

(2004) 12 DEL CK 0073
In the Delhi High Court
Case No : WP (C) No. 569/92

Shri Shivinder Singh

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 20, 21(1), 42

Citation : (2005) 117 DLT 468 : (2005) 80 DRJ 433

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : N.S. Vashisht, for the Appellant; B.S. Mor, for R-2, for the Respondent

Judgement

Pradeep Nandrajog, J.—Another case of fight over 1 bigha land. Fortunately it relates to its location. Consolidation took place in village Mitraon. East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 governs consolidation and repartition of holdings in Deli. Scheme of consolidation framed u/s 20 of the Act required that lands abutting the mottled 'Dhasa' Road (also called Najafgarh Road) were to be treated as compact block and holding allotted to the land holder as it is.

2. For record, the scheme aforesaid was not filed by any party along with the pleadings, but copy was handed over in court during arguments. Parties also handed over Aksh Shajra of pre-consolidation khasra No. 421 and 420. Petitioners and contesting respondent being respondent No. 3 had filed certified copy of the Aksh Shajra. It showed a variance in the location of the 2 khasras. One relied upon by the petitioner showed that towards the south eastern side, khasra No. 421 abutted Najafgarh Road. One filed by respondent No.3 showed that it did not. It showed that the south eastern edge of the khasra was just a little away from the road.

3. For record, impugned order has not dealt with the location of khasra No. 421

and 40.

4. While reserving for judgment when arguments were concluded on 29.11.2004, it was recorded :

"29.11.2004

Present: Mr. N.S. Vashisht for the petitioner.

Mr. B.S. Mor for respondent No. 2.

W.P(C) 569/1992

1. Case of the petitioner is that the order dated 9.8.1985 (Annexure P-4) has attained finality. As per the said order, petitioner was restored land comprised in Killa No. 63/2/1 (West) (post consolidation Khasra No.). Grievance is that while passing the order dated 17.1.1992 and its implementation by the Revenue Authority, petitioner was not restored possession of land comprised in Khasra No. 63/2/1 (West).

2. Dispute between the parties relates to the identity of the land comprised in Killa No. 63/2/1 (West).

3. Mr. Mor, who appears for respondent No. 2, has laid emphasis on scheme of consolidation which was framed. He states that as per the scheme of consolidation, it was decided that the Haqdars, whose land falls along the permanent Dhasa Road (also known as Najafgarh Road) were not to be disturbed at the re-partition and their holding on the said road had to be retained as it is. In other words, Mr. Mor states that the extent, dimensions and location of pre and post-consolidation holding along Najafgarh Road had to be retained. Mr. Mor further states that no part of land of the petitioner abutted or opened into Najafgarh Road.

4. Mr. Vashisht states that pre-consolidation Khasra No. 421 belonged to the petitioner and his brother. He states that the said khasra abutted Najafgarh Road. Mr. Mor admits that the petitioner and his brother were the recorded Bhoomidars of pre-consolidation khasra No. 421 but disputes that any part of said khasra abutted Najafgarh Road.

5. Mr. Mor further states that Eastern part of Khasra No. 421 (pre-consolidation) has fallen to the share of the petitioner's brother Mahender Singh. Mr. Vashisht disputes the said fact and states that in the consolidation proceedings in lieu of land comprised in khasra No. 421 (pre-consolidation), land comprised in Khasra No. 63/2/1 has been allotted to the petitioner.

6. Arguments heard. Judgment reserved."

While effecting repartition, vide order dated 6/7.10.1982 the consolidation officer affected changes in the holdings of the land owners as originally allotted. He withdrew Khasra No. 63/2 (west) from the petitioner and in lieu thereof including khasra No. 63/2 (north in petitioner's holding). Both Khasra's admeasured one

bigha.

5. Petitioner challenged the order dated 6/7.10.1982 by filing a revision petition u/s 42 of the Act. Inter alia, in the revision petition, averred as under:

"c) That the learned Consolidation Officer has committed a material irregularity in changing the location of Killa No. 63/2/1-West to 63/2/1-North at the back of the petitioner, nor there is any sufficient and cogent reason for changing the direction of the land which was allotted to him at the initial stage under-section 21(1) of the Consolidation Act, and there was no objection appeal or revision of any body else in respect of the allotment of the lands to the petitioner along with the lands of Killa No. 63/2/1-West, measuring one Bigha, situated within the revenue estate of Village Mitraon, Delhi.

d) That the Ld. Consolidation Officer has passed the impugned order dated 6-7/10-1982 for completing the deficiency of the hakdars of the village, but in the guise of completing the deficiency of the petitioner the consolidation officer has wrongly and illegally withdrawn the vital portion of the Chak of the petitioner and had only changed the direction of the lands allotted to him for the reasons best known to him.

e) That the Learned Consolidation Officer has failed to take into consideration that by withdrawing the lands of Killa No. 63/2/1-West, the Chak of the petitioner which was abutting the main puce road has been divested and the petitioner has suffered a great loss and injury, as the petitioner had spent huge money and labour for developing the lands allotted to the petitioner as the petitioner had developed a Farm House."

6. Revision petition was registered as case No. 105/1985. It was decided by the Financial Commissioner vide order dated 9.8.1985. Allowing the revision petition, financial commissioner held :

"The allotment of killa No. 63/2-West to the petitioner was during repartition. It was not objected to by any-one. Nor the respondents have also sought the allotment of this killa at an point of time. This being so, I come to the conclusion that the consolidation officer was not right in withdrawing the allotment of killa No. 63/2/1 west measuring 1 bigha from the petitioner. It deserves to be restored. In result Killa No. 63/2/1-West stands restored to the petitioner. Respondents be sent back to their killa. Revision stands accepted."

7. Petitioner moved an application on 25.9.1985 before the consolidation officer for correction of the revenue record. On 28.1.1986, the consolidation officer passed an order. He withdraw 17 biswa of land from Khasra No. 3/13 (East) from the holding of the petitioner and allotted him 17 biswa of land in Khasra No. 63/2/2. By said order, consolidation officer withdrew 17 biswa of land from holding of one Mahinder Singh from khasra No. 3/25/1 (O-11) and 16/2 (South) (O-06) and allotted him 17 biswa of land comprised in khasra No. 3/13 (East) withdrawn from the petitioner. The consolidation officer also affected changes in

the holdings of a few other land holdings.

8. Aggrieved by change of his holding, Mahinder Singh filed a revision before the financial commissioner. His grievance was that while implementing order dated 9.8.1985 passed by the financial commissioner, the consolidation officer could not change holdings of other land owners. Revision was allowed vide order dated 16.9.1987. It was ordered as under :

"2. I have considered the points raised. It is clear to me that my learned predecessor vide his order dated 9.8.85 had ordered the restoration of killa No. 63/2/1 to the respondent No. 1 and further it was directed that other respondents namely Sant Ram and Munshi Ram should be sent back to their placed. By this interpretation of the order, it was incumbent upon the learned consolidation officer to have implemented that order to that extent and should not have gone beyond it. In case there had been any amicable settlement in between the parties, that issue would have to be taken separately in case the same was found to have been within the ambit of his jurisdiction. This being the position, I proceed to hold that the action of the consolidation officer is contrary to the provisions of law and as such, the same deserves to be up-set. In and result, the present revision petition stands allowed. The order of the consolidation officer is hereby reversed."

9. Taking cognizance of order dated 16.9.1987, the Consolidation Officer directed that 1 bigha of land from khasra No. 63/2/1 (North) and 1 biswa of land from khasra No. 3/1 be withdrawn from the petitioner and 6 biswa of land in khasra No. 63/2/1 (West) and 15 biswa of land in khasra No. 2/2 (min.) West in lieu thereof be withdrawn. As a result, holding of Mahinder Singh was restored but two persons namely Surat Singh and Sant Ram got affected. Consequence of the order passed by the consolidation officer was that holding of the petitioner formed a 'L' shape with the southern boundary of khasra No. 63/2/2 abutting Najafgarh Road.

10. Respondent No. 3, claiming to be a purchaser under Sant Ram challenged the change effected in the holding of Sant Ram. He filed a revision petition challenging the order passed by the consolidation officer. Revision being case No. 62/91-CA was disposed of vide order dated 17.1.1992. Following was ordered:

"5. The only point for determination in this case is to identify the location of killa No. 63/2/1 West to be restored to the respondent No. 1 in terms of order of my learned predecessor dated 9.5.85. For this purpose, I have examined the Aks Sahjra of the village produced during the course of hearing of the case by the Halqa Patwari in the presence of the learned counsels for the parties. In the Aks Sahjra killa No. 63/2/1 has been depicted just on the sought of Killa No. 50/22. Its northern side has the same measurement as that of southern side of killa No. 50/22. Killa No. 50/22 is also in the allotment of the respondent No. 1, besides Killa Nos. 50/18/2, 19 and 22/1. It is apparent from a glance at the Shajra that the allotment of killa No. 63/2/1 to respondent No. 1 in the shape it has been

depicted in the Aks Shajra is in a compact block continuous to his other land. In case Killa No. 63/2/1 is allotted to the respondent No. 1, as has been sought to be argued on his behalf, killa No. 63/2/1 comes in between the other land allotted to respondent No. 1 and killa No. 63/2/2 as a result of which his chak is unnecessarily bifurcated. Further more, there is no logic in the argument of the learned counsel for the respondent No. 1 that killa No. 63/2/1 west implies the western portion of killa No. 63/2 as a whole. It means that western portion of killa No. 63/2/1 as sub-part of Killa No. 63/2. That being so, considering from every angle, allotment of killa No. 63/2/2 to respondent No. 1 cannot be held to be justified as has been ordered by the learned consolidation officer through the impugned order.

6. To conclude, the revision petition is accepted, the impugned order is modified to the extent that killa No. 63/2/2-min measuring 9 bids was is restored to the petitioner and the respondent is ordered to be restored Killa No. 63/2/1 as already ordered by my learned predecessor vide order dated 9.5.85."

11. Petitioner who was respondent No. 1 in the revision petition has filed the present writ petition challenging order dated 17.1.1992 passed by the financial commissioner.

12. It is averred by the petitioner:

"11. The petitioner also got a building Plan sanctioned for the construction of a Farm House on his entire holding including the land bearing No. 63/2 (West). The building plan was sanctioned on 15.7.86. True copy of the sanctioned building plan is annexed herewith as marked as Annexure P-11. After getting the building plans sanctioned the petitioner raised the construction of the super structures in accordance with the building plan and the said land has been in continuous uninterrupted cultivatory possession of the petitioner. It is pertinent to mention here that unless the petitioner remains in possession and ownership of the land bearing No. 63/2 (West) the Petitioners" other lands will have no access from the main road which shall be in violation of the rules and Bye-laws for the grant of sanction of the building plans and also the same would also be in violation of the policy and the scheme of consolidation under the Act which provide that every chak holder must be provided access from the main road to their respective holdings. Moreover, if the Petitioner is restored the Western portion of the Rectangle No. 63/2 which had also been originally allotted to the Petitioner the respondent No. 3 and other persons occupying other portion of Killa No. 63/2 will not be affected at all whereas on the other hand the Petitioner would suffer an irreparable loss and injury if the western portion of Killa No. 63/2 measuring one bigha is not restored to the Petitioner."

13. defense of the contesting respondent is:

"The only point to be determined was the location of the land comprised in killa No. 63/2/1 which was allotted to the petitioner vide order dated 9.5.85 passed by the Financial Commissioner. From the Aksh Sijra it is clear that the above land

i.e. Killa No. 63/2/1 does not fall on the 80" Najafgarh wide road but another road passing through the Western side of this land. Moreover, the said land in question falls in between the land comprised in killa No. 50/2 belonging to the petitioner on its northern side and 63/2/2, 63/2/3 and 63/2/4 belonging to the answering respondent on its southern side. In addition to that it is submitted that the southern side of the killa No. 50/22 and the northern side of the land in question i.e. killa No. 63/2/1 is exactly the same and also the southern side of the said land in killa No. 63/2/1 and the northern side of Killa Nos. 63/2/2, 63/2/3 and 63/2/4 together are the same. Even otherwise, the land comprised of 63/2/2, 63/2/3 and 63/2/4 originally belonged to the predecessor-in-interest of the answering respondent prior to consolidation and so according to the provisions of the scheme of consolidation they cannot be legally dislodged from this land which has now been purchased by the answering respondent."

14. Unfortunately, none of the orders passed by the authorities during the consolidation proceedings has dealt with the issue in the context of the scheme for repartition as was argued by Shri B.S. Mor, counsel for respondent No. 3. Since Shri B.S. Mor had urged the matter on basis of the scheme, Shri N.S. Vashisth, learned counsel for the petitioner referred to the pre-consolidation record and in rejoinder Shri Mor also referred to the pre-consolidation record:

15. Orders passed by the authorities during consolidation proceeding show that the orders related to making equal the land of the holders at the pre-consolidation and post consolidation stage. The orders also related to the compactness of the holdings.

16. Admittedly, 1 bigha of land comprised in khasra No. 63/2 (West) was originally allotted to the petitioner during consolidation proceedings. Vide order dated 6/7.10.1982, Consolidation Officer withdrew the said land from the holding of the petitioner and in lieu thereof, gave 1 bigha of land comprised in khasra No. 63/2 (North).

17. Petitioner challenged the said act of the Consolidation Officer. Financial Commissioner, allowed the revision petition filed by the petitioner vide order dated 9.8.1985. As a consequence thereof, it was directed by the learned Financial Commissioner that petitioner be restored possession of land comprised in khasra No. 63/2 (West). Said order dated 9.8.1985 has attained finality. To give effect to the order passed by the Financial Commissioner on 9.8.1985, Consolidation Officer took up the matter again. Rather than withdrawing khasra No. 63/2 (North) from the petitioner and restore him the land comprised in khasra No. 63/2 (West), Consolidation Officer vide order dated 28.1.1986 effected changes in the holding of other persons. One of the affected person, Mahinder Singh, filed a revision petition. Financial Commissioner, vide order dated 16.9.1987 held that the Consolidation officer was having limited jurisdiction while implementing the order dated 9.8.1985. It was held that the Consolidation Officer could not disturb the holding of other persons. Consolidation Officer, taking cognizance of the order dated 16.9.1987, again,

while restoring to petitioner land comprised in khasra No. 63/2 (West) went about changing the holding of other persons. Respondent No. 3 was one of the person who claimed to be affected as he had purchased land from Surat Singh and Sant Ram. His revision was allowed by the Financial Commissioner.

18. While allowing the revision petition filed by respondent No. 3, learned Financial Commissioner went into the revenue record to determine compactness of the blocks.

19. In my opinion, learned Financial Commissioner mis-directed himself when he proceeded to consider the issue from the point of view of compactness of the blocks. Under normal circumstances, compactness of the blocks is the purpose to be achieved in every consolidation, but in the instant case, while preparing the scheme, villagers decided that land abutting Najafgarh Road would be retained as a compact block so that the persons are not affected. This very reason was the one pressed during arguments by Mr. B.S. Mor, learned counsel for respondent No. 3. Further, the issue was concluded in the earlier proceedings wherein it was held that withdrawal of land comprised in khasra No. 63/2 (West) from the petitioner and in lieu thereof, giving him land comprised in khasra No. 63/2 (North) was illegal. It was directed that petitioner be restored possession of land comprised in khasra No. 63/2 (West).

20. Learned Financial Commissioner was, Therefore, only to see the original record and find out where the location of the land comprised in khasra No. 63/2 (West) was. The learned Financial Commissioner has not dealt with the revenue record in the context as aforementioned.

21. On the issue of land abutting Najafgarh Road as urged by Mr. B.S. Mor, I find that none of the authorities have considered the issue in light of the scheme as presented for consideration before me.

22. It was not in dispute that petitioner and his brother were co-owners of land comprised in khasra No. 421 (pre-consolidation number). It is also not in dispute that predecessor-in-interest of respondent No. 3 was owner of pre-consolidation khasra No. 420.

23. On the submission of Mr. B.S. Mor, it has to be considered whether pre-consolidation khasra No. 421 abutted Najafgarh Road or not. Petitioner has filed a certified copy of the Aks Shajra which shows that towards South-East side, said khasra abuts Najafgarh Road. Revenue record relied upon by respondent No. 3 shows that South-Eastern side of khasra No. 421 is just a little away from Najafgarh Road. Revenue Authorities have not considered the issue from the point of view of location of pre-consolidation khasra No. 421.

24. Normally, when a khasra is divided, reference to the divided khasra as East, West, North or South would mean that the divided khasra towards the West would be that part of the divided khasra, boundary of which forms the western boundary of the original khasra. Similarly, divided khasra (North) would be the

one which takes the northern boundary of the original khasra. Viewed from that position, location of khasra No. 63/2 (West) would mean the side as indicated by the petitioner.

25. Be that as it may, since revenue authorities have not considered the issue in the context of the submissions made by the learned counsel for the parties, impugned order dated 17.1.1992 is set aside. Matter is remanded to the Consolidation Officer/Tehsildar to re-determine the location of khasra No. 63/2 (West) as originally carved out at re-partition. Said land would be the one which has to be restored to the petitioner. Needful be done within six weeks from today.

26. No costs.