

(2010) 09 DEL CK 0054

In the Delhi High Court

Case No : Writ Petition (C) 9014 of 2007

Virender Singh and Others

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21(1), 21(2), 21(3), 42

Citation : (2010) 09 DEL CK 0054

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

**Advocate : S.K. Raut, Suman Chaudhary and J.K. Sharma, for the Appellant;
V.K. Tandon, for R-1 and Sunil Chauhan, for R-2, for the Respondent**

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The two petitioners by this writ petition impugn the order dated 19th October, 2007 of the Financial Commissioner in exercise of powers u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948. this Court while issuing notice of the petition, vide order dated 3rd December, 2007 directed the parties to maintain status quo with regard to title, possession and construction on the subject land. The said order was confirmed on 25th February, 2009. Neither of the respondents have filed counter affidavit inspite of opportunities. The counsels have been heard.

2. The dispute arose from the re-partition proceedings u/s 21(1) of the Act aforesaid in village Rawta, Delhi. The respondent No. 2 on 25th June, 2002 applied to the Consolidation Officer stating that a plot of land ad-measuring 2 bighas 8 biswas had been allotted during the consolidation proceedings; that he was not in need of the said plot of land and the same may be allotted to Sh. Puran and Sh. Pappu sons of Shri Jage Ram; that the land of Sh. Puran and Sh. Pappu in place of the plot of land be given to the respondent No. 2 "at his previous site where his land was situated"; it was also stated that Sh. Puran and

Sh. Pappu were also agreeable to the same.

3. The order sheet of the Consolidation Officer shows that the respondent No. 2 on 18th September, 2002 stated before the Consolidation Officer that his earlier holding had one old village well and borewells and his said pre-consolidation land had been allotted to someone else; he expressed desire for his land to be restored to him. The order sheet of 23rd October, 2002 shows that the respondent No. 2 stated that his residential plot should be reduced to 1 bigha as he did not require such a large plot. The Consolidation officer vide order dated 8th November, 2002 deleted certain land/plot earlier allotted to the respondent No. 2 and allotted another plot/land to the respondent No. 2 on re-partition.

4. The two petitioners herein are the sons of Sh. Dharambir Singh. The pre-consolidation holding of the respondent No. 2 was joint with the said Sh. Dharambir Singh and certain others and who had expressed desire for separation. The Consolidation Officer in re-partition while allotting land to the respondent No. 2 in his pre-consolidation holding, allotted to the respondent No. 2 the land which had on consolidation been allotted to Sh. Dharambir Singh; in lieu thereof Sh. Dharambir Singh was allotted some other land.

5. It is the case of the petitioners that Sh. Dharambir Singh had been missing for a number of years and was presumed dead; they being his sons along with certain others are his legal heirs. The petitioners being aggrieved by the order aforesaid of the Consolidation Officer of re-partition, vesting a portion of their land in the respondent No. 2, preferred an application u/s 21(3) of the Act to the Settlement Officer against the order aforesaid of the Consolidation Officer.

6. It was the case of the petitioners before the Settlement Officer that the land of which they had been divested as aforesaid had been allotted to them on consolidation and no notice had been given to them by the Consolidation Officer of withdrawing the said land from them and vesting the same in respondent No. 2. It was further their case that their predecessor Sh. Dharambir Singh had been allotted the said land owing to the same being his pre-consolidation land and without any objection whatsoever from any person. They further contended that the respondent No. 2 while applying for re-partition had not even demanded the said land and had demanded the land of Sh. Puran and Sh. Pappu.

7. The respondent No. 2 contended before the Settlement Officer that the petitioners had no locus; that the land was in the name of Sh. Dharambir Singh and had not been mutated in the name of the petitioners till then.

8. The Settlement Officer vide his order dated 2nd January, 2004 held that the respondent No. 2 while applying for re-partition had not demanded the land of Sh. Dharambir Singh and yet the Consolidation Officer had allotted the said land. He further found that no notice had been issued to the petitioners by the Consolidation Officer. He thus set aside the order of the Consolidation Officer and reverted the land to the petitioners.

9. Aggrieved therefrom the respondent No. 2 preferred a revision petition before the Financial Commissioner and from the order wherein this petition has arisen. It was the case of the respondent No. 2 before the Financial Commissioner that he had made improvements on the said land by providing water pipeline for irrigation purposes; he further claimed a better title to the land, the same being his pre-consolidation site; that the Settlement Officer could not have entertained the application u/s 21(3) of the Act of the petitioners as they were not the recorded owners of the land and their claims could have been preferred only after they had obtained mutation in their name and the order of the Settlement Officer amounted to illegally mutating and recognizing the petitioners alone as the legal heirs of Sh. Dharambir Singh. It was also submitted that the respondent No. 2 had an existing tubewell and other wells on his pre-consolidation site and thus had a preferential right thereto.

10. The petitioners opposed the said revision petition; they supported the order of the Settlement Officer and impugned the order of the Consolidation Officer. They contended that the irrigation line had been installed by the respondent No. 2 on the land after the order of status quo by the Settlement Officer and had since been removed. They further claimed that they as heirs of Sh. Dharambir Singh who was the co-bhoomidar along with the respondent No. 2 of the pre-consolidated land, they had the same preferential rights with respect to the said land. They impugned the order of the Consolidation Officer on the ground that no notice was issued to them.

11. The Financial Commissioner held (i) that since the subject land was not mutated in the name of the petitioners, the Consolidation Officer was not required to issue any notice to them; that it was not the case of the petitioners that notices were not issued to Sh. Dharambir Singh in whose name the land stood; (ii) that mutation in the name of the petitioners as legal heirs of Sh. Dharambir Singh had not been carried out and thus they had no rights; (iii) that besides the petitioners there were other legal heirs also of Sh. Dharambir Singh; (iv) that the respondent No. 2 had a preferential right to the subject land; (v) that the respondent No. 2 had made improvements over the subject land by investing in the water channel; (vi) that the Consolidation Officer had passed the order of re-partition after weighing all the facts; the Settlement Officer had not considered all the facts. Finding a case of interference in revision to have been made out, the Financial Commissioner set aside the order of the Settlement Officer and restored the order of the Consolidation Officer.

12. The counsel for the petitioners has argued that the respondent No. 2 could have applied for re-partition u/s 21(2) of the Act within 15 days only and his application dated 25th June, 2002 was beyond time. It is contended that the subject land was allotted to Sh. Dharambir Singh on 17th April, 2002 and 7th May, 2002 and the application u/s 21(2) of the Act could have been filed within 15 days thereof only. It is urged that after the expiry of 15 days, the Consolidation Officer could not have entertained such an application.

13. The counsel for the respondent No. 2 has opposed the said plea by contending that the said period of 15 days would have commenced only when the right holders were made aware of the said partition i.e. when passbooks were handed over and counted from the said date, the application of 25th June, 2002 was within time. It is argued that the same would be evident from the record of consolidation if summoned before this Court.

14. Not finding any mention of the said plea of limitation in the order of the Settlement Officer or in the order of the Financial Commissioner, I enquired from the counsel for the petitioners as to whether the said plea was taken in the application u/s 21(3) of the Act before the Settlement Officer or in opposition to the revision before the Financial Commissioner. Though, the counsel for the petitioners states that the plea was taken but is unable to show the same from any document. I am not inclined, in exercise of writ jurisdiction to entertain such pleas which are not borne out from the orders impugned in this petition and which are not shown to have been urged before the Authorities/Courts below.

15. I enquired from the counsel for the petitioners as to what prejudice the petitioners have suffered by the order in as much as the size of their land remains the same; it is not as if the size of their holding has been reduced. Though the counsel for the petitioners could not answer but I find that the petitioners in ground 10 of the petition have stated that their holding has been fragmented owing to the order aforesaid of the Consolidation Officer. The same would undoubtedly be prejudicial to the petitioners.

16. The legislature has vested finality in the order of the Financial Commissioner. The question which arises is whether inspite of the aforesaid, interference in the order of the Financial Commissioner is called for. The state of affairs now in existence has been prevailing since the last eight years. It is not deemed expedient to disturb the same. The parties in the last eight years are bound to have carried out considerable improvements over their land. The fight between the petitioners and the respondents No. 2 appears to be of ego rather than of any difference in value of the land.

17. There is yet another aspect of the matter. It is not as if the Financial Commissioner has not given the reasons for his order. This Court in writ jurisdiction does not interfere merely because it may have come to a different conclusion. No fault can be found with the reasons given by the Financial Commissioner. Moreover the finding of the Financial Commissioner of the respondent No. 2 having made improvements on the land is a finding of fact incapable of interference. Similarly though Sh. Dharambir Singh and the respondent No. 2 had an equal preferential right in the pre-consolidated holding but the fact remains that the mutation had not been carried out in the name of the petitioners though they are admittedly the sons of Sh. Dharambir Singh. It thus cannot be said that the order of the Financial Commissioner is so perverse as to be quashed by this Court in writ jurisdiction.

The petition is therefore dismissed. No order as to costs.