

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

Date of decision: 10th August, 2011

+ **W.P.(C) No. 4200/2008**

SH. DHANI RAM (DECD.) THROUGH LRs Petitioner
Through: Ms. Geeta Mehrotra & Mrs. R. Ratnam
Nagar, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr. D.P. Kaushik, Adv. for R-1 & 2.
Mr. N.S. Dalal & Mr. D.P. Singh,
Advocates for R-3 to 10

AND

+ **W.P.(C) No. 4897/2008**

SH. RAM PAT (DECD.) THROUGH LRs Petitioner
Through: Ms. Geeta Mehrotra & Ms. R. Ratnam
Nagar, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through: Mr. D.P. Kaushik, Adv. for R-1&2.
Mr. N.S. Dalal & Mr. D.P. Singh,
Advocates for R-3 to 10

AND

+ W.P.(C) No. 523/2009

SH. RAM SAROOP (DECD.) THROUGH LRs Petitioner
Through: Mr. N.S. Dalal & Mr. D.P. Singh,
Advocates.

Versus

DY. COMMISSIONER & ORS. Respondents
Through: Ms. Geeta Mehrotra & Mrs. R. Ratnam
Nagar, Advocates for applicants

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 challenge in each of the three petitions is to the order dated 16th May, 2008 of the Collector (North West), Kanjhawla, Delhi. The matter has a chequered history of litigation. For the sake of clarity, reference is made to the petitioner in each case by the name of the original petitioner irrespective of the legal heirs having been substituted.

2. The genesis of the dispute is the scheme for consolidation under the provisions of the East Punjab Holdings (Consolidation & Prevention of

Fragmentation) Act, 1948 (Consolidation Act) finalized on 14th May, 1973 with respect to village Khera Khurd, Delhi. Shri Ram Saroop (petitioner in WP(C) No. 523/2009) was the owner of pre-consolidation Khasra No. 928/1 in the said village. Four residential plots were carved out of the said Khasra (they were given numbers 544, 546, 547 and 548). As per the scheme, every *bhumidhar* was entitled to allotment of residential plot of maximum limit of 2 (two) bighas. Shri Ram Saroop made a claim for 2 bighas of residential plot and against his entitlement of 2 bighas of residential plot, he was allotted plots no. 546 and 547. Shri Dhani Ram (petitioner in WP(C) No. 4200/2008) and Shri Ram Pat (petitioner in WP(C) No. 4897/2008) being other *bhumidhars* of the village, were against their claims for residential plots allotted plots no. 548 and 544 respectively.

3. It was the case of Shri Ram Saroop that his Khasra No. 928/1 was bounded by a wall and had construction over it and he, under the consolidation scheme had preferential right over the entire land of the said Khasra and the entire said land ought to have been recorded as 'kayami' and allotted to him but was not so allotted.

4. Upon Shri Ram Saroop remaining unsuccessful in having Khasra No. 928/1 declared as 'kayami', he preferred an appeal to the Settlement Officer

(Consolidation) impugning the allotment of plots no. 548 and 544 to Shri Dhani Ram and Shri Ram Pat respectively. The said appeal was dismissed. Shri Ram Saroop then preferred a further appeal to the Additional Collector who vide order dated 8th November, 1978 cancelled the allotment of plots no. 548 and 544 in favour of Shri Dhani Ram and Shri Ram Pat and directed the allotment thereof to Shri Ram Saroop. The Additional Collector vide order dated 8th November, 1978 held that under the scheme, “in special case and keeping in view the need of a person”, allotment of residential plot in excess of 2 bighas could be made. The claim of Shri Ram Saroop to plots no. 548 and 544 was held to be justified.

5. Shri Dhani Ram and Shri Ram Pat preferred WP(C) No. 1371/1978 and WP(C) No. 70/1979 in this Court challenging the decision aforesaid of the Additional Collector. The said writ petitions were disposed of vide common judgment dated 29th July, 1999. It was held that the Additional Collector had not examined the respective pleas of the parties and had given findings without explaining the entitlement of each party and without reference to the consolidation scheme on the basis of which rights had accrued to the parties. Accordingly, the order dated 8th November, 1978 of the Additional Collector was set aside and the matter remanded to the

Additional Collector for decision afresh.

6. Upon such remand, the Collector vide order dated 9th March, 2001 dismissed the appeal of Shri Ram Saroop thereby negating his claim to plots no. 548 and 544 and upheld the allotment of plots no. 548 and 544 to Shri Dhani Ram and Shri Ram Pat respectively and restored the said plots to them. It was held that the original demand of Shri Ram Saroop for residential plot was 2 bighas only and it was only when Shri Ram Saroop failed in his attempt to get Khasra No. 928/1 declared as reserved / 'kayami' that he made supplementary demand for allotment of residential plot of 6 (six) bighas as an afterthought. It was held that the remaining two plots being plots no. 548 and 544 in Khasra No. 928/1 had thus been validly allotted to Shri Dhani Ram and Shri Ram Pat against their demand. It was also held that the supplementary demand for plots no. 548 and 544 had been made after repartition proceedings and had to be fulfilled from available plots remaining un-allotted or surplus after repartition.

7. Aggrieved from the aforesaid order dated 9th March, 2001, Shri Ram Saroop preferred a Revision Petition to the Financial Commissioner. The Financial Commissioner vide order dated 5th February, 2002 allowed the said Revision Petition of Shri Ram Saroop, withdrew the plots no. 548 and

544 from Shri Dhani Ram and Shri Ram Pat respectively and allotted the same to Shri Ram Saroop. It was held that other *bhumidhars* in the village had also been allotted residential plots of more than 2 bighas; that Shri Ram Saroop needed additional area on account of large family and was entitled to plots no. 548 and 544 which were carved out of his pre-consolidation holdings (Khasra No. 928/1) and were in proximity to plots no. 546 and 547 already allotted to him. It was also held that Shri Dhani Ram and Shri Ram Pat had in the year 1981, in satisfaction of their entire demand and value according to the scheme of consolidation, already obtained allotment of other residential plots and had failed to disclose so in the earlier writ petitions disposed of vide order dated 29th July, 1999 or before the Collector on remand. It was also noticed that Shri Dhani Ram and Shri Ram Pat had created third party interest in one of the plots allotted to them in 1981 in lieu of the plots no. 548 and 544. It was thus held that Shri Dhani Ram and Shri Ram Pat were no longer interested in plots no. 548 and 544.

8. Aggrieved from the aforesaid order of the Financial Commissioner, Shri Dhani Ram and Shri Ram Pat preferred WP(C) No. 3232/2002 and WP(C) No. 3506/2002 respectively in this Court which came to be decided vide common judgment dated 2nd July, 2007. It was held that the Revision

Petition preferred by Shri Ram Saroop before the Financial Commissioner was not maintainable. The proceeding before the Financial Commissioner and the order therein was thus held to be *non est*. It was however held that Shri Ram Saroop could have challenged the order dated 9th March, 2001 of the Collector by filing a Writ Petition to this Court. However finding that certain allotments of agricultural land and residential plots in favour of Shri Dhani Ram and Shri Ram Pat in the year 1981 was not disputed and which fact had not been discussed by the Collector, the order dated 9th March, 2001 of the Collector also was set aside and the matter was again remanded to the Collector for decision afresh.

9. Upon such remand the Collector has now vide order dated 16th May, 2008 impugned in the instant three petitions held neither Shri Ram Saroop nor Shri Dhani Ram nor Shri Ram Pat to be entitled to plots no. 548 and 544 and vested the same in the Gaon Sabha. The claim of Shri Dhani Ram and Shri Ram Pat has been rejected for the reason that there was no deficiency in their account/khata after the consolidation proceedings were completed in the year 1981. It was further held that portions of plots/agricultural lands allotted to Shri Dhani Ram and Shri Ram Pat in lieu of the plots no. 548 and 544 were acquired by the Government and

compensation for the same had also been received by Shri Dhani Ram and Shri Ram Pat. It was yet further held that a portion of plot no. 370 allotted in lieu of the plot no. 544 had been sold by Shri Ram Pat. The claim of Shri Ram Saroop was declined for the reason that he had already been allotted residential plots no. 546 and 547 in lieu of his original demand of 2 bighas. Reference was also made to the Delhi Holdings (Consolidation and Prevention of Fragmentation) (Amendment) Rules, 1996 providing that the maximum size of residential plot which can be allotted to a person is limited to the extent of 2 bighas 8 biswas only. It was held that the claim of Shri Ram Saroop to plots no. 548 and 544 was contrary to the amended Rules of 1996 and against the principles of equity and justice. It was yet further held that merely because some other persons in the village had been mistakenly allotted residential plots in excess of 2 bighas would not entitle Shri Ram Saroop to more than 2 bighas of residential plot.

10. The counsel for Shri Dhani Ram and Shri Ram Pat has admitted that they were in the year 1981, in lieu of the plots no. 548 and 544 allotted agricultural land and residential plots elsewhere and given possession thereof. They also do not dispute that part of such agricultural land was acquired and they have received compensation therefor. On inquiry as to

how they, after receipt of compensation can claim to be still entitled to plots no. 548 and 544, it is contended that their rights with respect to plots no. 548 and 544 have been *sub judice* since 1974 as aforesaid and allotments in 1981 in lieu of the said plots would not deprive them of having their rights to plots no. 548 and 544 adjudicated. It is contended that had such allotments of alternative land been considered to be depriving them of pressing their claims against plots no. 548 and 544, this Court in the year 1999 in the first round of Writ Petitions and in the year 2007 also in the second round of Writ Petitions would not have remanded the matter.

11. On inquiry as to whether in the first round of Writ Petition the Court was informed of such allotment, attention is invited to applications filed in those Writ Petitions and orders thereon providing that the same were to be disposed of alongwith the Writ Petition. It is thus urged that notwithstanding the final order dated 29th July, 1999 disposing of the Writ Petition making no mention of it, the same is deemed to have held that notwithstanding the alternative allotment, Shri Dhani Ram and Shri Ram Pat remained entitled to press their claims for plots no. 548 and 544. It is yet further contended that this Court in ***Suraj Mal Vs. Manohar Lal*** ILR (1973) 1 Del 1016 held that the Consolidation Officer becomes *functus officio* on

closing of the scheme; it is contended that the Consolidation Officer thus could not have in the year 1981 allotted any alternative land to Shri Dhani Ram and Shri Ram Pat in lieu of plots no. 548 and 544. It is contended that such allotment is not as per their demand. It is yet further contended that the sale of such alternative land is only by Shri Dhani Ram and Shri Ram Pat ought not to suffer on account thereof. With respect to the receipt of compensation, it is stated that compensation was awarded not only for the land allotted in lieu of the plots no. 548 and 544 but with respect to other lands also of Shri Dhani Ram and Shri Ram Pat and they were then not in a position to bifurcate the compensation or to accept the compensation for their remaining land and to reject the compensation awarded with respect to the alternative land. It is contended that the Additional Collector in the impugned order has failed to consider the matter in the light of *Suraj Mal* (supra) as had been specifically directed by this Court in the judgment dated 2nd July, 2007.

12. Per contra, the counsel for Shri Ram Saroop has contended that it is an admitted fact that he has not received his entitlement of 6 bighas 10 biswas in pursuance to consolidation. Attention is invited to the order dated 16th May, 2008 of the Collector impugned in these petitions where Shri Ram

Saroop had been directed to approach the concerned officials for making up the deficiency in his account/'khata'. Attention is further invited to the comments of the respondent thereafter to the effect that no land is available from which deficiency in the account of Shri Ram Saroop can be made up. He contends that the said deficiency in the account of Shri Ram Saroop can be made up by allotment of plots no. 548 and 544 to Shri Ram Saroop. It is yet further contended that plots no. 548 and 544 were earlier denied to Shri Ram Saroop only for the reason of the same having been allotted to Shri Dhani Ram and Shri Ram Pat and now since Shri Dhani Ram and Shri Ram Pat have already been allotted alternative land in lieu of plots no. 548 and 544, there is no reason for denying the said plots to Shri Ram Saroop. It is contended that the amended Rules of 1996 cannot have any retrospective operation and the Collector has wrongly denied relief to Shri Ram Saroop for the said reason.

13. The counsel for Shri Dhani Ram and Shri Ram Pat in rejoinder has contended that the alternative land allotted to them in 1981 is not at one place and is spread out at different locations and which is against the spirit of consolidation; it is stated that Shri Dhani Ram and Shri Ram Pat are ready to refund the compensation received together with interest at such rate as

may be ordered; that Shri Dhani Ram had even in 1981 got less than his entitlement for residential plot, though such deficiency was met from agricultural land; it is yet further contended that the plots allotted to Shri Ram Pat are also fragmented. It is yet further contended that in accordance with the scheme, Shri Ram Saroop, Shri Dhani Ram and Shri Ram Pat are each entitled to 2 bighas of residential plots and the demand of Shri Ram Saroop in this regard has already been met but that of Shri Dhani Ram and Shri Ram Pat has not been met; that the said demand of Shri Dhani Ram and Shri Ram Pat should be allowed to be met by allotment of plots no. 548 and 544 to them; as far as the deficiency in the 'khata' of Shri Ram Saroop of 6 bighas 10 biswas is concerned, it is contended that Shri Dhani Ram and Shri Ram Pat are willing to surrender their own agricultural land for such deficiency to be made up and the deficiency in 'khata' of Shri Ram Saroop of agricultural land should not be made up from residential plot. It is urged that if the same is permitted, while Shri Ram Saroop would get residential plots in lieu of the agricultural land, Shri Dhani Ram and Shri Ram Pat would end up getting agricultural land in lieu of the residential plot. It is contended that such result would be contrary to the spirit of consolidation.

14. I am unable to accept the contention of Shri Dhani Ram and Shri Ram Pat of their being not in a position to refuse compensation for acquisition of land allotted to them in lieu of plots no. 548 and 544. No document in this regard has been placed before this Court. I am similarly of the opinion that if at all Shri Dhani Ram and Shri Ram Pat were of the view that the allotment in the year 1981 to them of agricultural land and residential plots in lieu of the plots no. 548 and 544 was not in order, they ought not to have accepted the same and/or ought to have made applications in the proceedings then pending for appropriate order qua such alternative allotment and/or for the same to be without prejudice to their claims for plots no. 548 and 544. On the contrary, Shri Dhani Ram and Shri Ram Pat appear to have unequivocally accepted the alternative land and entered into the possession thereof. Though it was argued that such alternative allotment was informed to this Court in the first round of Writ Petitions but it is found that such information also was furnished by Shri Ram Saroop and not by Shri Dhani Ram or Shri Ram Pat. Of course, the counsel for Shri Ram Saroop at the time of final disposal of the Writ Petition on 29th July, 1999 failed to bring the said fact to the notice of this Court; however, such default by the counsel for Shri Ram Saroop would not vest any right in Shri Dhani Ram

and Shri Ram Pat. The fact remains that Shri Dhani Ram and Shri Ram Pat, inspite of entering into the possession and continuing to enjoy alternative land allotted to them in lieu of plots no. 548 and 544, also continued to press their claims with respect to plots no. 548 and 544 and which they were not entitled to. Merely because the said fact remained to be considered, would not create rights in Shri Dhani Ram and Shri Ram Pat which stood extinguished upon their accepting the alternative allotment.

15. The argument now raised by Shri Dhani Ram and Shri Ram Pat of the alternative land being fragmented and/or being otherwise not suitable does not cut any ice. The same is the position with respect to the offer to now exchange the residential plots for agricultural land allotted to them. The rights of Shri Dhani Ram and Shri Ram Pat qua plots no. 548 and 544 stood extinguished way back in 1981 as aforesaid and they have no right in law to demand such exchange.

16. No error requiring interference in exercise of power of judicial review is thus found in the order dated 16th May, 2008 insofar as against Shri Dhani Ram and Shri Ram Pat. Their Writ Petitions being WP(C) No. 4200/2008 and WP(C) No. 4897/2008 respectively are accordingly dismissed.

17. As far as the claim of Shri Ram Saroop is concerned, the reasoning given by the Collector in the order dated 16th May, 2008 based on the amended Rules of 1996 does not find favour with me. The counsel for Shri Dhani Ram and Shri Ram Pat has also fairly stated that the amendments of the Rules in 1996 are not retrospective and the claim of Shri Ram Saroop could not have been adjudicated on the basis thereof.

18. The only other reason given by the Collector for denying the claim of Shri Ram Saroop is that under the scheme the entitlement of *bhumidhar* of a residential plot was of maximum 2 bighas only. It is however not disputed that some other *bhumidhars* have been allotted residential plots in excess of 2 bighas. I am also of the opinion that the very fact that amendment in the Rules was considered necessary and was introduced in the year 1996 is indicative of, prior thereto, notwithstanding the scheme providing for maximum 2 bighas of residential plot, it being possible to allot more. Even otherwise it is highly inequitable and unfair that deficiency should remain in the 'khata' of Shri Ram Saroop. Though the counsel for the State/Gaon Sabha has not appeared during the current hearing but during the hearing held on earlier occasion had stated that there was no land with the Gaon Sabha for making up the said deficiency in the land of Shri Ram Saroop. I

see no impediment as to why the admitted deficiency in the 'khata' of Shri Ram Saroop ought not be made up from the plots no. 548 and 544 (supra) to which Shri Dhani Ram and Shri Ram Pat have not been found to be having any right.

19. The petition of Shri Ram Saroop being WP(C) No. 523/2009 thus succeeds and the order dated 16th May, 2008 of the Additional Collector holding Shri Ram Saroop to be not entitled to plots no. 548 and 544 and vesting the same in Gaon Sabha is set aside and Shri Ram Saroop is held entitled to the said plots.

20. Shri Dhani Ram and Shri Ram Pat having continued to litigate even after taking possession of alternative land and plots, are also jointly and severally burdened with costs of Rs.50,000/-.

RAJIV SAHAI ENDLAW, J

AUGUST 10, 2011
M.