
(2012) 08 DEL CK 0526

In the Delhi High Court

Case No : Writ Petition (C) No. 1488 of 2007

Vinod Kumar and Others

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21(1), 42, 43A

Citation : (2012) 131 DRJ 331

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : C.B. Varma and Mr. Raghvinder Varma, for the Appellant; Ruchi Sindhvani, Additional Standing Counsel with Ms. Bandana Shukla, Advocate for Respondent No. 1 and 2 - GNCT and Mr. Anand Yadav, Advocate for Respondent No. 3 to 8, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—The question raised by the petitioners in this petition is as under:-

Whether the respondent No. 2/Consolidation Officer having finalised repartition u/s 21(1) of the said Act in the year 1998 could review it in the year 2001 on the ploy that he did so to make up the deficiency in the allotment of the applicants in view of the applications filed on 2.7.2001.

Petitioners claim that the consolidation proceedings of Village Kanjhawala of which petitioners and the contesting respondent Nos. 3 to 8 are the permanent residents, had commenced in the year 1993 and the consolidation scheme was confirmed in the year 1997 and thereafter, objections to the consolidation scheme were invited but since no objections were received, the repartition in terms of the consolidation scheme took place in the year 1998. On the application of respondent No. 4 and 5, the Consolidation Officer vide order of 13th August, 2001 had made allotment from Khasra No. 33/11 (where Village

Cooperative Society had purportedly built up shops and had let them out to the petitioners), to respondent No. 3 to 8 herein (henceforth referred to as private respondents).

2. On behalf of the petitioners reliance is placed upon the decision in Ram Nath Vs. Finance Commissioner, Delhi and Others, , which was affirmed by the Division Bench in LPA No. 143/1983, titled as Ram Saroop Vs. Ram Nath and Another, , to contend that the Consolidation Officer has no jurisdiction to reopen the consolidation scheme as there is no power of review with him. Reliance was also placed upon the decisions in Gram Panchayat and Ors. vs. Har Lal and Ors., (1973) ILR (P&H) 408; Siri Chand vs. Commissioner, Ambala, (1975) PLJ 6; Bal Kaur and Ors. vs. Additional Director, Consolidation of Holdings, Punjab, Jullundur and Ors., 1980 (82) PLR 299 ; Johrimal Vs. Director of Consolidation of Holdings, Punjab, , to contend that petitioners have locus standi in view of their settled possession in the subject land, i.e., Khasra No. 33/11 much prior to the commencement of the consolidation proceedings and have right to challenge the allotment of the subject land to the private respondents being without jurisdiction and in violation of the scheme of consolidation and thus, the order of 13th August, 2001 of the Consolidation Officer upheld by the Financial Commissioner vide order of 11th January, 2007 impugned herein, deserves to be quashed.

3. Counsel for the respondents had placed reliance upon a Division Bench decision of this Court in Leo Puri vs. Consolidation Officer & Ors., 2008 X AD (Del) 446 wherein earlier decision of Ram Nath (supra) was considered and it was held as under:-

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 consideration 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.

4. On behalf of the private respondents, the orders impugned herein are sought to be defended while relying upon the decisions in Supriya Diwan and Others Vs. Sub Divisional Magistrate and Others, ; DDA Vs. Bishan Devi and Others, ; Sahi Ram vs. The State of Haryana & Ors., 1986 (1) AILLR 575 ; Satbir Singh and Others Vs. Lt. Governor and Others, , urging that petitioners having failed to establish their tenancy in the subject land, have no locus to challenge the impugned orders and since the petitioners have failed to establish any right in the subject land, so they were not entitled to any notice or hearing by the Consolidation Officer prior to making good the deficiency in the land holding of the private respondents on the basis of the spot Inspection Report of the

concerned Patwari, as Section 43A of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 empowers the Consolidation Officer to do so.

5. Having considered the submissions of learned counsel for the parties and upon perusal of the orders impugned herein and the decisions cited, I find that the Kanjhawala Cooperative Multipurpose Society, through its official liquidator had filed a Revision Petition (Annexure R-3) u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 against the order of 13th August, 2001 impugned herein also, but had not perused it resulting in its dismissal in default, puts an onerous burden upon the petitioners to establish their tenancy in the subject land under the aforesaid Society.

6. The finding returned in the impugned order on this aspect needs to be adverted to. It is as under:-

The locus standi of the petitioners also does not get established by virtue of record nor have the petitioners claimed to be bhoomidars or owners. But the petitioners have also not been able to establish their claim of having rented shops from the respondent society and that they were paying rent. The correspondence of the Liquidator of the respondent society is dated 23.8.01 and 15.10.01, but there is no record to show that the said Sh. V.S. Dabas continued to remain the Liquidator for the respondent society, during that period. Importantly, it is not clear from record why the Liquidator had waited for 3 years to establish the interest of the respondent society in the suit land, when admittedly the consolidation proceedings were in progress and repartition proceedings took place between 5.5.98 to 29.5.98. The petitioners have relied upon the copies of the Register Karawahi Chakbandi to show the entitlement and allotment made to respondents 6, 7 and 8 and they have contested the order of the CO, thereon changing the allotments. The applications made by the respondents on 2.7.01 are on record and these show that they were not only demands for fulfilling deficiency but also on the issue of difference between the area of the plot, at site and as recorded. It was in this context that Paimaish had been requested. I have also gone through the report prepared in consonance of the directions of the CO dt.2.7.01 and I find that the demarcation was carried out properly, with reference to old land marks and that the area under the different plots was measured. The said report reveals that after Paimaish discrepancies in the area of plot No. 144/25, as available on the ground and as in the record stood established. On the basis of these reports of the Girdawar, a final report was presented to the CO by the Patwari and the CO had approved the proposal. It is seen from record that the total areas which was deleted and included, in relation to respondents 3 to 8 is exactly the same and therefore it cannot be said, on the basis of the documentation, that any excess area was either added or deleted from the common pool. The record and the submissions do not establish the claim of either the petitioners or respondent No. 9, the prayer relating to restoring of the said land, in favour of respondent No. 9 or be shown

as scheme qabiz in favour of petitioners, cannot be acceded to.

7. At the hearing, learned counsel for the petitioners was unable to demolish the aforesaid finding of petitioners" failing to establish their tenancy in the shops on the subject land. Therefore, reliance placed by the petitioners" counsel upon the Field Book (Annexure-9) of the year 1997-98 indicating the subject land to be plot society is hardly inspiring as the words "plot society" appear to have been written quite differently than the other contents of this Annexure.

8. Mere mention of shops on north side in Patwari"s report of 23rd July, 2001 or an utterance of respondent - Surat Singh in some application to the effect that he is already in possession of a shop in Khasra No. 134/25 or of some averment in the revision petition of the aforesaid society or issuance of some summons by the liquidator regarding the recovery of rent of shops or photographs of some shops in Khasra No. 144/25 is neither here nor there, as the petitioners have failed to conclusively establish that they were tenants in the purported shops on the subject land, i.e., Khasra No. 33/11.

9. Similarly, reliance placed upon the revenue record, i.e. Khasra Girdawaries of year 1981-82 upto 1983-84 showing that the subject land is owned by the Gaon Sabha and there being Johad, Makan & Dukan on it, would be of no avail in view of the subsequent revenue record relied upon by the respondents, i.e., Khasra Girdawaries of the years 1994-95 and 1995-96, showing that the subject land is recorded in the name of Gaon Sabha with Johad alone on it. Therefore, petitioners" claim of being a Schemi Qabiz on the subject land has rightly not been considered in the impugned order being beyond the purview of Section 43A of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 and for the reason that the petitioners have failed to establish their right on the subject land.

10. In view of the decision of the Division Bench of this Court in Leo Puri (supra), the contention advanced on behalf of the petitioners" of Consolidation Officer lacking jurisdiction after closure of Consolidation Scheme, to make good the deficiency in the land holding in question is repelled as the Consolidation Officer does not become functus officio after the finalisation of the consolidation scheme as Section 43A of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 permits the Consolidation Officer to correct such like errors as found in the instant matter. Since the decisions in Har Lal, Siri Chand, Bal Kaur, and Johri Mal (supra) relied upon by learned counsel for the petitioners do not advert to Section 43A of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 therefore, the same are of no avail. In Sahi Ram (supra), it has been ruled that a person in possession without any right is not entitled to notice or hearing. In Supriya Diwan (supra), my esteemed brother Sanjay Kishan Kaul, J., had the occasion to consider the question of locus standi of the attorney of the Bhumidhars and upon finding that the Bhumidhars themselves had sought to avail of the remedy, it was held that the attorney of the Bhumidhars have no locus standi. pon considering this matter in its entirety,

the question posed is answered in the negative, holding that not only petitioners lack locus standi but even otherwise on merits, orders impugned herein do not call for any interference by this Court in the exercise of writ jurisdiction under Article 226/227 of Constitution of India. Consequently, this petition is dismissed while leaving the parties to bear their own costs.