

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

Date of decision: 22nd December, 2011

+ **LPA No.1046/2011**

% **BALJEET SINGH****Appellant**
Through: Mr. N.S. Dalal & Mr. Devesh Pratap
Singh, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS **Respondents**
Through: Ms. Sangeeta Sondhi & Ms. Nitika
Agarwal, Advocates for R-1&2.
Mr. Ravi Gupta, Sr. Adv. with Mr.
Kuldeep Balhara, Adv. for R-3.

AND

+ **LPA No.1047/2011**

% **ASHOK KUMAR & ORS.****Appellants**
Through: Mr. N.S. Dalal & Mr. Devesh Pratap
Singh, Advocates.

Versus

GOVT. OF NCT OF DELHI & ORS **Respondents**
Through: Ms. Sangeeta Sondhi & Ms. Nitika
Agarwal, Advocates for R-1&2.
Mr. Ravi Gupta, Sr. Adv. with Mr.
Kuldeep Balhara, Adv. for R-3.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. These intra court appeals are preferred against the common order dated 31st October, 2011 of the learned Single Judge dismissing W.P.(C) No.492/2007 and W.P.(C) No.693/2007 preferred by the appellants respectively. The said writ petitions were preferred impugning the orders, both dated 14th December, 2006 of the Financial Commissioner, Delhi allowing the Revision Petitions under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 preferred by the respondent no.3 Sh. Rohtas in each of these appeals. With the consent of the counsel for the parties, we have at the admission stage itself heard the appeals finally.

2. The appellants claim to be Bhumidhar and resident of Village-Kanjhawla, Delhi where consolidation proceedings were commenced vide Notification dated 8th September, 1993, Consolidation Scheme framed and announced on 14th November, 1996 and confirmed on 24th April, 1997. In the said consolidation proceedings plot No.144/32 was allotted to the respondent no.3 Sh. Rohtas in lieu of old Khasra No.32/3. The appellants preferred objections under Section 21(2) of the Act claiming possession of

Plot No.144/32 and which objections were dismissed by the Consolidation Officer vide orders dated 25th February, 2000. The appellants preferred appeals to the Settlement Officer and which appeals were allowed vide orders dated 1st November, 2002. The Settlement Officer held that the Consolidation Officer had not properly considered the objections of the appellants and had dismissed the same merely on the ground that the Plot No.144/32 had been given to the respondent no.3 Sh. Rohtas; it was observed that if the appellant/appellants were entitled to the said plot, allotment thereof to the respondent no.3 Sh. Rohtas would be immaterial. Accordingly, allotment of Plot No.144/32 in favour of the respondent no.3 Sh. Rohtas was withdrawn and the said plot was allotted in equal shares to the appellants and the Consolidation Officer directed to make necessary changes in the revenue record.

3. Aggrieved from the aforesaid orders of the Settlement Officer, the respondent no.3 Sh. Rohtas had preferred the revision petitions aforesaid before the Financial Commissioner.

4. The Financial Commissioner allowed the revision petitions holding that though the Settlement Officer had allowed the appeals on the premise that the appellants were in possession of the Plot No.144/32 but had not indicated the basis for the said conclusion; it was further observed that there was no analysis in the orders of the Settlement Officer as to why the original allotment of the said plot in favour of the respondent no.3 Sh. Rohtas needed to be reversed and whether the same was in contravention of the provisions

of the Scheme. The Financial Commissioner also observed that the Settlement Officer had not discussed the relative merits and demerits of the demand of the appellants and the respondent no.3 Sh. Rohtas with respect to the said plot. It was also observed that there did not appear to be any record of possession or claim of the appellants to the plot. Holding the order of the Settlement Officer to be non-speaking, the revisions were allowed.

5. The learned Single Judge has dismissed the writ petitions preferred by the appellants primarily on the ground that the appellants had not shown any document of their possession of the plot and for the reason of their having not agreed to the spot inspection as suggested and to which the respondent no.3 Sh. Rohtas was agreeable. It was thus inferred that the appellants were not in possession, as claimed by them.

6. We are constrained to observe a peculiar feature of the orders aforesaid of the Consolidation Officer, Settlement Officer and the Financial Commissioner. The Consolidation Officer dismissed the objections preferred by the appellants merely observing that the Plot No.144/32 stood allotted to the respondent no.3 Sh. Rohtas. The Settlement Officer in appeal though disapproving of such order of the Consolidation Officer himself did not record any reasons for holding the appellants to be in possession of or entitled to allotment of the plot or for allotment earlier made in favour of the respondent no.3 Sh. Rohtas to be bad or the need for reversal thereof. The Financial Commissioner again, though disapproving of such order of the Settlement Officer of not recording any reason or basis for the conclusion

reached, rather than remanding the matter to the Consolidation Officer, allowed the revisions resulting in restoration of the order of Consolidation Officer of dismissal of the objections preferred by the appellants. It would thus be seen that at no stage has any decision on merits of the said objections and/or of the rival claims of the appellants on the one hand and the respondent no.3 Sh. Rohtas on the other hand has been rendered.

7. Insofar as the learned Single Judge has been influenced by the refusal of the appellants to the offer of spot inspection, we enquired from the counsels, the nature of the land. We are told that it is open land which has not been built upon. We also find that from the claims of the appellants that the said land in fact was a “Gher” for grazing of cattle. We are constrained to observe that possession of such open land is difficult to determine and in any case unlikely to be determined in spot inspection as was sought to be done before the learned Single Judge. We therefore, do not attach much value to the refusal of appellants to spot inspection and are unable to draw any adverse inference against the appellants for refusing the same.

8. The rival rights of the parties to the land, as aforesaid have not been adjudicated till now. The senior counsel for the respondent no.3 Sh. Rohtas of course has sought to demonstrate before us the falsity of the claim of the appellants by contending that the appellants were earlier making a claim for possession of a different Khasra number and during the pendency of the proceedings inexplicably changed their stand to that of the earlier Khasra number on which Plot No.144/32 is situated.

9. It is not however for us to, in these appeals, for the first time adjudicate all the said pleas. Ideally, all the said pleas ought to have been considered and adjudicated by the authorities below and which they have failed to do. The senior counsel for the respondent no.3 Sh. Rohtas also has been unable to show to us any adjudication of the rival claims by any of the authorities below. The Settlement Officer and the Financial Commissioner in their respective orders have merely deprecated the order of the Consolidation Officer and of the Settlement Officer respectively but did not return any findings on the merits of the claims of either parties.

10. The matter thus requires to be remanded for adjudication in accordance with law. Both parties agree that rather than remanding the matters to the Financial Commissioner, the same be remanded to the Settlement Officer. The senior counsel for the respondent no.3 Sh. Rohtas states that considerable time having elapsed, direction for decision in a time bound manner be issued. The same is agreeable to the counsel for the appellants also.

11. We accordingly allow these appeals and set aside the order dated 31st October, 2011 of the learned Single Judge in the writ petitions preferred by the appellants and the orders dated 14th December, 2006 of the Financial Commissioner in the revision petitions (supra) preferred by the respondent no.3 Sh. Rohtas are modified and the matter remanded to the Settlement Officer to decide afresh in accordance with law. The Settlement Officer is further directed to decide the appeals preferred by the appellants on or

before 31st May, 2012. The parties are directed to appear before the Settlement Officer on 9th January, 2012.

The appeals are disposed of.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

DECEMBER 22, 2011

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