

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA No. 265/2011**
Kashmiri Lal Appellant
Through Mr. Mukesh Gupta, Advocate.

VERSUS

Govt. of NCT of Delhi & Others Respondents
Through Ms. Reeta Kaul with Mr. S. Khatri, Advs. for
Respondents 1-5.
Mr. Sanjay Poddar for respondents 6 – 12.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
% **22.03.2011**

CM No. 5827/2011 (for exemption)

Allowed, subject to all just exceptions.

LPA No. 265/2011 & CM Nos. 5825/2011 (delay), 5826/2011 (stay)

Ms. Dharam Devi had preferred LPA No. 142/2011
which has been dismissed by a detailed order passed by us on 10th
February, 2011. For the sake of convenience, the said order is
reproduced below:-

"LPA No. 142/2011 & CM No. 2600/2011 (stay)

In this Letter Patent Appeal, the challenge is to the
order dated 9th November, 2010 dismissing the W.P.(C)
No. 11117/2009 filed by the appellant.

2. The learned counsel for the appellant has drawn our attention to the history of the litigation between the parties and also drawn our attention to the paragraph 11 of the impugned order dated 9th November, 2010 in which the learned Single Judge has referred to 1996 amendment to the Rule 6(j)(i) of the Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959 (Rules for short). It is pointed out that in the present case, the said amendment was not applicable as the consolidation proceedings relate to the year 1974-75.

3. In spite of the aforesaid error pointed out by the learned counsel for the appellant in paragraph 11 of the impugned order dated 9th November, 2010, we are not inclined to issue notice in the present appeal. Consolidation proceedings in village Burari started in the year 1970 and repartition under Section 21(1) of the East Punjab Holdings (consolidation and Prevention of Fragmentation) Act, 1948 (Act, for short) as extended to Delhi was carried out in July-August, 1974. The repartition proceedings thereafter were confirmed on 17th June, 1975 and objections were invited and resolution No. 26 dated 18th June, 1975 was passed. Consolidation proceedings came to an end in June, 1982.

4. The appellant herein was not owner of any land at the time of repartition. They claim that they have purchased land admeasuring 3 bighas and 1 biswa in Khasra No. 122/5 vide registered sale deed dated 14th March, 1982 from one Daljit Bhalla and Ors. The case of the appellant is that in the consolidation proceedings land in Khasra No. 122/5 was allotted to one Gordhan who had sold the same to Faqira and Sisram. The appellant claims her right and interest in the land purchased, to the purported initial allotment to Gordhan in Khasra No. 122/5. It is stated that the said allotment

to Gordhan in the consolidation proceedings is supported by a number of documents. Our attention is drawn to the factual background of facts as stated in paragraphs 2 to 18 of the grounds of appeal. We are not referring to the aforesaid facts to avoid prolixity and in view of the earlier judgment dated 3rd September, 2004 disposing of the writ petition NO. 3650/2002, which was filed by the appellant. By this judgment, the matter was remanded to the Financial Commissioner with the direction to call for the entire record and re-decide the factual dispute taking into consideration the contentions of the appellant as noted in paragraph 23 and 24 of the said judgment and further trace the root relating to the very first allotment of Khasra No. 122/5 in the consolidation proceedings. This was directed as there were conflicting factual claims as to the allotment of Khasra No. 122/5; whether allotment was in favour of Gordhan/his successor or in favour of the predecessors of the contesting private respondents.

5. Pursuant to the aforesaid remand order, the Financial Commissioner called for the entire original records of the settlement/consolidation. Findings recorded by him after examining the records in the order dated 26th December, 2008 read as under:-

“6. The record shows that Khasra No. 122/5 was carved out of 1055 min. (0-12), 1055(2-8) and 1033(2-17), which were the pre-consolidation nos. and the land was standing in the name of Smt. Tara Wanti and Sh. Ho Ram etc. Register Karwahi Jild NO. 2 shows that through resolution no. 61 dated 4th August, 1976 land in Khasra no. 122/5 (3-1) was withdrawn from the Gaon Sabha (relevant entry at serial no. 41) and the same was allotted to the respondents, from whose Khata

No. 783(3-5) was withdrawn (withdrawn at serial no. 26). Hence, these two entries of withdrawal and allotment of Khasra No. 122/5(3-1) cross checked. This record also shows (serial NO. 15) that land was withdrawn from the account of Sh. Gopal Das from Khasra No. 745(3-0). The record thus confirmed that Khasra No. 122/5 was carved out of pre-consolidation of Khasra No. 1055(0-12) and (2-8) and Khasra No. 1093 (2-17) i.e. a total area of 5 bighas 17 biswas which was the pre-consolidation holding of Smt. Tara Wanti and Sh. Ho Ram. Consolidation proceedings were initiated on 8th April, 1974 after the scheme was confirmed through resolution no. 14. During consolidation proceedings, new Khasra nos. were given and the holdings of each Khata was also evaluated. Khasra No. 122/5 (3-1) was carved out of these pre-consolidation proceedings, new Khasra nos. and the Register Karwahi only shows that it was included in the Khata of the Gaon Sabha. Since this land was withdrawn from the Khata of the Gaon Sabha through resolution No. 61, the fact that it stood in the Khata of the Gaon Sabha stands established. The repartition proceedings were confirmed on 17th June, 1975 and objections were invited and resolution no. 26 dated 18th June, 1975 is a verification of this fact.

[The entry at serial no. 283 and the Register Karwahi Jild No. 2 shows allotment of Khasra No. 783 vide resolution no. 22 to the respondents which was subsequently withdrawn, land in Khasra No. 122/5 min. was allotted through resolution no. 61]

7. The entries at serial no. 350 shows the Khata of Sh. Gordhan and his LRs (predecessor in interest of the petitioner) and it shows allotment of land in different Khasra nos. including land in Khasra No. 59/20 (3-0), 21(3-0) and 22 min (0-8) vide resolution no. 20. These were withdrawn subsequently by resolution no. 32 dated 6th August 1975 and record shows that it was entered in the name of Sh. Faqira and Sh. Sisram.”

6. The aforesaid findings clearly show that the Khasra No. 122/5 was carved out of the land which in the pre-consolidation proceedings was standing in the name of Tara Wanti and Ho Ram and not Gordhan. Gordhan was allotted land in different khasra numbers and not in Khasra No. 122/5. Subsequently vide resolution No. 32 dated 6th August, 1975, name of Faqira and Sisram was substituted in place of Gordhan but in respect of khasra numbers other than Khasra No. 122/5. The appellant herein claim their right, title and interest from Faqira. On examination of the original record the Financial Commissioner has recorded that Faqira or Gordhan was not allotted land in Khasra No. 122/5. The learned Financial Commissioner had noticed that there were interpolation and fabrication of records/documents and on this basis the appellant had staked their claim in Khasra No. 122/5 which was never allotted to Gordhan/his legal representatives and then to Faqira. This aspect has been examined in paragraph 11 which takes notice of the paragraphs 23 and 24 of the judgment dated 3rd September, 2004. Paragraphs 8, 9 and 11 of the order passed by the Financial Commissioner read as under:-

“8. All these entries appeared to be original as they are in black ink and referred to the allotment

before proceedings under section 21(2). There is also a report prepared by the revenue authorities before the entry of Khasra no. 59/20, 21, 22 in favour of Sh. Faqira vide resolution No. 32 which shows that Khasra No. 2670/1720 (old Khasra nos. of 59/20, 21, 22) was sold by Sh. Gordhan to Sh. Faqira and Sh. Sisram and the mutation no. is 1080 dated 18th December, 1974. The record of the Register Karwahi (Jild No. 2) therefore confirms the allotment of land in Khasra No. 59/20, 21, 22 min in favour of Sh. Gordhan through resolution no. 20 dated 23rd April, 1975 and also confirmed the subsequent withdrawal of the same very Khasra no. vide resolution no. 32 dated 6th August, 1975. It is important that there is no entry of any allotment entered in the Khata of Gordhan in respect of Khasra No. 122/5 and the said Khasra no. has been entered only after cutting other numbers. I have noticed that word "min" was not mentioned at this point of time. The Khatouni Pamaish of 1980-81 in respect of Khata no. 283 of respondents shows the entry of Khasra no. 122/5/2 (0-18), and it appears that it was tampered/written after deleting the original entry of 122/5/1 with an area of (3-01). Khasra No. 122/5 min allotted to the respondents vide resolution no. 61 dated 4th August 1976 shows an area of (3-1) and not an area of (0-18). This fact is confirmed when we look at the entries in the Khata of the Gaon Sabha (Jujbi no. 707).

9. The Field Book is a record of the measurement of the field with pre-consolidation nos. as well as new nos. Entries in the Field Book for the year 1980-81; part 4 show that Khasra No. 122/5 was carved out of pre-consolidation Khasra

No. 1055 and 1093. Khasra No. 122/5 was therefore divided into 122/5/1 and 122/5/2, where the word “min’ has also been used. In these entries, there is once again a cutting indicating that area of (0-2) was deducted from Khasra No. 122/5/1 and area of (0-4) was deducted from Khasra No. 122/5/2. This was included in Khasra No. 122/26(0-2) and in Khasra No. 122/27 (0-4) respectively, which again creates doubt as there is no order confirming the said cutting.

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11. I have seen the records thoroughly and after taking into consideration the arguments of the parties, I found that land of the whole village, i.e. the land of land-owners and that of the Gram Sabha was amalgamated into a Pool for redistribution, so during reparation new Khasra Nos. were given to land and holding of each Khatedar was completed on the basis of valuation of land under section 21(1), and the proceedings were confirmed on 17.6.1975.

After confirmation of the proceedings of allotment of land as per the entitlement to each Khatedar on 17.6.1975, the land which was left unallotted, including Khasra no. 122/5, the land in question became the land of the Gaon Sabha, therefore, vide Resolution No. 26 dated 18.6.1975 (objection stage) the proceedings for disposal of objections was taken up and accordingly while disposing of the objection sof the villagers including the Pradhan of the village vide resolution No. 61 order in file No. 170/CO/75 land

bearing Khasra No. 122/5 (3-01) was allotted to the respondents after withdrawing land bearing Khasra No. 783(3-05).

From the record it is revealed that the predecessors of the petitioner had sold the old Khasra Nos. from which Khasra No. 59/20, 59/21 and 59/22 were formed, to one Shri Faqira, therefore, vide resolution No. 32 their Khasra Nos. were withdrawn and the land was transferred in the name of Shri Faqira, as such this fact further negates the stand of the petitioner taken in the written arguments of his predecessor being allotted land bearing Khasra No. 122/5 (2-19) after withdrawing land bearing Khasra No. 59/20, 59/21 and 59/22.

Further Register Karvai Jild No. 2 shows that vide Resolution No. 61 dated 04.8.1976 this land was withdrawn vide entry at S. No. 41 and was allotted to the respondent after withdrawn land bearing Khasra No. 783(3-5) from them vide entry at S. No. 26, thus, these two entries of withdrawal and allotment of Khasra No. 122/5 (3-01) are cross-checked. From the records it is clear that Khasra No. 122/5/1 (3-1) was never allotted to Gordhan and it was allotted to respondents. There is no record of double allotment of this Khasra No. The record produced and relied upon by the petitioner/appellant is tampered with which can be detected/seen with naked eyes.

Further from the inspection of Khatoni Paimaish of the respondent, it is further apparent that Khasra No. 122/5/1 (3-1) has been tampered to read as 122/5/2 (0-18). The other piece of land

allotted to the respondents bearing Khasra No. 123/1/1 (0-12) has also been tampered to read as 123/1/2 (0-12) without there being any note or order.”

7. In view of the aforesaid, we do not find any reason to disturb the aforesaid factual findings. Learned counsel for the appellant has not been able to show that the aforesaid findings merit and justify interference on the ground they are not based upon any material or evidence or ignore material or are perverse. The Financial Commissioner has thoroughly examined the matter after considering and scrutinizing the original records. If the appellants do not have any claim on Khasra NO. 122/5, their contention and challenge to allotment to the private respondents has to fail. It may also be noted that the private respondents have been allotted 4.4 bigha agricultural land in lieu of 2.2 bigha residential land which was within the Lal Dora land. In spite of repeatedly being asked, learned counsel for the appellant could not state that this was contrary to the scheme.

8. Accordingly, we do not find any merit in the present appeal, the same is dismissed in limine, without any order as to costs.”

2. The position of the present appellant, Kashmiri Lal is even weaker. The present appellant had accepted the order of the Financial Commissioner dated 23rd April, 2002 dismissing his petition. By the same order dated 23rd April, 2002, the petition of Ms. Dharam Devi was

also dismissed but she filed the Writ Petition No. 3650/2002 and had challenged the said order passed in petition No. 201/89-C.A. This writ petition was allowed and the matter was remanded to the Financial Commissioner for fresh adjudication after considering and noticing certain contentions raised by Ms. Dharam Devi. The operative portion of the said judgment dated 3rd September, 2004 in WP(C) No. 3650/2002 reads as under:-

“36. The impugned order dated 23.4.2002 passed by the Financial Commissioner in case No. 201/89-CA (old) 277/99-CA (new) is set aside. Matter is remanded with a direction to the Financial Commissioner to call for the entire record of settlement and redecide the matter taking into consideration the contentions of the petitioner noted in paras 23 and 24 above and further by tracing the root from the very first allotment of khasra No. 122/5. Fresh decision be taken as expeditiously as possible, preferably within 6 months from the date of receipt of this judgment.”

3. The case number referred to in the judgment dated 3rd September, 2004 was the petition filed by Ms. Dharam Devi and not the petition which was filed by the appellant herein, which was given a separate number i.e. 219/89-C.A. The judgment dated 3rd September,

2004 passed in W.P.(C) No. 3650/2002 did not have the effect of setting aside the order dated 23rd April, 2002 of the Financial Commissioner in the petition filed by the appellant herein bearing case No. 219/89-C.A. Learned counsel for the appellant has not been able to show, how and in what manner the order dated 3rd September, 2004, has the effect of reviving the petition filed by the appellant herein, i.e. petition No. 219/89-C.A. which was decided on 23rd April, 2002 by the Financial Commissioner. The appellant had accepted the order dated 23rd April, 2002. The appeal is accordingly dismissed without any order as to costs.

SANJIV KHANNA, J.

CHIEF JUSTICE

March 22, 2011
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