

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 11th May, 2011

+

W.P.(C) 2596/2011

SANJAY

..... Petitioner

Through: Mr. V.S. Rana, Advocate.

versus

FINANCIAL COMMISSIONER, DELHI & ORS. Respondents

Through: Mr. Sandeep Khatri for Ms. Reeta
Kaul, Advocate for R-1 to 3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The writ petition pertains to consolidation proceedings in village Rawta, New Delhi. It is not in dispute that the consolidation proceedings had commenced in the year 1993 and concluded in the year 2003-2004.

2. The petitioner claims that he owned land jointly with the respondent no.4 to 7 in the said village and further claims that as per the scheme of consolidation he along with the respondent no.4 to 7 was, on re-partition, entitled to land equivalent to having standard value of 2 bighas 6 biswas. It is however claimed that in the land allotted to the petitioner and the respondents no.4 to 7 there was a deficiency to the extent of 12 biswas.

3. The petitioner did not file any objections to re-partition. The petitioner for the first time on 1st March, 2008 applied for making good the alleged deficiency. The respondent no.2 Consolidation Officer vide order dated 3rd March, 2008 rejected the said application of the petitioner holding that with the conclusion of the consolidation proceedings and consigning of the records thereof to the record room, he had become *functus officio*; the petitioner was advised to approach the competent court/forum for redressal of his grievances if any.

4. Thereafter the petitioner preferred a Revision Petition under Section 42 of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 to the Financial Commissioner for the relief of making up of the deficiency aforesaid.

5. The Financial Commissioner has vide order dated 9th November, 2010 impugned in this petition dismissed the said Revision Petition holding that under Section 21(2) of the Act any person aggrieved by re-partition is required to make objections within 15 days of such re-partition and on failure to make any such objection is presumed to be satisfied with the allotment made on re-partition. It was further noticed that there was no allegation of the rules and the procedure for consolidation having not been followed or extensive publicity and publication of the proceedings having not been done. It was held that the petitioner owing to his own laxity and for sleeping over his rights if any for years, could not at the belated stage raise the objection and which has the potential of disturbing the whole scheme of allotment which had come to be settled with the passage of time. It was yet further held that the petitioner could not be permitted to get over the limitation provided under Section 21(2) by resorting to Section 42 of the Act.

6. The counsel for the petitioner has contended that it was the duty and obligation of the Consolidation Officer to allot land to the petitioner and the respondents no.4 to 7 as per their entitlement under the scheme and since the Consolidation Officer has failed in his duty, the petitioner and the

respondents no.4 to 7 ought not to suffer therefor. It is also contended that it is the settled position in law that there is no limitation for applying under Section 42 of the Act. Reliance in this regard is placed on ***Gram Panchayat Shitabgarh v. The Director, Consolidation of Holdings, Punjab*** 1992(2) All India Land Laws Reporter 220 and on ***Chhota Singh v. Addl. Director, Consolidation of Holdings, Punjab*** 1991(2) All India Land Laws Reporter 567.

7. It is not disputed that the petitioner could have resorted to Section 21(2) of the Act for the deficiency claimed by him. At this stage, the counsel for the petitioner contends that the objection as to deficiency cannot be taken under Section 21(2) and the objection permitted to be taken under Section 21(2) is only with respect to the location of land.

8. I am unable to agree with the contention of the counsel for the petitioner. The language of Section 21(2) is very wide. The words used are “any person aggrieved by the re-partition”; re-partition would also include the entitlement in accordance with the scheme and any deficiency therein. Not only Section 21(2) provides for a period of 15 days for raising the objection but Section 21(3) also provides for limitation of one month for an appeal to the Settlement Officer (Consolidation) against an order under

Section 21(2) on such objections. Similarly, Section 21(4) provides for a further remedy of second appeal to the Chief Commissioner against the order of the Settlement Officer (Consolidation).

9. Reference in this regard may also be made to Section 24 of the Act which provides that as soon as the persons entitled to possession of holdings, have entered into the possession of holdings respectively allotted to them, the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of re-partition shall remain undisturbed until a fresh scheme is brought into force or a change is ordered *inter alia* under Section 42.

10. The only question which thus arises is whether even after the person aggrieved has failed to initiate the machinery provided under Section 21(2) to (4) and within the period prescribed therein, the Financial Commissioner in exercise of powers under Section 42 is bound to look into the deficiency.

11. In my opinion the same cannot be the purport of law. If it were to be so held, the same would negate the limitation provided in Section 21 (2) to (4) of the Act. The power of the Financial Commissioner under Section 42 is a discretionary power and which the Financial Commissioner is not bound

to exercise. The same is the purport of the two judgments of the Single Judges of the Punjab & Haryana Court (supra) cited by the counsel for the petitioner. A perusal of the factual controversy therein also shows that the High Court refused to interfere with the discretion under Section 42, exercised by the Chief Commissioner (being the equivalent of Financial Commissioner in Punjab) in those cases. While in ***Gram Panchayat Shitabgarh***, the powers under Section 42 were exercised only to change the mutation which the Consolidation Officer had failed to do, in ***Chhota Singh*** the issue was only as to *inter se* allocation amongst the shareholders without affecting anybody else. It was in these circumstances that the High Court in exercise of jurisdiction under Article 226 refused to interfere with the discretion exercised by the Financial Commissioner. Though the counsel for the petitioner has at this stage sought to urge that in the present case also none else would be affected and the deficiency can be made up out of the vacant land available but the facts cannot be said to be akin to that in ***Chhota Singh*** case.

12. The counsel for the petitioner has also referred to the order dated 10th July, 2008 of the Financial Commissioner in Case No.69/2007-CA stated to be relating to the same village. The Financial Commissioner by the said

order directed the Consolidation Officer to decide on merits the claim of deficiency in the said case. However without knowing the facts of that case, the said order of the Financial Commissioner cannot be said to be a precedent for the Financial Commissioner to follow in deciding the case of the petitioner.

13. The power of the Financial Commissioner under Section 42 of the Act undoubtedly is wide and uninhibited from any limitation. Reference in this regard may be made to the Division Bench judgment of the Punjab High Court in ***Bhagat Singh v. Additional Director, Consolidation of Holdings Punjab*** 1966 PLR 496 expressly laying down that the Section nowhere says that interference cannot be made where remedies provided by Section 21 have not been availed of by the person making an application under Section 42. Similarly, the Full Bench of the Punjab High Court also, in ***Nar Singh Mansoor Singh v State*** AIR 1967 Punjab 111 (FB) has constructed the words “at any time” as of very wide import. However, the fact still remains that while remedy under Section 21 is a matter of right, relief under Section 42 cannot be claimed as a matter of right and the person who fails to exercise his rights under Section 21 runs the risk of being denied the remedy if it has become stale or if likely to affect others or if not in the interest of

consolidation proceedings. The power under Section 42 has to be exercised keeping in view not only the rights of the applicants but taking a holistic view of the matter. The Financial Commissioner in the present case has given cogent reasons for not entertaining the petition under Section 42 of the Act. There is absolutely no explanation whatsoever for the long delay after which the deficiency was claimed. Certainly, in the interregnum the matters attained finality and cannot be got reopened as a matter of right. If the same were to be permitted, there would never be any finality pursuant to consolidation proceedings and people would desist from dealing with land / properties subject matter of consolidation proceedings. The discretion to act under Section 42 specially after long delay is generally to be exercised to correct errors in the consolidation proceedings in general and not for enforcement of individual rights. The Apex Court in ***Gram Panchayat, Kakran v. Additional Director of Consolidation*** (1997) 8 SCC 484 held that the expression “at any time” in Section 42 cannot be understood as enabling a party who is aggrieved by the scheme or by repartition to make an application under Section 42 after an unreasonably long lapse of time and that even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. The reasonable time was held to be dependent on the facts of each

case and the explanation for delay. No error requiring interference under Article 226 is found in the order of the Financial Commissioner.

14. Significantly, the deficiency is claimed to be out of the joint share of the petitioner and the respondents no.4 to 7. The respondents no.4 to 7 have not chosen to agitate the matter, neither before the Consolidation Officer nor before the Financial Commissioner nor before this Court.

15. No case for interference with the order of the Financial Commissioner is made out. The petition is dismissed. No order as to costs.

CM No.5547/2011 (for exemption).

Allowed, subject to just exceptions.

RAJIV SAHAI ENDLAW,J

MAY 11, 2011

Pp

(corrected and released on 16th May, 2011)