
(2006) 03 DEL CK 0187

In the Delhi High Court

Case No : Writ Petition (C) No. 1093/94

Smt. Sarla Mittal

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21, 21(1), 43, 43A

Citation : (2006) 03 DEL CK 0187

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Rajender Dutt, for the Appellant; Daljit Sen, for the Respondent

Judgement

Pradeep Nandrajog, J.—Petitioner, Sarla Mittal, had a pre-consolidation holding ad-measuring 4 bigha and 16 biswa comprised in khasra No. 291 in the revenue estate of Village Budhpur. Respondent No. 2 Smt.Banarsi Devi had a pre-consolidation holding ad-measuring 4 bigha and 16 biswa in khasra No. 304 in the same village. Nirmal Kumar, S/o Smt.Banarsi Devi had a pre-consolidation holding ad-measuring 3 bigha and 3 biswa in the same village.

2. During repartition u/s 21(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act,1948, petitioner was allotted plot No. 238 (within phirni) plus agricultural land comprised in khasra No. 24/16 (0-14) and 24/17 (3-04). Smt.Banarsi Devi was allotted plot No. 248 (within phirni) plus agricultural land comprised in khasra No. 25/3min (0-7) and 25/4min (2-18). Nirmal Kumar was allotted plot No. 126. Entire demand of all the three was satisfied. Plot No. 119 was allotted to one Raj Singh.

3. Sub-section (2) of Section 21 of the East Punjab Holding Act,1948 gives a statutory right to a person aggrieved by repartition to file written objections before the Consolidation Officer. If objections are filed, Consolidation Officer is obliged to consider the same and pass an order confirming or modifying the partition effected.

4. Four objections came to be filed when repartition was effected. Vide case No. 49/CO/87, one Jaipal Singh filed objections. Vide case No. 147/C/87 Raj Singh filed objections. Vide case No. 148/CO/87, one Yashwant Sinha filed objections. Vide case No. 128/CO/87, Smt.Banarsi Devi, respondent No. 2 filed objections.

5. Objections filed by Jaipal Singh, Raj Singh and respondent No. 2 were considered together. Nirmal Kumar, son of respondent no.2 appeared at the hearing. An order was passed on 29.4.1988. The order reads as under : The aforesaid cases have been put up today for consideration simultaneously. Sh. Yashwant Singh on behalf of the objector is present. He has been heard at length and the revenue record examined. Sh.Nirmal Kumar for Banarsi Devi and Rakesh Kumar, S/o Balkishan are also present. The objections have contended that they are not interested in the residential plots allotted to them and requested for the agricultural land at their 1st centre. There is force in the contentions put fourth and on that basis, a proposal is prepared and amendment carried out.

S.No. Name of Haqdar Area Withdrawn Area Allotted

1. Jai Pal Singh 118 3-00 25/2 1-07 H.No.118 8 min 0-15 9 min 0-10 3 min 0-08 3-00

2. Raj Singh H.No.119 119 3-00 25/3 min 2-09 4 min 0-11 3-00

3. Yashwant H.No.120 120 3-00 25/4min 2-07

4. Banarsi Devi 25/3min 0-07 119 3-00 H.No.63 4 2-18 3-05

5. Bal Kishan 25/2 1-07 120 3-00 H.No.128 3 min. 2-10

8 min. 0-15 9 min. 0-10 3-02

6. Gaon Sabha Nil 118 3-00

A copy of this order be placed in each case. File be consigned to the record after implementation of the order.

6. Though the case of respondent No. 3 was also considered and forms subject matter of the order dated 29.4.1988, but unfortunately, the Consolidation Officer recorded that he was deciding only case No. 49/CO/87, 147/CO/87 and 148/CO/87.

7. Probably Realizing that though he had disposed of the objections filed by respondent no.2 but had not formally listed her objections as decided, another order was passed by the Consolidation Officer on 29.4.1988. The said order reads as under :

This case has been put before the undersigned for hearing of the objections. Nirmal Kumar Aggarwal on behalf of the objector is present. He has been heard at length and the revenue record has also been examined. The objector has contended that agricultural land in M.No.24 may be allotted to them. After examination of the record, it transpired that the land has been rightly allotted

and no change is justified. In view of this, the present objection is dismissed. File be consigned to the record room.

8. Aggrieved by the rejection of her request in which respondent No. 2 had wanted land in lieu of khasra No. 25/3 min and 25/4 min to be allotted near plot No. 126 which was allotted to her son, she filed an appeal challenging the decision taken by the Consolidation Officer on 29.4.1988 rejecting her written objections.

9. Since there were two orders passed on 29.4.1988, but since her case was formally rejected vide second order passed on 29.4.1988, she challenged the said order.

10. Be that as it may, the Settlement Officer before whom the appeal against the order dated 29.4.1988 was listed considered the matter on merits. Vide order dated 9.5.1989, Settlement Officer set aside the order dated 29.4.1988 and directed the Consolidation Officer to re-hear the matter and decide afresh after dealing with the submissions urged by respondent No. 2.

11. Order dated 9.5.1989 was not questioned by any party. At the remanded hearing, vide order dated 8.6.1989, the Consolidation Officer rejected the application filed by respondent No. 2.

12. Aggrieved by the order dated 8.6.1989, respondent No. 2 filed an appeal before the Settlement Officer. The said appeal was disposed of by the Settlement Officer vide order dated 9.10.1989. Appeal was allowed. Inter alia, following was directed :

I am Therefore of the view that the appellant cannot be forced to accept the allotment of the plot in residential area over and above her demand which is of 9 bigha standard in the present case and plot No. 248 has been allotted against this demand. Allotment of plot No. 119 which has not been accepted by the appellant and she is agitating for its withdrawal cannot be withdrawn. On the second point whether the appellant is entitled for allotment of land which was earlier owned by her son is obviously a legitimate claim. Both the mother and the son were having adjacent fields prior to consolidation. The argument of the learned counsel for the respondent No. 2 against this request for allotment of khasra No. 24/17 is that his client i.e. respondent No. 2 is having a compact area including khasra No. 24/17. If this area is withdrawn from respondent No. 2 then his chak will be disturbed and bifurcated. It is an admitted fact that the appellant can be allotted land without centre as per the consolidation scheme but her preference for the pre-consolidation area of her son carries weight. The appellant has preferential right rather than respondent No. 2 for the allotment of the area which also do not belong to respondent No. 2. I, Therefore, order that the appellant is entitled to the allotment of khasra No. 24/17 in lieu of plot No. 119. The third point does not arise as the appellant has been given the area which is being claimed by her. Consequent upon the above findings, the following changes are effected :

Name of Haqdar Area Withdrawn Area Allotted

1. Smt. Banarsi Devi 248 min 3.0 24/16 0-14 No. 62 (West) 17 min. 2-16 (East) 3-00

2. Smt.Sarla Mittal 24/16 0-14 248 min 3-00 No. 48 7 min 2-06 (East)

3-00

13. Respondent no.2 noted that there was an apparent contradiction between the concluding part of the order and the summary part of the order. Whereas the concluding part of the order held that respondent No. 2 was entitled to allotment of khasra No. 24/17 in lieu of plot No. 119, while making a summary of what was allotted and what was withdrawn, it was recorded that land in plot No. 248 was withdrawn and in lieu land comprised in khasra No. 24/16 and 24/17 was allotted.

14. Respondent No. 2 filed an application u/s 43A of the Holdings Act seeking correction as according to her it was a clerical error. Vide order dated 12.2.1990, the Settlement Officer corrected the hiatus between the concluding part of the order and summary part of the order by recording as under :-

I have examined the record and considered the arguments of the learned counsels of the parties. The plot No. 248 out of which an area of 3 bigha standard has been withdrawn from the appellant is measuring 9 bigha standard and 2/3 area of the plot still remains with the applicant. This hardly affects the proper utilization of the plot left with her. I agree with the arguments of the learned counsel for the respondent that an order passed cannot be reviewed as held by the Hon"ble Supreme Court in AIR 1966 but the circumstances of the case are that there is a clerical mistake in the concluding part of the order in the last but one sentence it has been written as I Therefore order that the appellant is entitled to the allotment of khasra No. 24/17 in lieu of plot No. 119. Here in this sentence, plot No. 119 has been wrongly typed whereas it should have been 248 min as is evident clearly from the summary of the order which was drawn as per intention and the decision arrived at into the matter. The power to correct such mistake are provided in section 43(a) of the said Act and accordingly it is ordered that in para mentioned above, plot No. 248 min be read in place of plot No. 119.

15. Respondent No. 2 filed a revision before the Financial Commissioner because according to her plot No. 248 was never the subject matter of any litigation. She stated that she could not just understand as to how plot No. 248 could be withdrawn from her.

16. The revision filed before the Financial Commissioner was disposed of vide order dated 5.6.1990. It was held as under :-

I have heard the lengthy arguments of the learned counsels for the contending parties. The learned counsel for the respondent No. 2 sought to raise an

objection viz-a-viz the jurisdiction of this court contending that u/s 43A of the Act, the officer who has passed the order can rectify the mistake and not the other court. I subscribe to the view and I am not going to make any rectification in the original order. However, I have ample powers u/s to adjudge the legality and propriety of the order of rectification passed by the same officer and that is the only scope of the present revision petition. Coming to the contentions of the learned counsels on facts/merits, I find that the orders of the court below passed on 9.10.89 and 12.2.90, if read together are not reconcilable. In the present matter, the whole thrust of the petitioner has been, as argued by the learned counsel for the petitioner before me, that the allotment of plot No. 248 to the petitioner was never in question before the court below. As such, that order of withdrawal of the said plot from the petitioner is wholly uncalled for. According to him, it was plot No. 119 which ought to have been withdrawn from the petitioner and allotted to the respondent No. 2 in order to bring to the order dated 9.10.89 in conformity. On the other hand, it has convincingly been argued by the learned counsel for the respondent No. 2 that allotment of plot No. 119 was made to the petitioner on the objection of Raj Singh after its withdrawal from him and that the petitioner never challenged the said order in the appropriate forum. That being so, the allotment of plot No. 119 in favor of the petitioner became final and the petitioner cannot get rid of it in other collateral proceedings and that the same cannot be thrust upon the respondent No. 2 in this manner. As noted above, I am not required to examine these facts in these proceedings as that has a direct bearing leading to the challenge of the order dated 9.10.89, which was never challenged by either of the parties. Be that as it may, I am confirming my consideration to the legality and/or impropriety of the impugned order.

A perusal of the impugned order clearly indicates that there is a hiatus between the contents of the detailed judgment and the decretal order, which still remained unreconciled even after the passing of the impugned order. Such a discrepancy (a clerical mistake) has also been admitted by the Settlement Officer (C) in his impugned order dated 12.2.90, but the same has not appropriately been reconciled/rectified even now. The matter, Therefore, requires redetermination by the court below. Accordingly, the impugned order is hereby set aside, as prayed for, and the case is remanded to the court of the Settlement Officer (C) for proper reconciliation/ rectification of the clerical mistake after hearing both the parties in all respects.

17. Order dated 5.6.1990 passed by the Financial Commissioner has attained finality as no party has questioned the same.

18. A perusal of the order passed by the Financial Commissioner on 5.6.1990 shows that case pleaded by respondent No. 2 was that the allotment of plot No. 248 to her was never in question and, Therefore, the order withdrawing the said plot was wholly uncalled for. Case pleaded by Sarla Mittal was that plot No. 119 was allotted to respondent No. 2 on objections filed by Raj Singh and said allotment in favor of respondent No. 2 became final. She could not get rid of the

said exchange effected between her and Raj Singh in collateral proceedings. Order passed by the Financial Commissioner noted that the Financial Commissioner held that he was not required to examine these facts as validity of the order dated 9.10.1989 was not questioned save and except, on the limited ground that there was a hiatus between the operative part of the order and the summary part of the order.

19. At the remanded proceedings, the Settlement Officer, went into the issue of reconciliation/rectification of the notes between the order and the decreetal portion. He held as under :

Keeping all the above facts and circumstances of this case in view and after reconciliation/rectification of clerical mistake, allotment and adjustment of land between the two contending parties is hereby ordered as under :-

Name of Allottee Area Withdrawn Area Allotted

1. Smt.Banarsi Devi 248 min 3.0 24/16 0-14 (West) 24/17min. 2-16 (East) 3-00
2. Smt.Sarla Mittal 24/16 0-14 248 min 3-00 24/17min 2-06 ----- (East) 3-00 (West)

The stay order dated 13.11.1991 passed by the then Settlement Officer (c) stands vacated. Copy of this order be sent to Tehsildar/Consolidation Officer for necessary action.

20. Afore-noted order was passed by the Settlement Officer on 26.8.1983. This order became the subject matter of a further challenge before the Financial Commissioner who disposed of the matter vide order dated 24.1.1994, which order stands impugned in the present writ petition.

21. Operative part of the impugned order reads as under :-

I have heard the learned counsels for the contending parties at great length and have also gone through the lengthy order passed by the learned Settlement Officer (Consolidation) wherein he has justified the previous order without correcting the mistake. I need not indulge in the discussions of the arguments of the learned counsels of the parties. I find that the impugned order has not been passed in consonance with the spirit of the order of remand and, Therefore, the same cannot be sustained on this ground itself. The remand order has not been obeyed in its true sense. Instead, a lengthy fresh order has been passed.

In view of the order, I allow the revision petition and direct the court below to reconcile and correct the clerical mistake within a period of 45 days after noticing both the parties to the case. A compliance report shall also be sent to this end. (a copy of this order shall be marked to Dy.Commissioner, Delhi (by name) to look into the conduct of the Settlement Officer (Consolidation) and to take necessary Administrative corrective measures against him.

22. I need not go into the depth of the issue raised by the learned counsel for

the respondent who sought to urge that the respondent No. 2 was entitled to land near the holding of her son for the reason, order dated 9.10.1989 passed by the Settlement Officer was not the subject matter of a substantive challenge in any proceedings. Only issue raised before the Financial Commissioner which resulted in the order dated 5.6.1990 being passed was whether there was a hiatus between the concluding part of the order and the summary part of the order dated 9.10.1989. Indeed, vide order dated 5.6.1990, learned Financial Commissioner mis-observed that the order dated 9.10.1989 passed by the Settlement Officer had attained finality subject to limited dispute whether there was a hiatus between the concluding part of the order and the part of the order which summarised withdrawal and allotment of land. The obvious conclusion has to be that allotment of plot No. 238 to the petitioner attains finality and could not be withdrawn from her.

23. If that be so, respondent No. 2 could not be allotted plot N.238. She had to get plot No. 119 for the reason, in the operative part of his order dated 9.10.1989, the Settlement Officer has categorically recorded: allotment of plot No. 119 which has not been accepted by the appellant and she is agitating for its withdrawal cannot be withdrawn. Further, the operative part of the order concludes : I, Therefore order that the appellant is entitled to the allotment of khasra No. 24/17 in lieu of plot No. 119.

24. There is an additional reason why respondent No. 2 cannot get plot No. 238. As would be noted from para 5 above, vide order dated 29.4.1988 plot No. 119 was withdrawn from Raj Singh and was allotted to respondent No. 2. If respondent No. 2 did not want plot No. 119 she ought to have challenged said order and imp leaded Raj Singh as a respondent. Raj Singh has gone out of the litigation. If claim of respondent No. 2 is accepted then plot No. 119 has to go to the petitioner which she never asked for and which was never allotted to her.

25. The impugned order passed by the Financial Commissioner is accordingly quashed. Order dated 26.8.1993 passed by the Settlement Officer is restored.

26. No costs.