

(2004) 03 DEL CK 0081

In the Delhi High Court

Case No : Writ Petition (C) .No. 5852 of 2003

Sh. Hukum Chand and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Citation : (2004) 111 DLT 21 : (2004) 74 DRJ 509 : (2004) 4 RCR(Civil) 44

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : V.P. Singh and Mahipal Singh, for the Appellant; Varsha Goyal, for Kailash Gambhir, for resp. No. 3 and Anand Yadav, for resp. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—This writ petition came up for admission on 12th September, 2003, and has been adjourned on successive dates. With consent of parties, it is taken up for disposal.

2. Petitioner, by this writ petition, assails the order dated 17.10.2002, passed by the Financial Commissioner, respondent No.1 in revision and orders of the Consolidation Officer dated 21.5.2002 passed u/s 43-A of East Punjab Holdings Consolidation and Prevention of Fragmentation Act, 1948 (hereinafter referred to as the Act) and 28.9.1984 passed by Consolidation Officer of amended allotments in consolidation proceedings.

3. The facts giving rise to the present petition insofar as they are relevant for its disposal may be noticed:

(i) Petitioners and respondent Nos.4 to 7 are residents of village Khaira, Delhi. They claim that they hold agricultural land in Village Mitraon, Delhi. The villages are stated to be located at a short distance from each other. In the year 1974-75, consolidation proceedings had been undertaken in the village Mitraon under the Act. Repartition u/s 21(1) of the Act has been carried out between

1.6.1975 to 30.6.1975, when new kila numbers were allotted to the right holders in lieu of their pre-consolidation holdings.

(ii) It is the petitioners' case that in the year 1977, they had raised construction of a dwelling unit in Khasra No.86/1/3, since they were having shortage of accommodation and the said piece of land was being used for residential as well as agricultural purpose. Petitioners claim to have constructed a dwelling unit on the said land.

4. I have heard Mr.V.P.Singh, Senior counsel for the petitioner in support of the writ petition. The grievance of the petitioners is that the Consolidation Officer on 28th September, 1984, passed the impugned order, wherein at S.No.19, it is noted that the earlier deficiency of petitioner was 2 bighas and 6 biswas. This deficiency was increased to 2 bighas and 7 biswas. The deficiency of 1 bids was coming from Khasra No.86/1/3. In place of the deficiency of 2 bighas and 7 biswas, petitioner was allotted 2 bighas 12 bids was out of Khasra No.105/7.

5. Learned counsel submits that this order was not to the knowledge of the petitioners and hence they could not challenge the same. It is further claimed that the said order was not implemented inasmuch petitioners continued to enjoy the possession and use of 1 biswa of land in Khasra No.86/1/3. Learned counsel submits that petitioners woes started in the year 1997, when respondent Nos.5 and 7 approached the S.D.M. and sought demolition of the structures in 1 biswa of land in Khasra No.86/1/3 on the ground that it was a part of the public passage. S.D.M. passed an order, directing the demolition of the said structure and its use as passage. Petitioner preferred a revision petition before the Additional District & Sessions Judge, who vide his order of 31.3.1999 held that Section 133 Cr.P.C was not attracted as the construction was stated to have been raised in the year 1977.

6. It may also be noted that respondent No.4 and other persons filed W.P. (C).6936/2000, wherein the petitioners had also been imp leaded as parties. In the said writ petition, after obtaining a report of the Halka Patwari that there was a public rasta and one biswa of land which had been directed to be taken away in 1984 remained encroached, passed a direction, directing respondent Nos.1 to 4 to take necessary action in accordance with law within six weeks from the date of order i.e.8.8.2002. A direction, restraining raising of any construction on the said public rasta was also passed in the writ petition. Petitioners have also preferred an appeal against the said order bearing L.P.A.No. 732/2002, titled Hukum Chand Vs.Sohan Devi, in which notice had been issued. Demolition of the structures, belonging to the petitioners on 1 biswa of land in Khasra No.186/1/3, also renumbered as Khasra No.511, was stayed.

7. Having noted the facts, giving rise to the present petition, it is to be noted that the Consolidation Officer as well as Financial Commissioner have declined the prayers of the petitioners, primarily on the ground that petitioners are seeking to challenge the order passed in correction/amendment of consolidation

done in the year 1984, pursuant to the draft consolidation scheme, published in the year 1975. The reason for declining the prayers of the petitioners has been that amendment/correction had been carried out as far as back in 1984-85 and the record had already been consigned. It was not within the jurisdiction of Tehsildar to withdraw the passage. Similar are the grounds, expressed by the Financial Commissioner, who notes that the consolidation operations were over long time ago and the records consigned. Further, that the appellant had challenged the same before the Tehsildar belatedly on 21.5.2002.

8. Petitioner's Explanation is that the Order dated 28th September, 1984, was passed without any notice to them. Let us consider whether the petitioners were in the knowledge of the order passed in the year 1984 or not. Mr.V.P.Singh's contention is that the no notice of the proceedings was served on the petitioners. The procedure, as prescribed under Rule 3 of the Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 was not followed. The Rules contemplate and provide for personal service. In this case, it is urged by the learned senior counsel for the petitioner, leave aside personal service, even affixation was not resorted to. The order itself records that service of notice was only by beat of drum.

9. Mr.Anand Yadav, appearing for respondent No.4, has addressed me in opposition to the writ petition. He submits that the petitioners were beneficiaries of the order passed in 1984 by allotment of 2 bighas and 12 bids was of land in Khasra No.105/7. Petitioners while keeping the benefit cannot now claim that they were not even aware of the said order which took away the land in Khasra No.86/1/3. Counsel also disputes the facts as alleged in the writ petition. A perusal of the order shows that petitioners' deficiency was determined at 2 bighas 7 bids was instead of the earlier deficiency of 2 bighas 6 bids was and 2 bighas 12 biswas, allotted out of Khasra No.105/7. The impugned order records that bhoomidars were informed through beat of drum. The said order deals and affects the rights of nearly 165 bhoomidars, whose entitlement were determined or adjusted. It is, Therefore, incredible that petitioners, who happened to be owning land in the said village and were residing in a village, which as per their own submission, was only short distance, would not know of the said proceedings. It is common knowledge that consolidation proceedings are a major event in any village. This is especially so, when lives of all are affected. In this case, petitioners also happen to be beneficiaries of adjustment and getting a greater area out of Khasra No.105 which they continued to enjoy. In these circumstances, I reject the plea that petitioners were not in knowledge of the amendment/adjustment proceedings. It is held that there has been substantial compliance by resorting to service by beat of drum. Even though, there may not have been a strict compliance with the manner of service as provided in the Rules. Considering that a period of 18 years had already elapsed in which amendment/correction of the draft consolidation scheme published, as far back as in 1975 was determined. Petitioner has acted like Ripvan Vinkle, waking up after 18 years, with no plausible Explanation. This is not a fit case for

interference in the exercise of writ jurisdiction.

10. The writ petition is dismissed.