

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

Date of decision: 18th May, 2011

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W.P.(C) 2957/2011

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SH. SUNIL DUTT

..... Petitioner

Through: Mr. V.P. Rana, Adv.

Versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Ms. Sangeeta Sondhi & Ms. Nitika
Agarwal, Advocates 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? | 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 impugns the order dated 17th February, 2011 of the Financial Commissioner.
2. The matter pertains to consolidation in Village-Bakoli, Delhi. The Draft Scheme of consolidation was published on 8th August, 1996. The

petitioner claims that his father, and whose successor the petitioner claims to be, filed objections under Section 19 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 to the Draft Scheme of consolidation i.e. for inclusion of his land in the extended Lal Dora of the village as per the Draft Scheme. The counsel for the petitioner has contended that though under Section 19 of the Act, the Consolidation Officer was required to put up the objections so preferred by the father of the petitioner along with his own comments before the Settlement Officer, for the Settlement Officer to take a decision thereon under Section 20 of the Act, but the objections preferred by the father of the petitioner were never put up by the Consolidation Officer before the Settlement officer and thus remained to be considered and the Scheme was finalized/confirmed on 15th April, 1997.

3. The petitioner claims that his father and after his father he himself continued to file reminders that their objections had not been considered but to no avail. The petitioner in or about the year 2009 i.e. after 12 years of the confirmation of the Scheme filed W.P.(C) No.10879/2009 in this regard. On contention of the petitioner that the objections preferred by his

father were still pending consideration, the said writ petition was disposed of on the very first day when it came up before this Court on 13th August, 2009 with a direction to the Consolidation Officer to dispose of the objections of the petitioner within eight weeks thereof and with liberty to the petitioner to seek appropriate remedies against the said order of the Consolidation Officer.

4. In pursuance thereto the Consolidation Officer vide order dated 18th November, 2009 held that he had no jurisdiction at that stage to entertain the objections, after the Scheme had been finalized.

5. Aggrieved therefrom the petitioner preferred Revision Petition under Section 42 of the Act to the Financial Commissioner and which has been dismissed vide order dated 17th February, 2011 impugned in this writ petition. The Financial Commissioner has held that the Consolidation Authorities were entitled to include appropriate lands in the Lal Dora and since the Consolidation Authorities had not found it appropriate to include the land of the petitioner in the new Lal Dora, the petitioner had no right to insist on the same. It was further held that the Scheme was prepared by the Consolidation Authorities in consultation with the Mashavi Committee and

since the Consolidation Authorities did not find it fit to include the land of the petitioner, the petitioner could not make any grievance with respect thereto after 14 years.

6. The counsel for the petitioner has contended that the Consolidation Officer in making the order dated 18th November, 2009 (which was impugned before the Financial Commissioner) acted contrary to the law. It is contended that the Consolidation Officer under Section 19 of the Act, after inquiry as to whether the objections preferred by the petitioner/his father to the Draft Scheme had been dealt with in accordance with law or not, was only required to put up the same before the Settlement Officer along with his own comments/report and it was for the Settlement Officer to take a decision thereon under Section 20 of the Act. It is contended that the Revision Petition to the Financial Commissioner was confined to the said error in the procedure followed by the Consolidation Officer but the Financial Commissioner instead of adjudicating on the said aspect has himself decided the objections of the petitioner/his father and which he was not entitled to and which jurisdiction is vested in the Settlement Officer only.

7. I am unable to agree with the counsel for the petitioner. Even if it is to be presumed that the objections preferred by the father of the petitioner were not dealt with under Section 19 of the Act and were not considered by the Consolidation Officer and not put up before the Settlement Officer, the grievance if any in that regard was required to be made by the petitioner/his father when the Consolidation Officer put up the Draft Scheme before the Settlement Officer or latest when the Settlement officer confirmed the Scheme on 15th April, 1997. The petitioner could not after a long span of 12 years have agitated that his objections were not dealt with in the manner required under Sections 19 & 20 of the Act. No error can be found in the order dated 18th November, 2009 of the Consolidation Officer stating that he was then i.e. after 12 years not left with any jurisdiction in the matter. The Consolidation Officer under Section 19 was required to follow the procedure of putting up the objections with his remarks to the Settlement Officer only before confirmation of the Scheme and not after the Scheme had been confirmed.

8. Faced with the aforesaid, the counsel for the petitioner invites attention to Section 36 of the Act which uses the expression “at any time”.

It is contended that the objections which remained unconsidered could be considered at any time.

9. However, Section 36 is distinct from the procedure under Sections 19 & 20. Section 36 confers power on the authority which confirms the Consolidation Scheme to *inter alia* vary the same at any time. The petitioner had not approached for varying of the Scheme under Section 36 but had approached with the case of his/his father's objections having not been considered and which plea as aforesaid was belated and incapable of consideration.

10. The counsel for the petitioner has urged that in the absence of any decision thereon, the objections preferred by his father are deemed to have remained pending. I am unable to agree. The objections preferred to the Draft Consolidation Scheme even if not adjudicated upon are deemed to have been dismissed when the Draft Scheme is confirmed/finalized by the Settlement Officer under Section 20 of the Act. Reference in this regard may be made to the judgment of the Apex Court in ***Santa Sila Devi Vs. Dhirendra Nath Sen*** AIR 1963 SC 1677, though in relation to arbitration proceedings, holding that claims/counter claims not allowed by the

Arbitrator are deemed to have been dismissed/disallowed.

11. A perusal of Section 20 shows that the Settlement Officer, under Sub-Section (2) is required to confirm the Scheme, if no objections have been received to the Draft Scheme and under Sub Section (3) is required to, either confirm the Draft Scheme, with or without modifications or refuse to confirm it, “after taking the objections into consideration together with the remarks thereon of the Consolidation Officer.” Sub-Section (4) of Section 20 requires the confirmed Consolidation Scheme to be published and once the Consolidation Scheme is confirmed and published, any objection(s) preferred to the Draft Scheme and in acceptance whereof the Draft Scheme is not modified/refused are deemed to have been considered / rejected and the matter cannot be kept open indefinitely for a *Bhumidhar* to agitate/re-open the matter after any length of time.

12. It is an instance where the silence, as to objection preferred, while confirming the Scheme is a clear indication, having regard to the finalization/confirmation being professedly complete and *de praemissis*, i.e. of and concerning all matters in dispute of that the objection was not upheld. The non-modification of the Scheme in accordance with the

objection preferred by the father of the petitioner is capable of only one interpretation and that is that the objection stood rejected. This would not render the Scheme so confirmed incomplete. The confirmation of the Scheme is deemed to be after consideration of all objections preferred to the Draft Scheme. There is a presumption that confirmation of the Scheme is by considering all objections preferred thereto. The failure to consider any objections has to be taken to have left the rights of the parties to be determined by the law.

13. The Supreme Court in *Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana* AIR 1990 SC 763 also noticed that the Settlement Officer in exercise of powers under Section 20 of the Act is not required to pass any order on the objections and is only required to consider the objections raised to the Scheme and to either confirm the Scheme or modify it or to return the same to the Consolidation Officer. Thus, the petitioner/his father if aggrieved by the finalization of the Scheme ought to have challenged the same immediately thereafter and cannot be allowed the relief after 12 years.

14. The Financial Commissioner also appears to have dismissed the

Revision Petition of the petitioner for the same reasons, though has not expressly stated so.

15. I have also considered whether the order dated 13th August, 2009 in the earlier writ petition conferred any rights on the petitioner. The counsel for the respondent has pointed out that it was misrepresented to the Court on that date that the Scheme has not been finalized and was being finalized. The counsel for the petitioner controverts and contends that the argument was that the Consolidation Scheme was being finalized and not that the Draft Scheme was being finalized. I am however of the opinion that when this Court disposed of the earlier writ petition on the very first day on the representation/argument that the objection was still pending consideration, merely by directing consideration of the objections of the petitioner, the same does not amount to this Court holding that the objections were entertainable at that stage and which as aforesaid have been found to be by then not entertainable.

16. The counsel for the petitioner at this stage states that he be permitted to apply under Section 36 of the Act for variation of the Scheme. On enquiry, as to to which Authority the application under Section 36 is to be

made, the counsel with reference to Section 20 of the Act has stated that the Scheme of the Consolidation is finalized by the Settlement Officer. The matter in the present case has not been considered by the Settlement Officer. In the circumstances, while dismissing the writ petition, liberty is granted to the petitioner to apply for variation of the Scheme in accordance with law. It is further clarified that the observations of the Financial Commissioner in the order dated 17th February, 2011 being in the context of the objections under Section 19 of the Act, will not come in the way of consideration of the matter under Section 36 of the Act.

17. With the aforesaid liberty/clarification, the writ petition is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 18, 2011

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(corrected and released on 1st June, 2011)