

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st July, 2012

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LPA No.297/2012

% **R.N. SAHNI & ANR.**

..... Appellants

Through: Mr. N.S. Vashishta & Mr. Vishal
Singh, Advs.

Versus

THE FINANCIAL COMMISSIONER & ORS. Respondents

Through: Ms. Zubeda Begum, Adv. for
R-1&2.

Mr. Davinder Verma, Adv. for R-4a.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 10.04.2012 of the learned Single Judge dismissing W.P.(C) No.773/1995 preferred by the appellants. The said writ petition was preferred impugning the order dated 06.02.1995 of the Financial Commissioner dismissing the revision petition preferred by the appellants.

2. Notice of this appeal was issued and vide order dated 18.04.2012 *status quo* directed to be maintained. The records of the writ petition from which this appeal arises were also requisitioned. The counsel for the appellants, the counsel for the respondent Government of NCT of Delhi (GNCTD) and the counsel for the contesting respondent no.4a Smt. Sita

Devi widow of late Sh. Raghunath Singh have been heard. The counsel for the appellants and the counsel for GNCTD have also filed synopsis of their submissions.

3. The appellants had in or about the year 1994 filed the Revision Petition aforesaid before the Financial Commissioner under Section 42 of the East Punjab (Consolidation and Prevention of Fragmentation) Act, 1948 challenging the re-partition carried out in the Revenue Estate of village Kapashera during 13.07.1988 to 20.07.1988. It was their case that their farmhouse, sanctioned on pre-consolidation Khasras No.763/2, 765/1 and 766 was situated in post-consolidation Khasras No.33/2 and 33/9 but a part of the land admeasuring 1 bigha 18 biswas of their farmhouse situated in Khasra No.33/2 min (1-8) and 33/9 min (0-10) had in re-partition been allotted to one Sh. Dharam Singh who had sold the same to Sh. Raghunath Singh whose widow Smt. Sita Devi, the contesting respondent No.4a is contesting this appeal.

4. The Financial Commissioner, vide order dated 06.02.1995 dismissed the Revision Petition observing:

- (i) that the appellants vide Sale Deed dated 10.08.1987 had purchased land admeasuring 5 bighas and 15 biswas with farmhouse, tube well and other fittings out of pre-consolidation Khasras No.763, 765 and 766 (having a total

area of 11 bighas) from M/s Poddar Construction Company Pvt. Ltd.; that the appellants had been allotted post-consolidation areas as per their recorded demands and there was no deficiency in the allotment of the appellants in lieu of their pre-consolidation holding;

- (ii) that addition of Khasras No.33/2 and 33/9 to the extent of 1 bigha and 18 biswas to the khata of the appellants will lead to excess allotment to the appellants which is not permissible;
- (iii) that the appellants had nowhere pleaded that some other land has to be withdrawn from them as a result of their demand for Khasras No.33/2 and 33/9;
- (iv) that the claim of the appellants was therefore untenable;
- (v) that the appellants had never objected to the Scheme of Consolidation and to consider the payer of the appellants for reservation at that stage would necessitate modification / amendment of the confirmed scheme of consolidation which was neither feasible nor had been sought;
- (vi) that there was no construction over Khasra No.33/2 and 33/9 then standing in the name of respondent No.4a.

5. Aggrieved from the aforesaid decision of the Financial Commissioner, the appellants preferred the writ petition from which this appeal arises. The learned Single Judge has dismissed the writ petition observing that though it was the plea of the appellants that they had come to know of re-allocation of the subject land, now with the respondent No.4a on 20.08.1994 and when they approached the Financial Commissioner, but the appellants had nowhere disclosed as to how and from whom they so learnt of re-allocation in the year 1994. It was further observed that the Occupancy Certificate of the farmhouse on which the appellants sought to rely before the learned Single Judge was not produced before the Financial Commissioner.

6. The counsel for the appellants has sought to poke holes in the judgment of the learned Single Judge by arguing that the appellants had in paras No.14 to 16 of the writ petition given particulars as to how they had acquired knowledge in the year 1994 of the re-partition and had in their revision petition to the Financial Commissioner also sought setting aside of the allotment dated 23.04.1993 in favour of the predecessor of the respondent No.4a. It is also shown that the occupancy certificate was produced before the Financial Commissioner. It has thus been argued that the judgment of the learned Single Judge is contrary to the records.

7. The counsel for the contesting respondent No.4a has with reference to the Sale Deed executed between M/s Poddar Construction Company

Pvt. Ltd. and the appellants shown that the sale in favour of the appellants was only of 5 bighas 15 biswas of land; that the demand of the appellants in the consolidation proceedings was of 5 bighas 15 biswas of land only and which has been met; that the claim if any of the appellants that the land allotted to them in the consolidation proceedings is not the same as the land which was sold to them is a dispute between the appellants and the said M/s Poddar Construction Company Pvt. Ltd.; that the appellants have been unable to substantiate that the land allotted to them in consolidation is not the same land which they had purchased; that the plea of the appellants of having not known of the allocation in favour of predecessor in interest of respondent no.4a and of having learnt of it only in the year 1994 is apparently false as the appellants in the revision petition before the Financial Commissioner had admitted owning other land also in the village; that the allotment in favour of the predecessor in interest of the contesting respondent No.4a is by drawing land from Khasra No.747 belonging to the Gaon Sabha and is dated 23.04.1993 i.e. prior to the order dated 03.10.1994 on the application dated 22.08.1994 of the appellants. It is thus argued that the appellants have no right to challenge the earlier order of allotment in favour of the predecessor in interest of the respondents No.4a.

8. The counsel for the GNCTD has argued that the notification for consolidation was issued on 17.04.1985 and 29.04.1985; the draft of the Scheme prepared and published on 22.05.1987; objections invited thereto;

no objections were preferred by the appellants; that the Scheme was approved on 24.07.1987 and in accordance therewith re-partition was carried out from 13.07.1988 to 20.07.1988; that the consolidation scheme does not state that the farmhouses would not be disturbed and there is no provision as to 'kayam' in farmhouse though there is a provision that efforts will be made to consolidate the land of the bhumidhar at one place; that the land allotted to the appellants under the Scheme is not less than their demand; that the very sale by M/s Poddar Construction Company Pvt. Ltd. in favour of the appellants is in violation of Sections 7 and 8 of the Act; that the sale in favour of the appellants is also after the finalization of the Scheme and M/s Poddar Construction Company Pvt. Ltd. having not objected, the appellants as their successors are not entitled to object; that the appellants have not challenged the order dated 03.10.1994 of allotment in their favour and the said order has attained finality and the demand of the appellants stands satisfied and the earlier order of allotment dated 23.04.1993 in favour of the predecessor in interest of the respondent No.4a cannot be interfered with as nothing was withdrawn or allotted and the order dated 03.10.1994 of allotment in favour of the appellants is a subsequent order; that the appellants have no locus to seek cancellation of re-partition done prior to the date of the execution of the Sale Deed in their favour; that the appellants are not saying that there is any deficiency in their holding; that the Act lays down a procedure and period of limitation for objecting to the consolidation and such objections cannot be raised

belatedly.

9. The counsel for the appellants in rejoinder has contended that there is no prescribed period of limitation for invoking Section 42 of the Act and thereunder a Scheme can be modified; that the order dated 23.04.1993 is apparently wrong inasmuch as it shows the land allotted to the predecessor of the respondent No.4a having been withdrawn from the Gaon Sabha when in fact it belonged to the appellants; he has from the documents attempted to show the errors which lead to the excess land going to the Gaon Sabha; Attention is invited to the Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 laying down cases fit for regularization as kayami and which includes residential units and cases not to be considered fit for kayami; attention is also invited to the conditions laid down in the Rules for declaring a built up structure as kayami; it is argued that the Consolidation Officer and the Financial Commissioner did not consider the Rules. Though not cited at the time of hearing, along with synopsis of submissions, copies of the following judgments are filed in support of the proposition that the Financial Commissioner under Section 42 of the Act has unlimited power, unqualified by the limitation of time:

- (i) ***Sanjay Vs. Financial Commissioner, Delhi*** 181 (2011) DLT 517.
- (ii) ***Surjan Singh Vs. Financial Commissioner*** 142(2007) DLT

123.

(iii) ***Rai Singh Vs. Divisional Commissioner*** 2005 (123) DLT 447.

(iv) ***Rajinder Singh Vs. Financial Commissioner, Delhi*** 122 (2005) DLT 151.

10. The counsel for GNCTD relying on ***Gram Panchayat, Kakran v. Addl. Director of Consolidation*** (1997) 8 SCC 484 argued that even where no time is provided, reasonable time has to be inferred.

11. What the aforesaid narration of facts would show is that the learned Single Judge, rather than exercising powers of judicial review over the reasoning given by the Financial Commissioner for rejecting Revision Petition of the appellant, has given his own reasons for which the Revision Petition of the appellants ought not to have been entertained. The Financial Commissioner did not dismiss the Revision Petition on the ground of the same having been preferred belatedly or on the ground of the appellants having not produced the occupancy certificate, the reasons which prevailed with the learned Single Judge. We are of the opinion that once the Financial Commission had considered the Revision Petition of the appellants on merits, the judicial review thereof ought to have been confined to the reasons given by the Financial Commissioner for so dismissing the Revision Petition on merits. We have also perused the

counter affidavits filed by the contesting respondent to the writ petition and do not find a contest therein either on the ground of delay, though certain other grounds not dealt with by the learned Single Judge are mentioned. Even before us the counsel for the contesting respondent has not argued on the aspect of delay. Moreover from a perusal of the revision petition it is found that the appellants had set out the facts and circumstances in which they had learnt of the claim of the contesting respondent and immediately whereafter they had filed the Revision Petition. Similarly, as aforesaid, the appellants have succeeded in satisfying us that the occupancy certificate was indeed filed before the Financial Commissioner also. We also do not find that the Revision Petition before the Financial Commissioner was after much delay so as to bar its consideration on merits. Perhaps for this reason only, the Financial Commissioner considered the same on merits. Rather we find the plea of the contesting respondent to be that the consolidation proceedings had till then not culminated and the remedy of the appellants was by way of appeal. For all these reasons, the order of the learned Single Judge cannot be sustained and has to be set aside.

12. However rather than remanding the matter to the learned Single Judge for consideration on merits, we have ourselves examined the order of the Financial Commissioner.

13. The key reason which prevailed with the Financial Commissioner in dismissing the Revision Petition was that the entitlement of the appellants

was only to 5 bighas and 15 biswas of land which was purchased by them from M/s Poddar Construction Company Pvt. Ltd. and they had been allotted land admeasuring 5 bighas and 15 biswas. It was further observed by the Financial Commissioner that even if it was the case of the appellants that the land so allotted to them was not the land purchased by them, the appellants had nothing to offer in lieu of the additional 1 bigha and 8 biswas of land which they claimed.

14. Though the reasoning of the Financial Commissioner is impeccable but a perusal of the Revision Petition preferred by the appellants before the Financial Commissioner shows that the case of the appellant was -

- i). that upon Shri Dharam Singh and Shri Raghunath Singh aforesaid on 20th August, 1994 coming to the farm house of the appellants to take possession of land admeasuring 1 bigha 18 biswas aforesaid comprised in the farm house of the appellants, the appellants for the first time came to know of the allotment thereof in the name of Shri Dharam Singh and sale by him of the same to Shri Raghunath Singh;
- ii) that on making inquiries the appellants learnt that the said land admeasuring 1 bigha 18 biswas was initially allotted to one Shri Rai Singh but subsequently withdrawn from him and put in the common pool of the gaon sabha and allotted to Shri Dharam Singh on 23rd April, 1993;

- iii) that the aforesaid 1 bigha 18 biswas of land had been carved out from pre-consolidation khasra nos. 763, 765 and 766 of which M/s Poddar Construction Company Pvt. Ltd. was the bhumidhar;
- iv. that the farm house aforesaid had also been got sanctioned and constructed by M/s Poddar Construction Company Pvt. Ltd.;
- v. that the appellants had purchased the land in Khasra Nos 763, 765 and 766;
- vi. that the appellants had purchased not only the farm house from M/s Poddar Construction Company Pvt. Ltd. but also other lands from recorded Bhumidhar thereof, prior to consolidation.

It was thus the case of the appellants that they owned the land acquired not only from M/s Poddar Construction Company Pvt. Ltd but also other land; in support thereof photocopy of a sale deed dated 16th December, 1983 executed by one Shri Hoshiar Singh in favour of the appellant No.1 with respect to the total of 3 bigha and 6 biswas of land in Khasra Nos. 762, 763 and 764 of the same village was also filed. Another thing which becomes evident from the aforesaid narration is that the cause of action for the Revision Petition was the claim of contesting respondent to 1 bigha 18 biswas of land aforesaid from out of the farmhouse of the appellants. It was not as if the appellants were claiming additional 1 bigha 18 biswas of land (as believed by the Financial Commissioner, since the Financial Commissioner has observed that the appellants were not offering any land in lieu of 1 bigha 18 biswas claimed by them) but were protecting their possession of the said 1

bigha 18 biswas which had been allotted to predecessor in interest of contesting respondent no.4a.

15. In the writ petition filed by the appellants, the appellants also stated that the sale deed of 5 bighas 15 biswas of land was in pursuance to agreement to sell dated 10th August, 1984; that the appellants had also purchased land in the vicinity from other recorded *bhoomidhars*; reference was again made to the sale deed dated 16th December, 1983; that some of the land of Khasras No.766 & 763 had been notified for acquisition for widening of Gurgaon Road; that the 1 bigha 18 biswas of land aforesaid was however part of the 5 bighas and 15 biswas of the land with respect to which the sale deed was executed.

16. However further elucidation of facts is found in the memorandum of this appeal. The appellants have stated:-

- (a). that the land comprised in Khasras No.763/2 (2 bighas 4 biswas), 765/1 (2 bighas 13 biswas) and 766 (4 bighas 16 biswas) were in the recorded ownership of M/s Poddar Construction Company Private Limited;
- (b). the land comprised in Khasras No.762 (1 bigha 4 biswas), 763 (1 bigha 2 biswas), and 764 (1 bigha 0 biswa) was in the recorded ownership of Shri Hoshiar Singh;

- (c). the appellants purchased 3 bighas 6 biswas of land comprised in Khasras No.762(1-4), 763(1-2) and Khasra No.764 (1-0) from Shri Hoshier Singh vide a registered sale deed dated 16.12.1983;
- (d). the appellants had entered into an agreement to sell dated 10.8.1984 with M/s Poddar Construction Company Pvt. Ltd. for the purchase of 9 bighas 13 biswas of land comprised in Khasras No.763/2 (2-4), 765/1 (2-13) and 766 (4-16) and were in pursuance to the agreement to sell put into actual physical possession of the land; they were thus in actual physical possession of land *ad measuring* 3 bighas 6 biswas acquired from Shri Hoshier Singh and 9 bighas 13 biswas acquired from M/s Poddar Construction Company Pvt. Ltd.;
- (e). M/s Poddar Construction Company Pvt. Ltd. had applied and obtained the sanction for the construction of the Farmhouse on the land comprised in Khasras No.763/2 (2-3), 765/1 (2-13) and 766 (4-16). The said sanction was granted by the Municipal Corporation of Delhi vide its sanction letter dated 9.1.1981;
- (f). M/s Poddar Construction Company Pvt. Ltd. after obtaining sanction constructed the Farmhouse on the land comprised in Khasras No.763/2 (2-4), 765/1 (2-12) and 766 (4-16). The

completion certificate was by the MCD vide its letter dated 15.11.1994. The entire land 9 bighas 13 biswas of land comprised in the Khasra numbers above stated was enbound by the boundary wall;

- (g). in pursuance to Notifications dated 10th November, 1986, 5th March, 1987 and 11th November, 1986 issued under Sections 4,6 & 17 of the Land Acquisition Act, 1894, 3 bighas 18 biswas of land in Khasra No.763/2 Min (0-12) and Khasra No.776 Min (3-6) was acquired;
- (h). after land acquisition aforesaid for widening of Gurgaon Road, the appellants were left with 5 bighas 15 biswas of land (instead 9 bighas 13 biswas agreed to be purchased) comprised in Khasras No.763/2 min (1-12), 766 min (1-10) and 765/1 min (2-13). The appellants thus obtained the sale deed dated 10.08.1987 of the 5 bighas 15 biswas of land;
- (i). that Khasras No.33/2 and 33/9 has been carved out of Khasras No.763/2 and 766 min respectively; the entire land comprised in Khasras No.763/2 and 766 has been in the ownership of the appellants; however the Consolidation Officer illegally allotted the same to Shri Dharambir Singh without verifying on the ground that the said land formed integral part of the approved and existing farmhouse and that it could not be

disturbed during consolidation; the Consolidation Officer also failed to consider that the said land was in the ownership of the appellants and that it could not be allotted to any third person.

17. The case as elucidated in the memorandum of appeal has indeed not been considered by the Financial Commissioner, though we find the appellants themselves to blame for the same in as much as the pleadings before the Financial Commissioner and even in the writ petition are not lucid as in the memorandum of appeal. We further do not find the Financial Commissioner to have returned any finding of the appellants being in possession of land in excess of their entitlement. The question thus for determination appears to be, whether the land bearing post consolidation Khasras No.33/2 and 33/9 is carved out of the pre-consolidation land of the appellants and in possession of the appellants. We do not find the Financial Commissioner to have returned any finding in this regard. The matter thus has to be remanded to the Financial Commissioner.

18. We therefore allow this appeal and set aside the judgment dated 10th April, 2012 of the learned Single Judge dismissing the writ petition preferred by appellant. Axiomatically we allow the writ petition by setting aside the order dated 06.02.1995 of the Financial Commissioner and remand the matter to the Financial Commissioner for decision afresh.

Since the pleadings of the appellants have been found to be deficient, we also allow the appellants to file a further affidavit before the Financial Commissioner. Needless to state, the contesting respondent shall be entitled to take all defences available in law. The parties to appear before the Financial Commissioner on 22nd August, 2012. Though the appellants have succeeded but the appellants by their poor conduct of the proceedings having delayed adjudication, are burdened with costs of Rs.30,000/- payable to the contesting respondent before the Financial Commissioner.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 31, 2012

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