties and the revision petition u/s 42 of the Act could not be dismissed merely on the ground that the Petitioner had not made application to the Consolidation Officer. Reference is also made to Rajinder Singh and Others Vs. Financial Commissioner and Others, holding that merely because objection had been adjudicated and the order had become final did not curtail or restrict the power of the Financial Commissioner u/s 42 of the Act.

7. I have enquired from the counsel for the Petitioner whether the Financial Commissioner is not entitled to dismiss the claim made u/s 42 of the Act as barred by laches and acquiescence. The counsel for the Petitioner has fairly stated that the Financial Commissioner is entitled to dismiss a claim as barred by laches and acquiescence. He however contends that the said question does not arise in the present case in the facts below mentioned.

8. It is the case of the Petitioner that the re-partition proceedings pursuant to

Notification of the year 1988 of consolidation took place between 18th March, 1999 to 5th May, 1999; however vide order dated 24th April, 2000 in proceedings filed by some other persons, the Financial Commissioner stayed handing over of possession in pursuance to consolidation / re-partition; that though in re-partition residential plot in Khasra No. 154/531 had been allotted to the Petitioner but the same was withdrawn by the Consolidation Officer vide Resolution dated 23rd March, 2001; that the order dated 24th April, 2000 (supra) was vacated by the Financial Commissioner on 15th January, 2002 and the Petitioner in 2002 itself applied to the Consolidation Officer for allotment of residential plot since plot No. 154/531 earlier allotted had been withdrawn; that the said application / objection of the Petitioner was dismissed by the Consolidation Officer on 10th July, 2002 and on 28th October, 2002 the revision petition (supra) was preferred before the Financial Commissioner.

9. The counsel for the Petitioner has thus argued that the occasion for applying for residential plot arose in 2002 owing to the residential plot in Khasra No. 154/531 earlier allotted having been withdrawn and thus the provisions of Section 21(2) of the Act providing for a time of 15 days are not strictly applicable inasmuch as in the Scheme and in re-partition residential plot had earlier been allotted to the Petitioner.

10. It is thus argued that the claim of the Petitioner for residential plot has not been considered by the Financial Commissioner who has merely reiterated the order of the Consolidation Officer of the objection of the Petitioner being belated.

11. I have satisfied myself that the Petitioner in the revision petition before the Financial Commissioner, copy of which has been filed at pages 44 to 55 of the paper book, had in para 26 made a grievance with respect to a residential plot and had in the prayer paragraph also sought a direction for allotment of residential plot. Similarly, in the writ petition before this Court also, grievance in that respect has been made in para 37 of the petition.

12. The Consolidation Officer in the counter affidavit filed before this Court has not dealt with the aspect of residential plot and has generally dealt with the total demand of the Petitioner and the deficiency in respect thereof.

13. The counsel for the Respondents 4 to 7 has stated that the said Respondents are not concerned with the claim of the Petitioner for residential plot, in so far as it is not for a residential plot in the land now owned by the said Respondents. He has otherwise argued that the Petitioner has concealed from this Court that the residential plot No. 154/531 withdrawn from the Petitioner was allotted to the son of the Petitioner; that the Petitioner has produced before this Court only the Resolution with respect to the withdrawal and not the order leading to the said withdrawal and which would have shown reasons therefore ;that if the said withdrawal was with the consent of the Petitioner, the Petitioner cannot now make a grievance with respect thereto; that the Petitioner u/s 21(4) of the Act is estopped from now making a claim.

14. Unfortunately none of the aforesaid arguments have been dealt with in the order of the Financial Commissioner. The counsel for the Respondents 4 to 7 of course contends that the Petitioner even if had raised the pleas in the revision petition did not raise any arguments with respect thereto and for which reason the same do not find mention in the order of the Financial Commissioner. The counsel for the Petitioner controverts.

15. Since the entire records are not before this Court and since in any event no discussion in this respect is found in the impugned order, I am inclined to remand the matter to the Financial Commissioner on this aspect and therefore refrain from making any observations on the contentions of the counsel. Suffice it is to state that prima facie the question of estoppel u/s 21(4) of the Act does not appear to arise inasmuch as on re-partition, the Petitioner was admittedly allotted residential plot No. 154/531 and which was subsequently withdrawn and soon whereafter an application / objection was preferred to the Consolidation Officer. In this regard, it may also be noticed that it is also the contention of the counsel for the Respondents 4 to 7 that the application so preferred by the Petitioner before the Consolidation Officer did not lie and the Petitioner if aggrieved with the order of withdrawal of residential plot No. 154/531 ought to have preferred an appeal there against to the Settlement Officer. The said aspect also needs to be gone into by the Financial Commissioner.

16. Insofar as the claim of the Petitioner for residential plot in the pre-consolidation holding now owned by the Respondents 4 to 7 is concerned, the counsel for the Respondents 4 to 7 has argued that the claim of the Petitioner for residential plot was towards East side only and thus the question of the Petitioner being now entitled to claim the residential plot in the pre-consolidation holding does not arise. On the contrary, the counsel for the Petitioner with reference to page 69 of the paper book, being his application dated 16th September, 1996 for residential and industrial plot shows that the claim for residential plot was towards "East or North" and in the Khasra forming the pre-consolidation holding. The counsel for the Respondents 4 to 7 controverts. He on the contrary relies upon page 112/113 of the paper book being the demand made by the Petitioner in the year 1989 for residential plot in the East direction. All these questions are also best left to be gone into before the Financial Commissioner.

17. As far as the claim of the Petitioner for deficiency in land is concerned, the Petitioner relies upon the counter affidavit of the Consolidation Officer where it is stated that the total deficiency of the Petitioner comes to 1 Bigha 11 Biswas and out of which 1 Bigha 8 Biswas is to be deducted from the land of one Sh. Ram Singh and others who have been allotted excess land.

18. The counsel for the Respondents 4 to 7 has contended that the said deficiency in the counter affidavit is with respect to the agricultural land only and not in the residential land. The counsel for the Petitioner controverts and contends that the deficiency mentioned in the said counter affidavit is with respect to both residential as well as agricultural land. In the absence of any

assistance from the counsel for the Respondents 1 to 3, no definite finding with respect thereto also can be given. The same is also left open for decision for the Financial Commissioner on remand.

19. The writ petition is therefore disposed of with the remand to the Financial Commissioner, to after hearing the Petitioner and the Respondents 4 to 7 and Sh. Ram Singh aforesaid and any other person found interested, render a decision on the aforesaid and other related aspects.

20. The order impugned in this writ petition to the aforesaid extent is set aside. In the circumstances, the parties are left to bear their own costs. Though the Petitioner and the Respondents 4 to 7 have taken conflicting stands as aforesaid with respect to possession but on the request of the counsel for the Petitioner, till the consideration of interim relief by the Financial Commissioner, the said order to continue.

No order as to costs.