

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

% *Judgment Reserved on: 15th November, 2011*
Judgment Pronounced on: 30th November, 2011

+ **W.P.(C) No.7025/2001**

SHRI PUNEET ANAND Petitioner
Through: Mr. N.S. Dalal & Mr. Devesh Pratp Singh,
Advocates

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr.Arun K. Sharma, Advocate for Mr. V.K.
Tondon, Advocate for R-1 to R-6.
Mr. Sanjay Podar, Senior Advocate, with
Mr.D.S.Patial, Mr.Navlin Swain and
Mr.Mohitrao Jadhav, Advocates for R-8 to R-14

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

1. *Whether the Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to Reporter or not?*
3. *Whether the judgment should be reported in the Digest?*

SUNIL GAUR, J.

1. Though the prolix pleadings have made the record of the instant petition voluminous but the short question which falls for consideration is whether petitioner can lay a challenge to Resolution No.148 (recorded on 25th August, 1981, during the consolidation proceedings) in writ proceedings after completion of consolidation proceedings in Village-Burari, Delhi in the year 1982, without invoking the revisional jurisdiction of the Financial Commissioner under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948. If answered in the negative, then whether concurrent findings of

the Revenue Authorities upholding correction of the revenue record at the instance of respondents No. 8 to 14 herein, in the year, 1993, to bring it in line with aforesaid Resolution No. 148, suffers from manifest error apparent on the face of record.

2. The bone of contention between the contesting parties is *Khasra* No. 123, situated in the Revenue Estate of Village- Burari, Delhi. The factual position, as noted in the impugned order of 16th October, 2001, is as under:-

- ‘(i) That the Khasra No.123/1 (4-14) which belonged to Smt. Joginder Kaur was vertically divided into two parts. Out of this, 12 biswas was allotted to Sh. Shanti Swarup Batra vide resolution No.148. The remaining 4 bighas 2 biswas was withdrawn from Smt. Joginder Kaur and was allotted to Sh. Brahm Dutt, the predecessor of the appellant vide resolution No. 154 dated 30.11.81.*
- (ii) The appellant moved a petition under section 26 of the Act before the then Addl. Collector for correction of the mistake or error in the Annual Register with regard to Khasra No. 123/1/1 in the revenue estate of village, Burari, Delhi.*
- (iii) The then Additional Collector after hearing the parties directed Sh. G.S.Thanewal, L.A.C. who was also vested with the powers of Settlement Officer to conduct a detailed enquiry u/s 26 of the Act and to submit a report to the Deputy Commissioner.*
- (iv) The L.A.C/S.O. submitted his enquiry report on 22.02.95 with the findings that the land bearing Khasra No.123/1/1 min. West (0-12) stood allotted to Sh. Shanti Swarup Batra (now deceased) and the remaining portion 123/1/2 (4-02) lies on the eastern side, subsequently, purchased by the appellant.’*

3. Appellant before the Financial Commissioner, is the petitioner herein, whose application under Section 26 of the Delhi Land Revenue Act was dismissed by the Additional Collector by relying upon a detailed enquiry report and the order of 20th July, 2001 of the Additional Collector has been affirmed by the Financial Commissioner vide impugned order.

4. With much vehemence, it was sought to be highlighted by Mr.N.S.Dalal, learned counsel for the petitioner, that Section 24 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Consolidation Act') provides that if any person has been given possession as per consolidation scheme, the said scheme attains finality and as per Section 36 of Consolidation Act, if the consolidation scheme has been implemented, then the same cannot be reopened.

5. It is pointed out by petitioner's counsel that in the instant case, the consolidation scheme had been implemented in June, 1982 and as per Section 42 of the Consolidation Act, it is the Financial Commissioner alone who can reopen the consolidation scheme to correct the palpable error apparent on the face of record. Thus, it is submitted by petitioner's counsel that the concerned *Naib Tehsildar* (H.Q.) had blatantly and illegally allowed application for correction of mutation of respondents No. 8 to 10 on 24th March, 1993, and that too, without notice to the effected party i.e. the petitioner who had purchased land measuring 4 *bighas* and 2 *biswas* in *Khasra* No. 123/1/1 on 24th March, 1982 and after getting it demarcated in the year 1984, had constructed a school thereon. However, in February, 1994, the petitioner claims to have learnt about the fraudulent change in the annual register showing respondents No. 8 to 14 be the owners of *Khasra* No. 123/1/1 and petitioner being the owner of *Khasra* No.123/1/2. Thereafter, petitioner had filed an application under Section 26 of Delhi Land Revenue Act, 1954, which was dismissed by the Additional Collector on 20th July, 2001, while holding as under:-

'By perusing the records in question, and after going, in detail, into the procedure followed during the consolidation process and the sub-division of Khasra Numbers, I am of the decided opinion that there is at present no error in the Annual Register with regard the Khasra No.123/1/1. Kh. No.123/1/1 (0-12) Biswas had been allotted to Sh. Shanti

Swarup Batra during the consolidation proceedings and Khasra No.123/1/2 (4-2) had been allotted to predecessor of the petitioner. It appears that certain interpolations had occurred in the Revenue Record in the intervening period, which was corrected by the Naib Tehsildar (HQ) in the year 1993. There may have been procedural errors in the process of correction effected by the Naib Tehsildar but the remedy for that was for the petitioner to come in appeal against the decision of the Naib Tehsildar. The petitioner has no case under section 26 of the Delhi Land Revenue Act, 1954 because there does not appear to be any mistake in the annual register with regard to Khasra No.123/1/1 situated in the revenue estate of village Burari.'

6. The aforesaid order of the Additional Collector concedes the legal position that principles of natural justice had demanded that the concerned *Naib Tehsildar* (H.Q.) who had conducted an enquiry under Rule 104 of Delhi Land Revenue Rules, 1954, ought to have heard the opposite side but while taking note of the fact that no error had crept into the annual register by such correction carried out in the year 1993, dismissed petitioner's application. The Financial Commissioner in the impugned order concurs with the Additional Collector regarding certain interpolation having occurred in the revenue record which was corrected by the *Naib Tehsildar* (H.Q.) in the year 1993.

7. Upon hearing learned counsel for the parties at length in this matter, I find that the order of the Additional Collector of 20th July, 2001 is based upon the enquiry report of Sh. G. S. Thanewal, LAC (North) Delhi (Annexure- AA), which reveals that both the sides were heard on the merits of their rival stand and thereafter it was found that though there were apparent interpolations indicating change of revenue entries in favour of the petitioner herein, but the same stood corrected by the *Naib Tehsildar* (HQ), on 29th March, 1993 by bringing it in line with the aforesaid Resolution No.148 of 25th August, 1981. On the basis of the

aforesaid Report (Annexure- AA), petitioner's application was dismissed by the Additional Collector and the said order has been upheld by the Financial Commissioner.

8. It must be remembered that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised. It has been so reiterated by the Apex Court in its recent decision in '*Anoop Sharma Vs. Public Health Division, Haryana*' (2010) 5 SCC 497.

9. Undoubtedly, *Naib Tehsildar (HQ)* had violated the principles of natural justice in not putting the opposite side to notice before correcting the revenue record to bring it in line with the aforesaid Resolution No. 148 which conferred the substantive right upon the parties but it is not shown by the petitioner as to what prejudice the petitioner had suffered on account of the infringement of the principles of natural justice, as the revenue record has to be in conformity with the aforesaid Resolution which confer substantive right on the parties.

10. In this context, Mr. Sanjay Podar, learned Senior counsel for contesting respondents rightly contended that affording of hearing to the petitioner by the *Naib Tehsildar (HQ)* would have been an empty formality, as the petitioner had apparently suffered no prejudice upon being not heard by the *Naib Tehsildar* concerned. In any case, the petitioner was heard by Sh. G. S.Thanewal, LAC (North) Delhi, who had conducted a factual enquiry and had found no fault with the order of the

Naib Tehsildar (HQ) and the positive factual finding returned was that there was interpolation in the revenue record, which was corrected by the *Naib Tehsildar (H.Q.)* in the year 1993, to bring it in line with the substantive right, as reflected in aforesaid Resolution No. 148. It has been declared by the Apex Court in “*Canara Bank Vs. V.K. Awasthy*’ (2005) 6 SCC 321 that in a given case post decision hearing can obliterate the procedural deficiency of a pre-decisional hearing. In the instant case, the procedural defect of not affording hearing to the petitioner by the *Naib Tehsildar (HQ)* stand remedied by the Additional Collector who got a fact finding enquiry conducted through Sh. G. S. Thanewal, LAC (North) Delhi, before whom petitioner had availed of a full-fledged hearing. Thus it becomes abundantly clear that petitioner suffers no prejudice on this account.

11. In the light of the aforesaid narration, this Court is of the considered view that the impugned order of 16th October, 2001 does not suffer from any patent error on the face of record. So far as the claim made by the petitioner for the first time in the writ petition to declare Resolution No. 148 of 25th August, 1981 as null and void on the strength of decision in ‘*Ram Swaroop vs. Ram Nath & Ors.*’ 38 (1989) DLT 473 (DB) is concerned, I find that for this relief the petitioner ought to have invoked Section 42 of the Consolidation Act. Having not done so, petitioner is precluded from seeking the relief of declaration of aforesaid Resolution No. 148 of 25th August, 1981 being null and void in this writ petition.

12. Consequently, the twin question raised in this petition are answered in the negative i.e. against the petitioner, resulting in dismissal of this petition, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

November 30, 2011/rs