(2010) 07 DEL CK 0283

In the Delhi High Court

Case No : Writ Petition (C) 2041 of 2010, C.M. No. 4104 of 2010 and C.M. No. 7690 of 2010

Sheopal and Others APPELLANT

Vs

GNCT of Delhi and Others RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 36, 42

Citation : (2010) 07 DEL CK 0283

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Anand Yadav and Anita Tomar, for the Appellant; Rajiv Nanda and Rachna Saxena for Respondents Nos. 1 to 3, Maheshwar Dayal and A.C. Mittal, for Respondents Nos. 4 to 16, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petitioners preferred this writ petition impugning the order dated 26th June, 2009 of the Financial Commissioner in the revision petition u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 preferred by the respondents No. 4 to 16. The Financial Commissioner by the said order has allowed the said revision petition of the respondents No. 4 to 16 and directed the Consolidation Officer to reframe the Consolidation Scheme after taking into consideration the findings/illegalities therein as recorded in the said order.

2. It is inter alia the contention of the petitioners that they are the ?interested parties? within the meaning of proviso to Section 42 (supra) requiring notice to be issued to all the ?interested parties? but the aforesaid order of the Financial Commissioner was made without issuing notice to them. This Court vide ex parte order dated 25th March, 2010 while issuing notice of the petition stayed the operation of the order of the Financial Commissioner.

3. CM No. 7690/2010 was filed by the respondents No. 4 to 16 for vacation/ modification of the aforesaid ex parte order. This Court vide order dated 4th June, 2010 on the said application recorded the statement of the counsel for the petitioners and the counsel for the respondents No. 4 to 16 undertaking to this Court that none of them shall transfer the land without permission of the Court and shall also maintain the status quo with regard to the agricultural land. It was further stated with respect to the Abadi land that the same shall not be transferred and sold to any third party and in case any construction is made neither party shall claim any equity and it will not be a ground that will affect the final outcome/relief in this writ petition.

4. The senior counsel for the respondents No. 4 to 16, without prejudice to the rights and contentions of the said respondents, has today at the outset stated that the matter be remanded to the Financial Commissioner for decision afresh after hearing the petitioners. The counsel for the respondents No. 1 to 3 also has no objection to the said order.

5. The counsel for the petitioners however opposes. He seeks an opportunity to file the rejoinder to the reply filed by the respondents No. 4 to 16. He contends that he, besides the ground of having not been granted an opportunity of being heard, has raised other grounds also impugning the order of the Financial Commissioner. It is contended that the consolidation proceedings had come to an end and there was no consolidation officer who could have been heard by the Financial Commissioner or who could have been impleaded as a respondent in the proceedings before the Financial Commissioner. He further contends that the power u/s 42 can be exercised by the Financial Commissioner only during the pendency of the consolidation proceedings and not after the same have been concluded and the record thereof consigned. Reliance in this regard is placed on Chahat Khan Bahadur Khan and Others Vs. The State of Punjab and Others, dealing with Section 36 of the Act and laying down that the expression ?at any time? in Section 36 would not mean after the proceedings have terminated.

6. It is contended by the counsel for the petitioners that since the petitioners are challenging the very maintainability of the petition u/s 42 before the Financial Commissioner, instead of the matter being remanded back to the Financial Commissioner on the concession aforesaid of the respondents, this Court should adjudicate upon the maintainability of the revision petition preferred by the respondents No. 4 to 16 u/s 42 of the Act before the Financial Commissioner.

7. Though it is deemed expedient to leave the aforesaid adjudication to the Financial Commissioner, inasmuch as even if the procedure under proviso to Section 42 (supra) of giving notice to the petitioners had been followed by the Financial Commissioner, the petitioners would have been required to first address their opposition to the revision petition before the Financial Commissioner only, and this Court in the exercise of writ jurisdiction i.e. of judicial review ought not to entertain and decide pleas in the first instance but the counsel for the petitioners insists that the matter be not remanded without first dealing with the

said aspect.

8. To appreciate the contention of the counsel for the petitioners, it is necessary to set out Sections 36 and 42 herein below:

36. Power to vary or revoke scheme ? A scheme for the consolidation of holdings confirmed under this Act may, at any time, be varied or revoked by the authority which confirms it subject to any order of the Chief Commissioner that may be made in relation thereto and a subsequent scheme may be prepared, published and confirmed in accordance with the provisions of this Act.

42. Power of Chief Commissioner to call for proceedings ? The Chief Commissioner may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that no order, scheme or repartition shall be varied or reserved without giving the parties interested notice to appear and opportunity to be heard except in cases where the Chief Commissioner is satisfied that the proceedings have been vitiated by unlawful consideration.

9. Section 42 expressly uses the words ?...of any case pending before or disposed of by such officer....? which are missing in Section 36. Thus the contention that the revision petition u/s 42 could be filed only during the pendency of the consolidation proceedings and not after conclusion thereof appears to be contrary to the express language of the statute. The judgment cited deals with Section 36 only which is with respect to powers of Consolidation Officer and whose powers are distinct from the powers of Financial Commissioner u/s 42. Rather the Full Bench in Chahat Khan (supra) expressly observed that they were not dealing with Section 42 and refused to follow the judgments with respect to powers of Financial Commissioner u/s 42. The Supreme Court in Johrimal Vs. Director of Consolidation of Holdings, Punjab, distinguished between the powers u/s 36 & 42.

10. I also find that the same contention, raised by the counsel for the petitioners herein, was negated by another Single Judge of this Court in Rajinder Singh and Others Vs. Financial Commissioner and Others, . It was held that merely because objections had been adjudicated and order had become final, the power u/s 42 could not be curtailed or restricted in any manner and that the nature of finality and the circumstances of a particular case are relevant factors to be examined in each given case by the Financial Commissioner while exercising or declining to exercise jurisdiction u/s 42.

11. Thus it cannot be said, as contended that the revision petition u/s 42 before the Financial Commissioner was/is liable to be dismissed at the threshold. It will however remain open to the petitioners to contend so before the Financial

Commissioner.

12. The writ petition is allowed in aforesaid terms. The order of the Financial Commissioner is set aside and the matter is remanded to the Financial Commissioner for decision afresh after hearing not only the petitioners but also the other interested parties in accordance with the proviso to Section 42. The counsels for the petitioners and the respondents No. 4 to 16 agree that the interim arrangement as aforesaid shall continue till the disposal of the revision petition by the Financial Commissioner. The senior counsel for the respondents No. 4 to 16 seeks time bound disposal of the revision petition by the Financial Commissioner. Considering that notices may be required to be issued to the other interested parties also, the Financial Commissioner is requested to dispose of the writ petition within one year of today. It is clarified that it will be open to all the parties to take all pleas available to them in law in the proceedings before the Financial Commissioner. The parties to appear before the Financial Commissioner on 28th July, 2010. No order as to costs.

Dasti.

