

(2008) 09 DEL CK 0197

In the Delhi High Court

Case No : LPA No. 1734 of 2006 and CM No. 10649 of 2006

Shri Leo Puri

APPELLANT

Vs

Consolidation Officer and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 32
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21, 21(2), 21(3), 21(4), 24

Citation : (2008) 09 DEL CK 0197

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : N.S. Vashisht, for the Appellant; Amitabh Marwah and B.S. Maan, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The present appeal arises out of a judgment dated 31st July, 2006 whereby the learned Single Judge allowed the Appellant's writ petition bearing No. 2844 of 2005 and set aside the order dated 5th February, 2005 passed by the Consolidation Officer and further directed the matter to be remitted for re-consideration before the Consolidation Officer who would hear the parties afresh and thereafter render specific findings on the issues indicated in paras 16 and 17 of the order dated 8th September, 2004 in earlier writ petition (Civil) bearing No. 267 of 2003.

2. The relevant paras 16 and 17 of the Order dated 8th September, 2004 passed by another learned Single Judge in earlier W.P. (C) No. 267/2003 read as under:

16. At the stage when it was brought to the notice of the Settlement Officer and thereafter to the Financial Commissioner that petitioner through her predecessors in interest came into settled possession of 8 bigha and 5 biswas of land comprised in Khasra No. 171 (New) in my opinion since application of Raghuvir Singh was being entertained after over 20 years and fresh adjudication

was being effected pertaining to his claim that at the repartition he was allotted less land, revenue authorities should have looked into the revenue record as to how in lieu of pre-consolidation holding of 7 bigha and 15 biswas, post consolidation allotment was of 8 bigha and 5 biswas. Was it a case where value of land was resulting in the increased area or was it a case of excess allotment? Further, effect of the original bhumidar selling the land to a person who could claim to be a bonafide purchaser for value also required to be considered.

17. To do complete justice between the parties, in the facts and circumstances of the case noted above, it would be advisable to remand the matter to the Consolidation Officer to pass fresh orders after hearing the petitioner.

3. The brief facts of the case are as follows:

(a) Shri K. Puri the late father of the Appellant purchased an agricultural farm house bearing old Khasra No. 2697/661/2, 2697/661/1 and 2699/662 measuring 7 bighas 15 biswas and after repartition under the Consolidation proceedings the new khasra number being 171 measuring 8 bighas 5 biswas in the revenue estate of village Bijwasan in the National Capital Territory of Delhi vide sale deed dated 06.04.1979 from the recorded owner one Smt. Raksha Tandon.

(b) The aforesaid land was purchased by Shri K. Puri after the seller (Smt. Raksha Tandon) had duly obtained the necessary sale permission from the competent authority u/s 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as made applicable to Delhi (hereinafter referred to as the "Act").

(c) The land was duly mutated in the name of Shri K. Puri in the revenue records by the Consolidation Officer. Shri K. Puri died on 30.10.1992.

(d) A notice in the name of Mr. K. Puri (since deceased) was issued for demarcation on 10.01.2002 from the office of the Consolidation Officer.

(e) On one of her visits the Appellant's attorney received the said notice and after receiving the said notice the Appellant visited the Tehsil and the Consolidation Office at Kapashera Court and it transpired from the records that some adverse orders had already been passed against Shri K. Puri, the deceased father of the Appellant.

(f) On making enquiries at the office of the Consolidation Officer, the Appellant was told that one Shri Raghubir Singh Sharma (late father of Respondent Nos. 4-7 had filed an Appeal bearing No. 43/2000 in the Court of Shri H.P.S. Saran Collector (South-West) Delhi against an order passed by the Settlement Officer (C) on 09.12.1980 wherein the Collector (South-West) vide order dated 8th May, 2001 had set aside the order dated 09.12.1980 passed by the SO(C) and remanded the case back to Consolidation Officer (Bijwasan) in respect of land bearing Khasra No. 22/16/2(1-4) with the direction that Petitioner be allotted land after due process as suit land has been allotted to third person during consolidation.

(g) In pursuance of the order dated 08.05.2001 passed by the Additional Collector in appeal No. 43/2000, Shri Vinay Kaushik, Consolidation Officer (Village Bijwasan), Distt. South-West, Kapasehara, Delhi passed an order dated 17.09.2001 whereby the Consolidation Officer held that the Appellant's father late Shri K. Puri held excess land to the extent of 14 biswas which deserved to be withdrawn for the purposes of allotment to Respondent Nos. 4-7.

(h) The Appellant's mother upon gaining knowledge of the above facts immediately moved an application before the Settlement Officer (C)/SDM, Vasant Vihar, New Delhi praying for declaration, nullity of the proceedings initiated against Shri K. Puri and also prayed that no further action, including demarcation of the land, be taken.

(i) Thereafter aggrieved by the order dated 17.09.2001 passed by the Consolidation Officer, Bijwasan, Distt. South-West, New Delhi, the Appellant's mother filed an appeal u/s 21 Sub-section (3) of the Act in the Court of the Settlement Officer/SDM, Vasant Vihar, New Delhi praying therein for setting aside the order dated 17.09.2001 and for restoration of the land admeasuring 14 biswas which was alleged to be in excess to its original form to the khata of the Appellant's late father.

(j) The SDM held that there was no illegality in the order dated 17.09.2001 passed by the Consolidation Officer.

(k) Aggrieved by the order dated 03.07.2002 passed by the Settlement Officer, the Appellant preferred an appeal being case No. 143/2002-CA before the Court of the Financial Commissioner, Delhi. The Financial Commissioner dismissed the appeal of the Petitioner.

(l) Aggrieved by the orders dated 27.12.2002, 03.07.2002, 17.09.2001 and 08.05.2001 respectively passed by the Financial Commissioner, Settlement Officer/SDM, Vasant Vihar and the Consolidation Officer village Bijwasan and the Additional Collector, (South-West), the Appellant filed W.P. (C) 267 of 2003 before this Hon"ble Court.

(m) The said writ petition was disposed of vide order dated 08.09.2004 with the following directions:

...18. Writ Petition is accordingly disposed of quashing the order dated 17.09.2001 passed by the Consolidation Officer, order dated 03.07.2002 passed by the Settlement Officer and order dated 27.12.2002 passed by the Financial Commissioners.

19. The Consolidation Officer shall proceed to issue notice for a date of hearing to the petitioner as well as to respondents 4 to 7 . Petitioner would be heard. Consolidation record would be considered. Fresh decision would be taken in light of the observations made above....

(n) The Consolidation Officer vide order dated 05.02.2005 was pleased to hold

that excess allotment of 14 biswas including 4 biswas "Muzarai" in the Khata of the Appellant deserves withdrawal from Khasra 171 from the khata of Shri Leo Puri reducing the area from 8 bighas 5 biswas to 7 bighas 11 biswas.

(o) The said order dated 05.02.2005 was challenged by the appellant by way of Writ Petition (C) No. 2844/2005.

(p) A Learned Single Judge vide his judgment dated 31st July 2006 in WP (C) No. 2844/2005, held as follows:

7. I am of the opinion that the Consolidation Officer while seemingly complying with the directions of the Court in the previous writ proceedings had strayed away from one of the main issues. The order of this Court indicated that the Consolidation Officer had to record reasons, or the rationale for allotment of excess lands namely 8 bighas 5 biswas. The Court in fact indicated possible reasons which could have resulted in such allotment i.e. either excess allotment on account of increased area or the effect of the original bhumidar selling the land to the person claiming to be a bonafide owner. All these aspects, however, have gone unnoticed. The Impugned Order is, therefore, set aside. The matter is remitted for re-consideration of Consolidation Officer who shall hear the parties and render specific findings on the issues indicated in Paras 16 and 17 in the order of this Court dated 8th September, 2004 in W.P. (C) No. 267/2003. The Consolidation Officer is directed to complete the process and issue a reasoned order within 8 weeks from today.

(q) The present appeal was filed on 7th August, 2006 challenging the validity and legality of the order dated 31st July, 2006 passed by the learned Single Judge.

4. In the meantime, the Consolidation Officer in compliance with the impugned order heard the matter at length and on 25th September, 2006 gave reasons for withdrawal of excess land. The Consolidation Officer, by this order held that the withdrawal of the excess allotment from the Khata of the Sh. K. Puri or his successors-in-interest was fully warranted.

5. The learned Counsel for the appellant Mr N.S. Vashisht submitted that the Consolidation Officer who is an authority under the Act had become Functus officio as after the completion of the consolidation proceedings resulting in repartition and entering into possession of the holding by the predecessor of the Appellant, repartition cannot be disturbed by the Consolidation Officer suo motu and it is in this respect that the Consolidation Officer is rendered Functus Officio after the repartition is done by him as any withdrawal would be altering the repartition which cannot be done when no objection u/s 21(2) of the Act is preferred and/or filed by any of the aggrieved person. In this connection he relied upon a judgment of the learned Single Judge of this Court in Ram Nath Vs. Finance Commissioner, Delhi and Others, wherein it was held that in view of Sections 21 and 24 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the Consolidation Officer had no power or right after five years to take away excess land given to an individual in re-partition and

allocate it to a third party. The learned Single Judge held that possession of an individual could not be disturbed and more so, in view of an earlier order of the Financial Commissioner. Mr. Vashisht also relied upon a judgment of the Hon'ble Supreme Court in the case of Roop Chand Vs. State of Punjab, wherein it was held that:

where the State Government has, u/s 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its power given u/s 21(4) to hear appeals to an officer, an order passed by such officer is an order passed by the State Government itself and not an "order passed by any officer under this Act" within the meaning of Section 42. The order contemplated by Section 42 is an order passed by an officer in his own right and not as a delegate. The State Government, therefore, is not entitled u/s 42 to call for and examine the record of the case disposed of by the officer acting as delegate. An order passed by the State Government u/s 42 in such a case is nullity and deserves to be set aside under Article 32 of the Constitution.

6. The counsel for the appellant contended that even if it is held that remand order dated 08.05.2001 was under the Provision of the Act, then the same would be struck by the vice of non-application of mind as the Settlement Officer did not consider and apply his mind as to change, alter or revoke the scheme as the said issue was not before the Settlement Officer in Appeal No. 43/2000. The remand order of 20.08.2007 also cannot held to be one u/s 21(3) of the Act as the Settlement Officer was not hearing any appeal against any order of Consolidation Officer u/s 21(2) of the Act. The Financial Commissioner failed to appreciate that the order dated 17.09.2001 of the Consolidation Officer disturbing the possession of the appellant was ultra vires the Act as none of the condition as prescribed under the Section 21 and/or 36 and or 42 of the Act was present. More over there was no legal ground to disturb the possession of the Appellant after 30 long years.

7. The learned counsel for the Respondent No. 1 Mr. Amitabh Marwah contended as under:

(a) Ms. Raksha Tandon was the recorded owner of the pre-consolidation Khasra Nos. 2697/661/2/(3-17), 2697/661/1(3-01) and 2699/662 (0-17) totaling to 7 Bighas 15 Biswas of land in Village Bijwasan. Pursuant to the Consolidation of Land Scheme dated 22.05.1975 of village Bijwasan, Hadbast No. 218, Tehsil Mehrauli District, Delhi, consolidation process started in village Bijwasan in the year 1974-75 . The aforesaid Consolidation Scheme is still in force and has not yet been closed. A salient feature of the aforesaid Consolidation Scheme (page 200 of the paper book is that wherever excess land of the Gram Sabha or the Bhumidar is found, the same can be withdrawn by the Consolidation Officer) . Between 18.06.1975 to 11.07.1975, vide Resolution No. 18, Ms. Raksha Tandon was allotted the whole of Khasra No. 171, admeasuring 8 Bighas and 5 Biswas in Hakdar No. 349 against a demand of 7 Bighas and 15 Biswas. As such, an excess allotment of 10 Biswas was made. Upon remand, as an excess allotment was

made to Ms. Raksha Tandon in 1975, the Consolidation Officer, after enquiry, vide order dated 17.09.2001 withdrew 14 Biswas from the allotment made to Ms. Raksha Tandon, which land had been purchased by the late Mr. K. Puri. 10 Biswas were withdrawn on account of excess allotment and 4 Biswas on account of Muzarai.

(b) The question of the Consolidation Officer becoming *Functus Officio* cannot and does not arise in the facts and circumstances of the present case as the Consolidation Officer was acting in compliance of the directions passed by this Hon'ble Court vide order dated 31.07.2006 in exercise of its powers under Article 226 of the Constitution. The Appellate Authority has the power to call for the proceedings of consolidation for satisfying itself regarding the legality or propriety of any order made or any repartition done and pass such order as it may deem fit upon it coming to the conclusion that there has been some illegality. Upon remand by this Hon'ble Court, the Consolidation Officer has passed the order dated 25.09.2006 u/s 21(2) of the Act after giving full opportunity to the Appellant to present its case. There is no allegation that full opportunity was not given by the Consolidation Officer to the Appellant. The Appellant voluntarily participated in the proceedings before the Consolidation Officer. As such, the question of the Consolidation Officer becoming *functus officio* cannot and does not arise.

(c) This Hon'ble Court in the matter of *Sahib Singh Vs. The Lt. Governor of Delhi and Others*, , has held that the contention that after publishing of the Scheme, the Consolidation Officer becomes *functus officio* is without any basis in view of the specific provisions of Sections 21(1) and 21(2) of the Act. Even in the aforementioned case the Consolidation Scheme was still in force when repartition was effected after a previous repartition had been effected. This is evident from the fact that order is passed by the adjudicating authority as Consolidation Officer, thereby showing that the village was still under consolidation and the scheme had not been consigned. Mr. K. Puri and subsequently, the Appellant are not the original Bhumidars at the time when the excess allotment was made. The excess allotment was made to Ms. Raksha Tandon and not to the Appellant or his late father who was merely a purchaser of the land. Since, title in the land has changed from the original Bhumidar Ms. Raksha Tandon to the late Mr. K. Puri by way of sale and to the Appellant, by way of succession and the fact that the excess land has been placed in the Gram Sabha Pool and the fact that the consolidation process had still not attained finality, the Consolidation Officer was well within his rights to withdraw the excess land.

8. The learned counsel for the Respondent No. 2 to 5 Mr. B.S. Maan and Mr. Jai Prakash contended as under:

(a) The simple and pure controversy involved in the present matter is as to whether the consolidation authority has power and jurisdiction during the pendency of the consolidation proceedings to withdraw the excess area from the right holder to whom the excess allotment was made over and above his/her

actual entitlement due to some clerical error and whether the authorities can correct/rectify the said error by withdrawing the excess allotment.

(b) In the present case, the re-partition u/s 21(1) of the Consolidation Act has been made by the consolidation authority in accordance with the scheme of consolidation.

(c) As per the scheme of the consolidation made and confirmed in respect of Village- Bijwasan, which is on record specific provisions have been made for withdrawal of the excess land from the right holders. It is further pertinent to point out that as per section 43-A of the said act the consolidation authority is fully competent to correct any clerical error of an order passed by any officer. The consolidation officer in his order dated 25.09.2006 has held that there no reasons apparent on the records to allot the excess land in the khata of the appellant. Therefore, it appears to be a simple clerical error which could be corrected and has been rightly corrected.

(d) The contention raised by the appellant to the effect that the consolidation officer has become Functus officio is totally mis-conceived and devoid of any merit in as much as the consolidation proceedings are still going on and the present case is not a case of fresh re-partition, but it is a case of correction of the error/withdrawal of the excess allotment.

9. The main ground of challenge in the present appeal as contended by the counsel for the appellant is the fact that Consolidation Officer had become Functus officio after the repartition and entering into possession of the holding by the predecessor of the Appellant. According to the appellant the Consolidation Officer is rendered Functus officio as any withdrawal would amount to altering the re-partition which cannot be done. However, in our view the above contention of the appellant needs to be examined in the factual context that Ms. Raksha Tandon was the recorded owner of the pre-consolidation Khasra admeasuring 7 Bigha and 15 Biswas of land and the consolidation Scheme for village Bijwasan, Mehrauli District, Delhi clearly stipulated that wherever excess land of the Gram Sabha or the Bhumidar is found, the same can be withdrawn by the Consolidation Officer. The relevant portion of the Consolidation Scheme reads as under:

The walls of the farm-houses, which are existing at the spot and which have been made Qayami and wherein excess land of Gram Sabha or Bhumidar falls, the said excess of land shall be withdrawn from the side where the wall does not exist and if pucca walls exists on all the four sides, in that condition also, the land shall be withdrawn from one side, as deemed appropriate. In such a situation, the owner of the wall shall have to remove his wall and no one will/ shall have any objection thereto.

10. After repartition in accordance with the aforementioned Consolidation Scheme, Ms. Raksha Tandon was allotted the whole of Khasra No. 171 admeasuring 8 Bighas and 5 Biswas against a demand of 7 Bighas and 15

Biswas. Since an excess allotment of 10 Biswas was made, the Consolidation Officer vide order dated 17th September 2001 withdrew 10 Biswas from the allotment made to Ms. Raksha Tandon, which land had been purchased by the late Mr. K. Puri. An excess of 4 Biswas was also withdrawn in lieu of Muzarai as was done in the case of every land owner in village Bijwasan, on the basis of a uniform formula of half a biswa for 1 bigha of land for building up of Gram Sabha land. In our view, the Consolidation Officer has acted in a bonafide manner and in accordance with the provisions of the Consolidation Scheme. The Consolidation Officer after withdrawing the excess area of land available with the Appellant has allotted it to the Gram Sabha Pool. In the scheme of consolidation dated 25th May, 1975 specific provisions have been made for the withdrawal of the excess land available with the right holders. It is also to be noted that the Consolidation Officer in his order dated 25th September, 2006 has held that there are no reasons apparent on the records to allot excess land in the Khata of the appellant. Therefore, in our view, it is not a case of fresh repartition but it is a case of correction of a mistake which resulted in excess allotment and thereby had to be rectified by withdrawal. The statute u/s 43-A provides that the Consolidation Officer is fully competent to rectify a mistake in a Scheme at any time of an order passed by an Officer. Section 43-A of the Act reads as under:-

43-A. Correction of clerical errors:- Clerical or arithmetical mistakes in a Scheme made or an order passed by any office, under this act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties.

11. Consequently, the withdrawal of 10 biswas on account of excess allotment was a clerical mistake, as against an allottee's demand of 7 bighas and 15 biswas, 8 bighas and 5 biswas was allotted! Even, the withdrawal of 4 biswas was on account of a clerical or arithmetical mistake as it arose on account of failure to withdraw land in lieu of Muzarai, on the basis of a uniform formula. Therefore, we are of the view that both these mistakes were capable of correction/rectification by the Consolidation Officer by virtue of the power conferred u/s 43A of the Statute.

12. In light of the above observations, the contention raised by the appellant to the effect that the consolidation officer has become *Functus officio* is misconceived on facts and untenable in law. However, as the village is still under consolidation and the Scheme had not been consigned, the Consolidation Officer was not *functus officio* and the power and jurisdiction to withdraw the excess area from the holder of the land to whom an excess allotment was made over and above his actual entitlement due to some mistake which is also in accordance with the specific provision in the Consolidation Scheme made in respect of village Bijwasan.

13. The case of Roop Chand referred to by Mr. Vashisht is not applicable to the present facts as no issue of delegation of power has arisen in the present case. Moreover, we find that in none of the two judgments cited by Mr. Vashisht, an

issue of rectification of mistake or applicability of Section 43-A of the Act arose.

14. The learned Single Judge by way of the impugned judgment had directed the matter to be remitted to Consolidation Officer to ascertain after hearing the appellant, as indicated in the order dated 08.09.2004 in paragraph 16 and 17, as to how in lieu of the pre-consolidation holding of 7 Bigha and 15 biswas, post consolidation allotment of 8 Bigha and 5 biswas was made. The Consolidation Officer was directed to render specific findings on the above mentioned issue. In our view, there is no infirmity with the judgment passed by the learned Single Judge. It is interesting to note that the subsequent order dated 25th September, 2006 passed by the Consolidation Officer, in pursuance to the impugned order, has not been challenged by the Appellant.

15. Accordingly, the appeal is dismissed, but with no order as to costs.