

(2010) 02 DEL CK 0071

In the Delhi High Court

Case No : Writ Petition (C) 7392 of 2002

Sh. Raghubir Singh and Others

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Citation : (2010) 159 PLR 37

Hon'ble Judges : Veena Birbal, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Vikram Nandrajog, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—On 01.09.1988, the Delhi Government issued a notification u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "said Act") as extended to Delhi whereby it declared its intention to make a scheme for the consolidation of holdings in the village Nangli Poona. Consolidation proceedings started accordingly.

2. Rule 6 of the Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 (hereinafter referred to as "the said Rules") lays down the principles which guide the Consolidation Officer in preparing the scheme. Rule 6 as originally stood was as follows:

6. Statement of principles etc. of the Scheme. - In preparing a scheme of Consolidation, the Consolidation Officer shall have regard to the following principles:

(a) Blocks shall comprise of homogenous land of similar quality.

(b) The number of plots to be allotted to an owner shall not except with the previous sanction of the Settlement Officer and for reasons to be recorded in writing exceed the number of blocks into which a village has been divided.

(c) As far as possible only those owners shall be allotted land in any particular block who already held land therein.

(d) Every owner shall, as far as possible, be allotted land in a block at the place where he holds the biggest plot.

(e) The owner holding land in two contiguous villages shall, as far as possible, be allotted land on the common boundary line.

(f) The owners belonging to the same family, shall, as far as possible, be given neighbouring plots.

Explanation: The family of a person includes the wife or husband, the sons and their wives, the daughters, grand-children and great grand children.

(g) If a land-owner has all his land in one compact block of 8 acres or upwards, his existing holding shall not, as far as possible, be disturbed or divided, irrespective of the multiplicity of blocks.

(h) The alignment of canal water courses shall be as determined by the Irrigation Department. The well water courses shall as far as possible run straight and along the boundaries of the plot.

(i) All agricultural labourers and village artisans who are without accommodation or who have insufficient accommodation shall be allotted land for residential purposes, free of compensation, upto 2 1/2 biswas (126 square yards) at a suitable place.

(j) Such other matters as the Settlement Officer (Consolidation) may consider necessary in this behalf.

3. During the pendency of the abovesaid consolidation proceedings, the Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 as framed under the said Act got amended vide notification dated 03.02.1992. Amongst other amendments, Rule 6 was amended. The then existing Clause (j) in said rule was renumbered as Clause (m) and new Clauses (j), (k) & (l) were added which run as follows:

(j) the ratio for exchange of agricultural land with the land to be provided in the extended abadi area shall be 3:1 during consolidation.

(k) The size of the plot to be provided in the extended abadi area to a bonafide resident of the village shall not exceed the area of half an acre i.e. (2 bighas and 8 biswas).

(l) The facility of providing residential plots in the extended abadi area shall be available only to the bonafide residents of the village residing in the village for the last twenty years. The record date for counting this period shall be the date of issue of first statutory notification for consolidation of holdings in the village.

4. Again on 12.06.1996, another amendment was made to the aforesaid Rules.

This time the Clause (j) was inter alia again amended and the same was substituted with a new clause which runs as follows:

(j)(i) Bhumidhar whose land has been included in the extension of the village abadi may be given agricultural land worth two times the value of land surrendered.

(ii) Bhumidhar who has applied for allotment of plot in the extension of the village abadi shall surrender in exchange during consolidation two times the size of agricultural land subject to the size of plot and his eligibility.

(iii) The maximum size of a residential plot to be provided in the extension of the village abadi to a bonafide resident of the village shall be two bighas and eight biswas out of which the "bhumidhar" can take industrial plot upto a maximum size of six biswas. Allotment of such plot shall be done through draw of lots.

(iv) Wherever necessary, the maximum "Muzarai" that may be deducted shall be two biswas per bigha only (when adequate gaon Sabha land is not available in the village for common purpose.)

(v) The allottee of industrial plot shall neither transfer or sell the same in any manner nor shall amalgamate it with other land.

In addition, Clause (l) was renumbered as Clause (k) and then the following was inserted:

(l)(A) cases fit for regularization as "Kayami" shall be as under:

(l) Residential units constructed for self occupation, on the individual's own holding, by a person who has resided in the village for a period of at least twenty years, and subject to the condition that the size of the plot does not exceed the area of half an acre (2 bighas and 8 biswas).

5. The scheme of consolidation at Village Nangli as had been initiated in the year 1988 was prepared by the Consolidation officer on 02.08.1996 and confirmed by the Settlement Officer in the year 1999.

6. The case of the petitioners in the writ petition is that they are the residents of the village Nangli Poona since the year 1972 and have been carrying out commercial activity in the said village since then. It is further their case that upon consolidation, their pre-consolidation land holdings came within the extended abadi area and thus they became entitled to allotment of residential plots in the post-consolidated holdings. It is also their case that on receipt of copy of the consolidation pass book depicting the land allotted to them on 02.06.2001, they became aware of the fact that though they had been allotted land in the village, they had neither been allotted residential plot within the extended abadi area nor any industrial plot even though they had made demands for allotment of residential and industrial plot.

7. The petitioners accordingly filed objections u/s 21(1) of the said Act before the

Consolidation Officer. The Consolidation Officer after hearing their counsel vide its order dated 29.06.2001 dismissed the objections. The petitioners preferred a revision petition u/s 42 of the said Act before the Financial Commissioner which also got dismissed on 04.07.2002. Both authorities were of the opinion that as the petitioners admittedly had not been the residents of the village for a period of twenty years prior to the date of the notification dated 01.09.1988, they were not entitled for the land as desired by them. The Consolidation Officer as also the Financial Commissioner did not agree with their contention that as the proceedings had commenced before the amendment of the Rule which stipulated the condition of twenty years residence, the same shall not apply to the present consolidation proceedings.

8. In the present writ petition, the petitioners besides challenging the orders passed by the Consolidation Officer and Financial Commissioner also impugn the constitutional validity of the Rule 6(k) to the extent that the same stipulates that the residential plots shall be available to the persons resident in the village for the last twenty years as arbitrary and discriminatory. It is contended that normally the consolidation proceedings take place once in every 40-50 years and thus it may not be possible for the persons such as the petitioners to attain the residential plot in their life. It is also contended that arbitrariness of Rule 6(k) is evidenced from Rule 2(3) of the Rules, which pertains to declaration of "Kayami" and provides that the land on which structures are in existence, prior to the Section 14 notification under the Act, are eligible for being declared "Kayami". The Rules do not provide time period for which the structure should be standing whereas Rule 6(k) provides onerous condition of 20 years residence counted from the date of first statutory notification for consolidation of holdings. Thus a person who might have built the structure just prior to the notification u/s 14 of the Act may be entitled to the benefit, but persons such as the petitioners may not be so entitled. In the alternative, it is contended that as the proceedings had commenced before the amendment of the Rule which stipulated the condition of twenty years residence, the same shall not apply to the present consolidation proceedings.

We find it difficult to accept the contentions on behalf of the petitioners.

Prior to 1992, the Rules did not contemplate grant of residential or industrial plot to land holder in lieu of the agricultural land. The enabling provision for exchange of agricultural land with the land to be provided in the extended abadi area was made by the amendment of the Rules in the year 1992 and 1996. While introducing the provision for exchange, it was certainly open for the rule making authority to lay down such terms and conditions including requirement of tenure of residence in the village as may be considered appropriate by it. The requirement of long residence in the village prior to the date of notification u/s 14 of the Act as a precondition for exchange of agricultural land in lieu of land in extended abadi area cannot be considered as arbitrary or discriminatory in any manner. That part of the rule is also not liable to be struck down on the ground

that normally that consolidation proceedings take place once in every 40-50 years and thus it may not be possible for the persons such as the petitioners to attain the residential plot in their life. The rule is merely laying down the condition for exchange of agricultural land in lieu of land in extended abadi. The petitioners were the holders of the agricultural land and they have been allotted agricultural land accordingly. May be the petitioners feel aggrieved that they are residing in the village for 16 years which is very close to 20 years but they don't fulfil the criteria which is laid down in the Rules. Further, hardship in individual cases is not a ground for striking down a provision of law.

In view of above discussion, no case is made out by the petitioners which calls for interference under Article 226 of the Constitution of India.

Petition stands dismissed.