(2011) 03 DEL CK 0487

In the Delhi High Court

Case No : W.Ps. (C) 9033, 9430, 9487, 9515, 11111, 11249 and 11314 of 2009

Sh. Sukhbir — APPELLANT

Vs

Financial Commissioner and Others
 Sh. Hawa Singh Vs Financial Commissioner and Others
 Partap Singh Vs The Govt. of N.C.T.D. and Others — RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

- Delhi Land Reforms Act, 1954 — Section 33, 45, 67
- Delhi Land Revenue Act, 1954 — Section 23, 64, 65
- East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 42, 6, 8, 9
- Land Acquisition Act, 1894 — Section 4

Citation : (2011) 03 DEL CK 0487

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Davinder Verma, in W.Ps. C 9033, 9430, 9487, 9515 and 11249 of 2009 and D.C. Sharma, in W.Ps. C 11111 and 11314 of 2009, for the Appellant; Bandana Shukla, for Ruchi Sindhwani, for R 1 to R 5 in W.Ps. (C) 9033 and 9430 of 2009, Arun Kumar Sharma, for R 1 to R 5 in W.Ps. (C) 9487 and 9515 of 2009, R.P. Vats and P.K. Dhamija for Purchasers, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—These seven writ petitions have been filed against the common order dated 29th January, 2009 of the Financial Commissioner dismissing the eight Revision Petitions u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Consolidation Act) preferred before it.

2. On enquiry, as to why the order on the eight Revision Petitions has resulted in filing of seven instead of eight writ petitions, the counsel for the "purchasers" states that W.P.(C) No. 11112/2009 against the eighth Revision Petition was also preferred by Partap Singh but which was dismissed for non prosecution on 26th

August, 2009. The counsel for the Petitioners states that he has no instructions with respect thereto.

3. The counsel for the Petitioners Hawa Singh and Sukhbir Singh has contended that Hawa Singh, Sukhbir Singh and Partap Singh were the bhumidhars having 1/12th share each in land ad-measuring 240 Bighas 12 Biswas in village Pooth Khurd, Delhi. It is stated that thus each of them was the Bhumidhar of 20 Bighas 1 Biswa of land. It is further informed that Notification for consolidation was issued with respect to the said village and the Consolidation Scheme sanctioned on 23rd February, 1998. It is urged that u/s 8 & 9 of the Consolidation Act, post notification for consolidation, no transfer or partition could be effected with respect to the village land. Attention is invited to the Khatauni dated 20th May, 2006 with respect to the said land also containing a notation that no permission for sale / transfer of the land subject matter of consolidation shall be granted.

4. It is further the case of the Petitioners Hawa Singh & Sukhbir Singh that without their knowledge, five Sale Deeds were registered at Bombay on 10th June, 1998, of which three were purportedly on behalf of Hawa Singh and two were purportedly on behalf of Sukhbir Singh of different portions of their land aforesaid in favour of different purchasers and after the said transfer, Petitioners Hawa Singh & Sukhbir Singh were left with only 4 Bighas and 19 Biswas of land each. It is further informed that the Sale Deeds were shown to be executed on their behalf by their purported attorneys and consideration was shown to have been paid before the Sub-Registrar.

5. The counsel for the Petitioners states that the case qua Partap Singh is the same and three Sale Deeds with respect to land of the share of Partap Singh were also executed on the same date in favour of three different purchasers, save that Partap Singh was left with land ad-measuring 1 Bigha 16 Biswas only.

6. It is further the case of the Petitioners that on the basis of Sale Deeds aforesaid, the purchasers applied for mutation to the Tehsildar then also functioning as the Consolidation Officer who without notice to any of them carried out the said mutation on 13th July, 1998.

7. The Petitioners claim that they learnt of the mutation and the Sale Deeds in favour of the purchasers when in repartition pursuant to the consolidation proceedings, no allotment was made in their favour with respect to the land subject matter of the Sale Deeds and which stood mutated in the name of the purchasers.

8. The Petitioners Hawa Singh & Sukhbir Singh took dual remedies against the aforesaid. They filed appeals before the Deputy Commissioner under Sections 64 & 65 of the Delhi Land Revenue Act, 1954 (Revenue Act) against the order of mutation averring mutation by Tehsildar to be in violation of Section 23 of the Revenue Act as well as in violation of Section 33 of the Delhi Land Reforms Act, 1954. They also filed Revision Petitions aforesaid u/s 42 of the Consolidation Act before the Financial Commissioner against the allotment in re-partition in favour

of purchasers.

9. However, Partap Singh did not prefer any appeal against the mutation and was satisfied by preferring revision petitions only to the Financial Commissioner.

10. It is in this manner that the eight Revision Petitions mentioned in the initial part of this order were filed before the Financial Commissioner. The Financial Commissioner in the order impugned in these writ petitions has held that the Petitioners had not even filed an affidavit to counter the allegations of the purchasers that the Petitioners had received the sale consideration under the Sale Deeds and deposited the same in the State Bank of India (SBI), Pooth Khurd, Delhi. The Financial Commissioner thus observed that the non denial by the Petitioners proved that the sale transaction was finalized between the parties and the Petitioners had received the sale consideration. With respect to the argument of the Petitioners of the mutation on the basis of Sale Deeds registered in Bombay being in violation of orders / circulars dated 29th August, 1990 & 3rd October, 1996 of the Deputy Commissioner, the Financial Commissioner held the same to be not permissible in view of the judgment of Single Judge of this Court in Rajinder Singh and Others Vs. Financial Commissioner and Others, . The Financial Commissioner held the Sale Deeds to have been thus rightly registered and acted upon by the consolidation authorities.

11. Upon enquiry as to the fate of the appeals preferred by Hawa Singh & Sukhbir Singh against the mutation to the Deputy Commissioner, it is informed that the same were allowed by the Deputy Commissioner on 23rd September, 2009. It is further stated that one of the purchasers namely Smt. Devki Devi who was the Respondent in one of the appeals preferred by Hawa Singh, filed an affidavit before the Deputy Commissioner denying that she had made any purchase of land from Hawa Singh as attributed to her.

12. Upon enquiry as to whether any second appeals have been preferred against the order aforesaid of the Deputy Commissioner, it is stated that though none of the purchasers have filed any second appeal but one person claiming to be assignee of Smt. Devki Devi has filed a second appeal before the Financial Commissioner and which second appeal is stated to be still pending.

13. The Counsels for the Petitioners contend:

(i) that the land of each of the Petitioners being 20 Bighas 1 Biswa i.e. less than 8 standard acres (equal to 48 Bighas), the sale of different portions thereof to different purchasers leaving balance as aforesaid with each of the Petitioners was in violation of Section 33 of the Reforms Act restricting such transfers;

(ii) once the sale was in violation of Section 33 of the Reforms Act, the same was void u/s 45 of the Reforms Act;

(iii) that the Financial Commissioner has wrongly imputed admission to the Petitioners of receipt of sale consideration when none existed;

(iv) without prejudice to the aforesaid contentions, it is urged that even if the Petitioners are held to have received the sale consideration, the same would still not validate the sale in as much as u/s 42 of the Reforms Act, the sale in contravention of Section 33 of the Reforms Act, even though vesting the land in the Gaon Sabha, does not prevent the transferor from suing for the balance sale consideration;

(v) It is thus urged that the invalidity u/s 33 of the Reforms Act is irrespective of receipt of sale consideration;

(vi) that the purported Sale Deeds during the pendency of the consolidation proceedings even otherwise could not have conveyed any title in as much as immediately upon consolidation the entire land vested in the common pool and there was no question of the Petitioners being entitled to convey any title or transferring possession thereof;

(vii) it is contended that though all the aforesaid arguments were raised before the Financial Commissioner in the Revision petitions aforesaid but the Financial Commissioner without adjudicating upon the same has merely on an admission wrongly attributed to the Petitioners of receipt of sale consideration dismissed the Revision Petitions;

(viii) that the Financial Commissioner in exercise of powers u/s 42 of the Act was not empowered to look into the sale transactions and was only concerned with the orders made in the course of consolidation proceedings and has erred in dismissing the Revision Petitions on the basis of finding regarding the Sale Deeds;

14. Per contra, the counsel for the purchasers has contended:

(i) that the Petitioners have not initiated any proceedings challenging the Sale Deeds;

(ii) that the Petitioners had not denied deposit of sale consideration in their account with the State Bank of India. On enquiry as to whether the admission attributed to the Petitioners of receipt of sale consideration is in writing, it is informed that the purchasers in their reply to the Revision Petitions had taken the said plea and no rejoinder thereto was filed by the Petitioners. On further enquiry as to whether any opportunity was given to the Petitioners to file the rejoinder, though the answer is in the affirmative but there is nothing before this Court to demonstrate so;

(iii) the statement of the counsel for the Petitioners of the appeals having been decided by the Deputy Commissioner is controverted and it is stated that the appeals are still pending;

(iv) it is contended that the notification u/s 4 of the Land Acquisition Act, 1894 was issued with respect to the said land on 7th August, 2000; notification u/s 6 of the Act was issued on 11th September, 2000; possession of the land was taken on 4th October, 2000 and award with respect to the land made on 7th

September, 2002. It is stated that in accordance with the award, the compensation for acquisition of the land was received by the purchasers and it is the purchasers alone who sought a reference with respect to the award for compensation for acquisition and which reference has also since been decided. It is contended that the Petitioners herein did not prefer any claims whatsoever with respect to acquisition or seek any reference. On interjection by the counsel for the Petitioners that the Petitioners could not have made any such claim since the land did not stand in their name, it is contended that any person claiming any interest in land is entitled to make a claim with respect to acquisition thereof;

(v) attention is invited to Section 67(b) of the Reforms Act to contend that the right as Bhumidhar extinguishes on acquisition of the land;

(vi) reliance is placed on Pyare Vs. The Financial Commissioner and others, where the Division Bench of this Court held that the Revenue Court ceases to have jurisdiction on acquisition of the land. It is thus contended that the argument of the Petitioners of the Sale Deeds being in contravention of the Reforms Act could not in any case, have been considered by the Financial Commissioner;

(vii) it is contended that the Petitioners have not approached this Court with clean hands; they have suppressed from the petition the factum of acquisition; having preferred appeals to the Deputy Commissioner and of having filed affidavits before the Tehsildar-cum-Consolidation Officer confirming the same.

15. The counsels for the Petitioners have of course controverted all the arguments of the counsel for the purchasers and have contended that the acquisition was of a very small part of the land and the remaining land is still in possession of the purchasers. The counsel for the purchasers however states that only one plot allotted in repartition for commercial purposes survives on acquisition.

16. In my view the order of the Financial Commissioner cannot be sustained merely on the ground that a vital conclusion of the Petitioners having received the sale consideration could not have been arrived at for the reason of non denial alone. The counsel for the purchasers has been unable to show any documents / pleadings in which the Petitioners may have admitted the receipt of the sale consideration. Rather the impugned order itself notices that it was the case of the Petitioners that the purchasers had committed fraud and records "the counsel for the Petitioner submitted that the Petitioner had not received any consideration for the alleged sale". It was further noted that it was the case of the Petitioners that they had neither executed the Sale Deed nor the GPA on the basis whereof the Sale Deeds were executed. In the face of recording the said pleadings of the Petitioners, the Financial Commissioner could not have, even if had felt the question of receipt of sale consideration was relevant, dismissed the Revision Petitions without proof of deposit of sale consideration in the bank account of the Petitioners.

17. I have enquired from the counsel for the purchasers whether the purchasers have produced any document before this Court viz. a certificate from any of the banks of deposit of sale consideration by cheque or by cash in the said bank accounts. The answer is in the negative. It is however argued that the documents were filed before the Financial Commissioner. Suffice it is to state that there is no mention thereof in the impugned order and even if there were any documents, the Financial Commissioner has not proceeded on the basis thereof and has merely returned the finding of receipt of sale consideration on assumed non-denial thereof by the Petitioners.

18. I am also of the view that once the Deputy Commissioner was seized of the challenge to the mutation and on the basis of which mutation allotment on repartition was made in favour of the purchasers, irrespective of whether the Deputy Commissioner has till now decided the appeals or not, the Financial Commissioner ought not to have shown haste in deciding the Revision Petitions. If the contention of the Petitioners of such appeals having been decided in favour of the Petitioners by the Deputy Commissioner and no second appeal there against having been preferred is to be correct, then in any case the two orders i.e. one impugned in these petitions and that of the Deputy Commissioner which are inconsistent to each other, cannot be allowed to stand.

19. With respect to the various other contentions noted hereinabove, need is not felt to return any finding in as much as it is felt that the same may prejudice the proceedings before the Financial Commissioner on remand. Moreover, it is not deemed expedient by this Court to in the first instance decide all the said contentions without the same having been dealt with by the Financial Commissioner.

20. The petitions therefore succeed. The order dated 29th January, 2009 of the Financial Commissioner is set aside. The matter is remanded to the Financial Commissioner for decision of the Revision Petitions afresh after dealing with all the contentions raised by the respective parties including those recorded hereinabove.

No order as to costs.

