

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

+ **W.P.(C) 1965/1992, CM No.8607/2004 (u/O 1 R-10) & CM No.9157/2009 [u/O 1 R 10(2)].**

% **Date of decision: 25th November, 2010**

SHRI BHAGWAN & ORS ... Petitioners
Through: Mr. N.S. Vasisht, Advocate.

versus

THE FINANCIAL COMMISSIONER & ORS Respondents
Through: Mr. R.P. Bansal, Sr. Advocate with Mr. V.P. Rana, Advocate for Applicant in CM No.8607/2004.
Mr. Bishwambhar, Advocate for Applicant in CM No.9157/2009
Ms. Sana Ansari for Ms. Zubeda Begum, Advocate for respondent.

AND

+ **CONT.CAS(C) No.463/2004**

SHRI BHAGWAN & ORS. Petitioners
Through: Mr. N.S. Vasisht, Advocate.

versus

A.K.SAXENA, REVENUE ASSISTANT/ SO(C) Respondents & ORS
Through: Mr. R.P. Bansal, Sr. Advocate with Mr. V.P. Rana, Advocate for R-2&3.
Ms. Sana Ansari for Ms. Zubeda Begum, Advocate for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The 35 writ petitioners by this writ petition impugn the order dated 19th December, 1991 of the Financial Commissioner, Delhi dismissing the Revision Petition of the petitioners against the order dated 21st January, 1991 of the Settlement Officer cancelling the allotment of land in favour of the petitioners in pursuance to the Scheme of Consolidation.
2. The writ petition pertains to the Scheme of Consolidation under the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 and the Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959 relating to the village Alipur, Delhi. The scheme was formulated in the year 1987 and confirmed by the Settlement Officer on 24th July, 1987. Pursuant to repartition under the Settlement Scheme, 154 persons including the petitioners were allotted residential plots measuring 2 ½ biswas (equal to 126 sq yards) each within the extended *abadi* of the village.
3. However, the Settlement Officer vide order dated 21st January, 1991 (*supra*), holding that the allotment in favour of 154 persons aforesaid was under Section 6(i) of the Rules aforesaid and having commenced an inquiry on receipt of various representations from residents of the village, found that 61 out of the 154 persons aforesaid had been allotted the residential plots in violation of Rule 6 (i) (*supra*). Treating the same to be a question

of amendment of the scheme, the Settlement Officer after obtaining the approval dated 19th March, 1990 of the Lieutenant Governor to amend the scheme and after having issued notices individually to the said 61 persons to show cause held the allotment to the said 61 persons to be in violation of Rule 6(i) and accordingly cancelled the said allotment and vested the land which was allotted to the said persons in the *Gaon Sabha* and amended the scheme accordingly.

4. Of the 61 persons allotment in whose favour had been cancelled as aforesaid by the Settlement Officer, 35 preferred Revision Petition under Section 42 of the Act to the Financial Commissioner. The Financial Commissioner vide order dated 19th December, 1991 impugned in this petition held that under Rule 6(i) only agricultural labourers and village artisans could be allotted land for residential purposes free of compensation. The 35 Revision Petitioners before the Financial Commissioner and who have now filed this writ petition admitted before the Financial Commissioner that they were neither agricultural labourers nor village artisans. They however claimed to be landless persons of the village and claimed to be equally entitled to allotment of residential plots as had been initially done during repartition. It was the argument of the petitioners before the Financial Commissioner that under Section 18 of the Act land is to be reserved for common purpose which includes extension of the village *abadi* and contended that allotment to them was made in the

extended *abadi* and thus the allotment in their favour was in furtherance of the common purpose and fully covered under the provisions of the Act and the Rules. The Financial Commissioner dismissed the Revision Petition.

5. Aggrieved therefrom this petition was filed. It is the case of the writ petitioners in this petition that in pursuance to the allotment in favour of each of them, they were put into possession of their respective plots though no date of so being put into possession has been stated. This Court vide order dated 27th May, 1992 while issuing notice of the petition directed *status quo* regarding possession to be maintained. The said interim order was continued from time to time. Rule was issued in this writ petition on 6th December, 1994.

6. CM. No.8607/2004 has been filed by Shri Jai Pal and Shri Prem Chand, both sons of Shri Ram Chander for impleadment in the present petition. It is claimed that Shri Ram Chander, father of the applicants was *bhumidar* of agricultural land admeasuring 27 bigha 18 biswas in village Alipur; that on a false report, an *ex parte* order under Section 81 of the Delhi Land Reforms Act, 1954 was made directing the said land to be converted to agricultural use within three months of 4th April, 1975 failing which it was threatened that the land shall vest in the *Gaon Sabha*; that the revenue authorities however on the basis of the said order and even before three months thereof mutated the land from the name of Shri Ram Chander in the name of the *Gaon Sabha*; that in the execution filed by the *Gaon*

Sabha it was held that the land was wrongly mutated in the name of *Gaon Sabha* and the execution proceedings were dismissed; that proceedings were also initiated by the applicants after the demise of their father for correction of the mutation entries; that in the meanwhile consolidation proceedings were commenced in the village; that ultimately on 4th July, 2003 order was passed in favour of the applicants for correction of revenue records and in pursuance thereto the land of Shri Ram Chander wrongly mutated in favour of *Gaon Sabha* was mutated back in favour of the applicants.

7. The applicants, pleading that the land which the 35 petitioners herein claim to have been allotted to them was the land aforesaid of the applicants and which had been wrongly allotted to the petitioners on the premise of being *Gaon Sabha* land, filed the application for impleadment. It is also the case of the applicants in the application that their father Shri Ram Chander and after him they have always been in possession of the land and even when the land in the revenue records was mutated in the name of the *Gaon Sabha* it was in their possession and remains in their possession and the claim of the petitioners of being put into possession of the land in pursuance to the allotment in their favour is false. No formal order impleading the applicants has been made but the counsel for the applicants has also been heard in opposition to the writ petition.

8. The respondents in their counter affidavit filed through the Consolidation Officer have pleaded that in the fact finding inquiry conducted it was found that 61 persons including the petitioners were not poor but rich and therefore they were not eligible for residential plots since they did not come in the category mentioned in the Rule 6(i) (supra); that whether the petitioners fell in the category under Rule 6(i) is a pure finding of fact and not open to challenge under Article 226; that allotment of residential plots to the weaker sections/landless persons is regulated under Rule 6(i) and it has been found that the petitioners do not fall in the same; delivery of possession of the land to the petitioners is also denied.

9. The counsel for the petitioners at the outset has urged that the Settlement Officer had no power to *suo moto* cancel the allotment. Even though the order of the Settlement Officer shows that the action was not *suo moto* but on receipt of the representations from residents of the village, a perusal of the order of the Financial Commissioner does not show that any such argument was raised before the Financial Commissioner. The counsel for the petitioners was thus asked to show whether any such ground had been taken in the Revision Petition filed before the Financial Commissioner. No such ground could be found. The counsel could only point out to a ground where it is averred that the petitioners were not provided any opportunity of being heard. The grounds taken in the present writ petition were also perused. No such ground has been taken in the

present writ petition also that the Financial Commissioner has failed to deal with the said argument urged before him. No new ground can be permitted to be urged before this Court.

10. The counsel for the petitioners then urges that though the Settlement Officer records that the representations had been received from the villagers but no particulars of the villagers who had made the representations are given. It is contended that inspite of directions in these proceedings, the record of the Settlement Officer has not been produced and from which it could be gathered whether the Settlement Officer had acted on the representation of any villager or *suo moto*.

11. Again, neither was any such ground urged in the Revision Petition before the Financial Commissioner nor in the writ petition before this Court. This argument also therefore cannot be permitted to be urged for the first time at the time of hearing.

12. Section 21(3) of the Act provides for an appeal to the Settlement Officer from the order of the Consolidation Officer. Though the order of the Settlement Officer in the present case does not disclose as to in exercise of which provision the same has been made, the counsel for the applicants in CM .No. 8607/2004 has however in the written synopsis handed over after the close of hearing contended that the Settlement Officer made the order not under Section 21(3) but in exercise of power under section 36 of the Act. Under the said Section, a scheme for consolidation may be varied

or revoked subject to any order of the Chief Commissioner. The order of the Settlement Officer in fact records that the approval of the Lieutenant Governor before making the same had been obtained. However, need is not felt to deal with the said question also, again because neither any such ground is shown to have been taken in the Revision Petition before the Financial Commissioner nor any such argument recorded to have been raised before the Financial Commissioner. In the writ petition before this Court also there is no such ground. No argument also has been urged in this regard.

13. The counsel for the petitioners thereafter drew attention to Sections 14, 15, 16, 19, 20, 24 and 31 of the Act to contend that the scheme could not have been altered. Again this is a new argument taken for the first time today and not found to have been raised before the Financial Commissioner or in the writ petition. Even otherwise, I fail to find as to how the provisions cited call for interference in the order of the Financial Commissioner.

14. The counsel for the petitioners next contends that the records of consolidation have not been produced inspite of directions. Undoubtedly, on 12th October, 2006 the respondents were directed to produce the records including the notices furnished to the petitioners by the Settlement Officer including the allotments made to the petitioners during the repartition proceedings and the subsequent notices issued and the response / objections

received; the copies of the fact finding report and the copies of the representations received by the Settlement Officer from the villagers were also directed to be produced. The said records were not produced inspite of repeated opportunities and on 14th May, 2007 last opportunity subject to payment of costs was granted and it was ordered that if the records were not produced by the next date, the petition would be decided on the basis of existing pleadings. On the next date it was informed that the record necessary for the purpose of adjudication on the subject matter of the writ petition was available but the record of the consolidation proceedings was not available. In fact the counsel for the respondents, during the course of hearing today also, has offered the available records.

15. I do not find any ground for interference to be made out on the basis of the arguments qua records also. I find merit in the plea of the respondents in the counter affidavit that the findings returned by the Financial Commissioner of the petitioners being not qualified for allotment under the category in which allotment was made to them being a finding of fact is not capable of interference in writ jurisdiction. Rather the petitioners before the Financial Commissioner admitted that they did not qualify in the category of agricultural labourers or artisans of the village but claimed to be entitled to allotment for common purpose of extension of the village *abadi*. The said argument of the counsel for the petitioners was negatived by the Financial Commissioner by holding that the allotment for

common purpose means that the land allotted is to be used by the entire village community as a whole for furtherance of a societal purpose without any exclusive right of an individual to its use and that as soon as an individual acquires an exclusive right over its use either by specific allotment or otherwise, it ceases to be for common purpose for the community. It was thus held that allotment to the petitioners could not be said to be for common purpose. The counsel for the petitioners before this Court has not raised any argument whatsoever in this regard.

16. The counsel for the petitioners however generally stated that the petitioners were landless persons of the village and entitled to allotment. However, Rule 6 laying down the principles to which Consolidation Officers shall give regard in preparation of scheme for consolidation does not provide for allotment to such landless persons. Rule 6(i) provides for allotment of 2 ½ biswas (equal to 126 sq yards) of land at a suitable place free of compensation to agricultural labourers and village artisans who are without accommodation or who have insufficient accommodation. It was the admitted case before the Financial Commissioner that none of the petitioners fall in the said category. I therefore fail to see as to how the petitioners on their arguments of being landless persons of the village can claim to be entitled to the allotment or contend the cancellation of allotment to be bad. Though a copy of the alleged scheme handwritten in Hindi has been filed alongwith the petition but the same is unreadable and

no English translation thereof has been filed. The counsel for the petitioners also did not make any argument that under the scheme such landless persons were to be entitled to any land. However, on perusal of the ordersheet I do find that the counsel for the petitioners on 22nd September, 2005 also had argued that similar allotment of 2.5 biswas of land has been made to a large number of persons in different revenue estates in Delhi. Liberty was granted to the petitioners to file an affidavit disclosing the revenue estates where similar allotments had been made but neither I find any affidavit on record nor has the counsel for the petitioners, during the hearing, drawn attention to any such allotment.

17. The counsel for the petitioners in the written submission handed over after the close of hearing has raised arguments that were not raised during hearing. Though the said practice is to be deprecated and contentions not urged during hearing and introduced in the written submission are to be disregarded but the matter having remained pending for long and for complete justice, it is deemed appropriate to deal with the same. The contention is that the allotment in favour of the petitioners was under the 20 Point Programme adopted as a national policy in the year 1974 by the Central Government. It is contended that duty is cast on the Government under Article 39(b) and 46 of the Constitution to do equitable distribution of land and Rule 6(i) is to be implemented in the said light. Reliance in this regard is placed on (1) *Murlidhar Dayandeo Kesekar Vs. Vishwanath*

Pandu Barde 1995 Supp (2) SCC 549; (2) *Papaiah Vs. State of Karnataka* (1996) 10 SCC 533; (3) *Charan Singh Vs. State of Punjab* (1997) 1 SCC 151 and *Hukam Chand Vs. Union of India* 1988 (Supp) SCC 464 again not cited at the time of hearing.

18. No such plea is found to have been raised before the Financial Commissioner also. The said plea is a plea of fact and contradictory to the earlier stand and cannot be permitted. A writ of certiorari is claimed in the present case with respect to the order of the Financial Commissioner and this Court is concerned with the validity of the said order only and the petitioners have not approached this Court as landless persons.

19. The counsel for the petitioners had, during the oral hearing, referred to certain other orders of this Court upholding the allotment in favour of the landless persons as distinct from agricultural labourers and village artisans. Alongwith the written submissions, copies of the order dated 19th November, 2009 in WP(C)10241/2009 titled *Ganga Ram Vs. Govt of NCT of Delhi* and judgment dated 1st February, 1985 in Civil Writ No. 1538/1984 titled *Shri Dharamvir Singh Vs. The Financial Commissioner* have been filed. The order in *Ganga Ram* related to the allotment in favour of 154 persons aforesaid in the same village Alipur. As aforesaid the allotment in favour of 61 persons only was cancelled and in favour of the rest remained. One of the persons, allotment in whose favour remained, contended that he had not been given possession of the land.

The stand of the respondents was that the possession had not been given owing *inter alia* to the order of *status quo* in this writ petition. The Court in ***Ganga Ram*** called for the file of this writ petition and held that the order of *status quo* in the present petition was with respect to the allotment in favour of the 35 writ petitioners only and not with respect to the allotment in favour of Ganga Ram and thus disposed of the writ petition by directing the respondents to hand over the possession to Ganga Ram. In my view the said order cannot come to the rescue of the petitioners. The petitioners have not raised any ground that the remaining persons, allotment in whose favour was not cancelled, were similarly situated as the petitioners. The Court in ***Ganga Ram*** did not go into the questions urged in this case. By mere loose reference to Ganga Ram as a landless person it cannot be said that he was not an agricultural labourer or a village artisan owning no or insufficient accommodation. The judgment in ***Dharamvir Singh*** (supra) related to different village. the scheme of consolidation wherein provided for allotment to landless persons not having any land or house and who was a resident of the village for a period of five years and whose monthly income was below Rs. 500 per month. It is not the case of the petitioners that any such clause existed in the scheme of consolidation of village Alipur in the present case.

20. The counsel for the petitioners has also argued that though the order of the Settlement Officer and of the Financial Commissioner recorded that

the scheme was amended after obtaining the approval of the Lieutenant Governor but no such amended scheme has been shown. It is also urged that the objections to the scheme for repartition could have been filed within the prescribed time and upon no objection being filed the scheme had become final and the Consolidation Officer had become *functus officio* and scheme could not have been amended. Again these are all new questions not raised before any of the authorities below and not raised in this writ petition also and there is no basis therefor.

21. The counsel for the respondents had handed over in the Court the list of trades which can fall in the category of village artisans i.e. carpenter, blacksmith, barber, potter, sweeper and tailor to contend that the petitioners do not fall in any of the categories.

22. The counsel for the applicants has also argued that the case made out by the petitioners in the writ petition in para 4 is not shown to be supported by the scheme.

23. During the hearing it was inquired from the counsel of the petitioners as to what was there to show that the petitioners had been put into possession. The counsel for the petitioners drew attention to page 57 of the paper book being a copy of *Khasra Girdawari* of the village for the year 1989-90 where the name of petitioner no.1 is recorded as a tenure holder. However, need is not felt to go into the question as to whose claim of being

in possession, whether that of the petitioners or that of the applicants is correct.

24. Contempt Case No. 463/2004 was filed contending that the application of the applicants aforesaid, namely, Shri Jai Pal and Shri Prem Chand for correction of mutation should not have been decided owing to the order of *status quo* in the present proceedings and contending that the Revenue Assistant in passing the orders dated 4th July, 2003 aforesaid of correction of revenue entries in favour of the applicants had committed contempt. Though notice of the contempt was issued but the counsel for the relators / petitioners has fairly stated that in the event of this writ petition being dismissed, the contempt case be also dismissed as not pressed.

25. I do not find any merit in the writ petition. No error is found in the order of the Financial Commissioner impugned in this petition. The writ petition as well as contempt case are dismissed.

26. However, before parting with the case I may add that the purport of dealing with the contentions raised in the written synopsis regarding entitlement of the petitioners as landless persons and under the policy of the Government is not to hold the petitioners not entitled to the said relief. If the petitioners prove themselves to be entitled to any relief under the relevant policies of the Government, they would notwithstanding dismissal of this petition be entitled to allotment of lands, independently of the allotment cancellation whereof was subject matter of this petition.

27. While correcting the order it is noticed that the counsel for applicant in CM.No. 9157/2009 has also given appearance. However, no arguments were addressed. The writ petition having been dismissed, need is not felt to deal with the said application.

28. The Rule is discharged. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**November 25, 2010
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