

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

Date of decision: 24th December, 2010

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W.P.(C) 8730/2010

SHRI KRISHAN CHANDER & ORS.

..... Petitioners

Through: Mr. D.V. Khatri, Advocate.

Versus

**CONSOLIDATION OFFICER
(KANJHAWALA) & ORS.**

..... Respondents

Through: None.

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 six petitioners impugn the order dated 19th October, 2010 of the Financial Commissioner, Delhi in a Revision Petition under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 preferred by the respondent no.3 Shree Durga Shiv Sewa Samiti,

Kanjhawala (Regd.).

2. The Revision Petition aforesaid was filed pleading that consolidation proceedings in the Village Kanjhawala commenced vide Notification dated 8th September, 1993; vide Resolution dated 6th July, 1996 the land owners/bhumidars were required to make applications demanding plots and/or for separation of their holdings; that the draft scheme was announced on 14th March, 1996 and was confirmed by the Settlement Officer on 24th April, 1997 and re-partition was carried out from 5th May, 1998 to 29th May, 1998. The grievance in the revision petition was:-

- a. that the petitioners no.4 to 6 herein and the respondent no.5 herein (being the wives of the petitioners no.1 to 3 and respondent no.4 herein) were not owning any land in the village on the date of the Notification or the Resolution and were thus not entitled to demand any plot; however sham and collusive Sale Deeds were executed by their husbands in their favour and got registered at Mumbai on 26th November, 1997 and the Revenue staff in collusion with them sanctioned mutation and thereby created separate units in favour of the

petitioners no.4 to 6 and respondent no.5 and separate residential/industrial plots allotted to them;

- b. that excess land had been allotted to the petitioners no.1 to 3 and respondent no.4, even beyond their demand;
- c. that certain pre-consolidation land had been reserved for common purposes but during consolidation the same was also allotted in favour of the petitioners no.1 to 3 & respondent no.5 to 8.

Though certain other grievances were also made but the persons against whom the same were directed are not petitioners herein and thus are not relevant.

3. The Consolidation Officer and the Gaon Sabha (respondents no.1&2 herein) supported the Revision Petition. None of the petitioners filed any reply to the Revision Petition; they however entered into a compromise with the respondent no.3 (who was the petitioner before the Financial Commissioner) and filed an application under Order 23 Rule 3 of the CPC).

4. The Financial Commissioner rejected the compromise application on 22nd July, 2008 on the ground that the grievances agitated could not be compromised.

5. The Financial Commissioner found that the petitioners, in the compromise application, had agreed to withdrawal of allotment in their favour out of the land reserved for public purposes and had agreed to apply for alternative land in the extended abadi or for equivalent agricultural land. The Financial Commissioner even otherwise was of the opinion that the land reserved for common purposes, water bodies, public park & temple could not have been allotted to the petitioners. The Financial Commissioner accordingly held the allotment of the said land in favour of the petitioners no.1 to 3 and respondents no.5 to 8 herein to be bad and in violation of the Scheme of consolidation and cancelled/set aside the same.

6. The Financial Commissioner also held that the petitioners no.4 to 6 and respondent no.5 were not entitled to allotment of any plotted area. It was held that under the Scheme of consolidation, the rights of the parties are to be determined with reference to the touchstone of the date of Notification and the law grants liberty only to the residents of the village to

W.P.(C) 8730/2010

seek allotment of plotted area. It was held that since the petitioners no.4 to 6 and the respondent no.5 were not holding any land till the expiry of last date for making demand for allotment of plots, the allotment in their favour was bad and set aside and quashed.

7. Similarly, it was held that the petitioners no.1 to 3 and respondents No.4 & 8 herein had been allotted land in excess of their entitlement and directions were issued to the Consolidation Officer to take action for deletion from the holdings of petitioners no.1 to 3 and respondents no.4&8.

8. I have repeatedly enquired from the counsel for the petitioners that on what ground judicial review of the order aforesaid of the Financial Commissioner, whereagainst otherwise the legislature has not provided any appeal, is maintainable. The counsel for the petitioner could only argue that this Court in *Rajinder Singh v. Financial Commissioner* 122 (2005) DLT 151 had held that the date for demanding allotment is not sacrosanct and could have been extended.

9. However what troubles me in the present case is that the person (respondent no.3 herein) who had invited the attention of the Financial Commissioner to the irregularities aforesaid chose not to pursue with the

W.P.(C) 8730/2010

Revision Petition and joined hands with the petitioners. However the attention of the Financial Commissioner having been invited and the Financial Commissioner having rejected the compromise, proceeded to take *suo moto* action which he, under Section 42 of the Act was entitled to take. The interest of the other respondents in this petition save the respondents no.1&2 was also the same as that of the petitioners. The counsel for the petitioners was as such repeatedly asked to treat the hearing as final hearing and to apprise this Court of the illegalities. However no assistance was forthcoming.

10. I have perused the writ petition filed. With respect to the allotment in favour of the petitioners no.4 to 6, besides referring to ***Rajinder Singh*** (supra), all that is pleaded is that the highest Revenue Authority being the Divisional Commissioner had in reply to a question in the Delhi Assembly confirmed that the Sale Deeds registered before 24th September, 2001 at Mumbai would be valid for consideration for mutation. It is thus contended that the said Sale Deeds were duly accepted by the Consolidation Officer for making allotment to the petitioners no.4 to 6.

11. The Financial Commissioner was not concerned with the mutation
W.P.(C) 8730/2010

in favour of the petitioners no.4 to 6. The reasoning given by him for quashing/setting aside the allotment in favour of the petitioners no.4 to 6 was that neither on the date of the Notification of consolidation nor of the Resolution, they had any land in the village entitling them to the allotment. In spite of prodding, no answer as to the defect if any in the said reasoning has been forthcoming. The counsel has not been able to show that under the Act or under the Scheme, a subsequent transferee of the land was entitled to any allotment. No error can thus be found with the said reasoning of the Financial Commissioner.

12. The petitioners also plead that allotments have been made to others also holding similar Sale Deeds. The Supreme Court in *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59 has held that negative equality cannot form the basis of any relief. Merely because the illegality has been perpetuated qua others also would not entitle the petitioners to any relief.

13. I also do not find any error in the order in so far as quashing the allotments in favour of the petitioners no.1 to 3 out of the land meant for common purposes.

14. As far as the order of the Financial Commissioner qua excess land
W.P.(C) 8730/2010

allotted to the petitioners no.1 to 3 is concerned, the Financial Commissioner has already directed action for deletion of excess land after hearing the said petitioners.

15. The petitioners have also pleaded that the consolidation proceedings have not been concluded as yet and the excess land should have been adjusted. No interference in the said part of the order is called for.

No merit is found in the petition. The same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

December 24, 2010

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(Corrected and released on 19th February, 2011)