

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

Date of decision: 20th July, 2012

+ **LPA No.523/2012**

% **SHRI PUNEET ANAND** **....Appellant**

Through: Mr. N.S. Dalal, Mr. Devesh Pratap
Singh & Mr. Aditya Bhadoo, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS. **Respondents**

Through: Ms. Mamta Tondon for Mr. V.K.
Tandon, Adv. for R-1&2.
Mr. Sanjay Poddar, Sr. Adv. with Mr.
D.S. Patial & Ms. Navlin Swain,
Advs. for R-3 to 9.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the order dated 30th November, 2011 of the learned Single Judge dismissing W.P.(C) No. 7025/2001 preferred by the appellant. The said writ petition was preferred impugning the order dated 16th October, 2001 of the Financial Commissioner, Delhi dismissing the appeal under Section 64 of the Delhi Land Revenue Act, 1954 preferred by the appellant against the order dated 20th July, 2001 of the Addl. Collector/Dy. Commissioner (North).

2. Even though this appeal is preferred with an application for condonation of 168 days delay in re-filing the appeal and for which delay there is no plausible explanation but we have nevertheless heard the counsel for the appellant and the counsel for the contesting respondents no.3 to 9 on merits.

3. The dispute concerns Khasra No.123 in the Revenue Estate of Village Burari, Delhi. The said Khasra comprises of land *ad measuring* 4 bighas 14 biswas and of which 4 bighas 2 biswas, in the consolidation proceedings was allotted to Shri Brahm Dutt and others who sold the same to Shri Surjit Singh and Smt. Rashmi Bhalla and who in turn sold the same in March, 1982 to the appellant. The remaining 12 biswas of land in the said Khasra, in the consolidation proceedings was allotted to the ancestors of contesting respondents no.3 to 9.

4. It is the case of the appellant that upon purchase he got the demarcation done through *Tehsildar* and in the year 1984 constructed a boundary wall enclosing his entire land and in the year 1987 constructed a building thereon where a school is running. It is further the case of the appellant that while his 4 bighas 2 biswas of land bears Khasra No.123/1/1, the 12 biswas of land of contesting respondents no.3 to 9 bears Khasra

No.123/1/2.

5. The appellant in the year 1994 filed an application under Section 26 of the Delhi Land Revenue Act, 1954 before the Addl. Collector/Dy. Commissioner (North) pleading that the ancestors of the contesting respondents no.3 to 9 had, in connivance with the *Naib Tehsildar*, in the year 1993 got, the revenue record manipulated/corrected to show the 12 biswas of land which in fact bore Khasra No.123/1/2 as Khasra No.123/1/1; that the said fact came to the knowledge of the appellant when the ancestors of the contesting respondents no.3 to 9 filed a suit for permanent injunction.

6. The Addl. Collector/Dy. Commissioner (North), after hearing both the parties directed the Land Acquisition Collector (LAC) also vested with the powers of Settlement Officer, to conduct a detailed inquiry and to submit a report.

7. The Addl. Collector/Dy. Commissioner (North) in the order dated 20th July, 2001 observed/found/held:-

- (a). that the correction carried out by the *Naib Tehsildar* in the revenue records was correct and essential to correct the old errors;
- (b). that though the *Naib Tehsildar*, before correcting the revenue

records had not heard the appellant as should have ordinarily been done but no error had crept into the revenue records by carrying out of such correction;

- (c). that there was no error in the revenue records as they existed after correction of 1993;
- (d). that the ancestors of the contesting respondents no.3 to 9 had been allotted Khasra No.123/1/1 in the consolidation proceedings and the predecessor in interest of the appellant had been allotted Khasra No.123/1/2;
- (e). that certain interpolation had occurred in the revenue record in the intervening period and the *Naib Tehsildar* had merely corrected the same in the year 1993;
- (f). that the procedural error on the part of the *Naib Tehsildar* in not hearing the appellant before carrying out the said correction was remediable by preferring an appeal against the decision of the *Naib Tehsildar*;
- (g). that in the circumstances the appellant had no case under Section 26 of the Act because there was no mistake in the revenue records.

8. The appellant preferred an appeal to the Financial Commissioner. The order dated 16th October, 2001 of the Financial Commissioner deals with the dispute with commendable clarity and we deem appropriate to re-produce the relevant paragraph from the said order of the Financial Commissioner:-

“7. I find that the main dispute between the parties is regarding location of their respective piece of land. The appellant has been submitting that he purchased Khasra No.123/1 (4-02) from one Sh. Brahm Dutt as per his sale deed dated 24.3.82 which lies on the western side. On the other hand, according to the LR's of late Sh. Shanti Swarup Batra etc. the land allotted to Sh. Shanti Swarup Batra etc. during the consolidation proceedings bears Khasra No.123/1/1 min west (0-12) lies on the western side.

8. The Inquiry Officer Sh. G.S. Thanewal has reported in his inquiry report dated 22.2.95 that the land bearing Khasra No.123/1/1 min west (0-12) allotted to Sh. Shanti Swarup Batra lies on the western side and other piece of land purchased by the appellant bearing Khasra No.123/1/2 (4-02) lies on the eastern side. The appellant has also admitted at page 3 para 9 of his appeal that Khasra No.123/1 min west (0-12) was allotted to Sh. Shanti Swarup Batra.

9. I also find that it has rightly been held by the Addl. Collector/Dy. Commissioner (North) that when a field is sub-divided vertically, the sub-numbering and denomination starts from left to right. Accordingly, when Khasra No.123/1 was sub-divided, the left portion become Khasra No.123/1/1 and right portion become Khasra No.123/1/2. Similarly when a field is sub-divided horizontally sub-numbering and denomination starts from top to bottom and on this basis when Khasra No.122/5 was sub-divided horizontally, the top portion became Khasra No.122/5/1 and bottom became 122/5/2. Since Sh. Shanti Swarup Batra has been allotted Khasra No.122/5/1, it is

logical that the additional land (0-12) allotted to him would be adjacent to Khasra No.122/5/1 and would in consequence be numbered 123/1/1. It would be against the logic of consolidation if Sh. Shanti Swarup Batra was to be allotted Khasra No.123/1/2 as alleged by the petitioner leaving a plot of 4 bighas 2 biswas between his two land holdings. This defies the logic of consolidation and contention of Sh. Shanti Swarup Batra are borne out by the copy of the consolidation record dated 25.8.81 which shows the land holding of Sh. S.S. Batra as 123/1/1 min west.

10. Further, the Additional Collector/Dy. Commissioner (North) has rightly held that certain interpolation had been occurred in the revenue record which was rightly corrected by the *Naib-Tehsildar* in the year 1993 and that the appellant has no case under Section 26 of the Act 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.

11. In view of the above, I hold that the Addl. Collector/Dy. Commissioner (North) has passed a detailed well reasoned and speaking order which does not require any interference. Accordingly, the present appeal is hereby dismissed”.

9. The appellant being dissatisfied, preferred the writ petition from which this appeal arises. The argument of the appellant before the learned Single Judge was that the correction in the revenue record carried out in the year 1993 was bad for the reason of the appellant having not been given a hearing prior thereto. The learned Single Judge has dealt with the said plea by observing that the appellant had been unable to show as to what prejudice he had suffered on account of infringement of the principles of natural

justice in as much as all that was done in the said correction was to bring some of the revenue records (in which interpolation had been made) in conformity with other records. The learned Single Judge has further observed that the non-grant of opportunity of hearing to the appellant by the *Naib Tehsildar* had lost relevance after the appellant had been duly heard by the LAC who as aforesaid had conducted a factual inquiry. It was further observed that the appellant had also availed of a full hearing before the Addl. Collector/Dy. Commissioner (North). Accordingly, the writ petition was dismissed.

10. Before us the counsel for the appellant has raised the same argument i.e. that once the correction of the year 1993 was without granting an opportunity of hearing to him, the same ought to have been set aside.

11. We are reminded of V.R. Krishna Iyer, J's observation "Perhaps not all violations of natural justice knock down the order with nullity..... In Indian Constitutional law, natural justice does not exist as an absolute jurial value but is humanistically read by courts into those great rights enshrined in Part III as the quintessence of reasonableness" (See *Nawabkhan Abbaskhan v. The State of Gujarat* (1974) 2 SCC 121). The appellant, on the aspect of the correction of the year 1993 in the revenue record, has been heard by the

LAC who conducted the inquiry, by the Addl. Collector/Dy. Commissioner (North), by the Financial Commissioner, by the Single Judge of this Court and now by us. The appellant cannot possibly have any grievance of having not been heard.

12. Besides aforesaid, there are concurrent findings of the *Naib Tehslidar*, LAC, Addl. Collector/Dy. Commissioner (North) and of the Financial Commissioner and approved of by the learned Single Judge in exercise of powers of judicial review that the location of the land of the appellant is not where he claims it to be. The said findings are findings of fact. Neither is it in the domain of exercise of powers of judicial review to re-visit the said findings of fact nor has the appellant been able to make out any dent thereto. We have drawn the attention of the counsel for the appellant to the passages set out by us herein above from the order of the Financial Commissioner and enquired from him as to what is wrong with the logic contained therein. The counsel for the appellant instead of replying has contended that the revenue record could not have been changed after it had been consigned on completion /closure of the consolidation proceedings. We are unable to accept the said plea also. The present is not a case of change in allotments after completion/closure of the consolidation proceedings but of by

correction, restoring what in fact had happened in the consolidation proceedings.

13. There is also concurrent finding of fact that certain manipulations/interpolations had been carried out in some of the revenue records and on the basis whereof the appellant was claiming his land to be located where the authorities have not found it to be. The senior counsel for the contesting respondents no.3 to 9 has drawn our attention to the records which have been found to be interpolated and the same indeed show change from 123/1/1 to 123/1/2. It is the argument of the senior counsel for the contesting respondents no.3 to 9 that the said interpolations were at the instance of the appellant only as none else was to gain therefrom. He has further argued that owing to the said interpolations there was a difference in the records of the *Patwari* which had interpolations and of the *Sadar Kanoongo* which the appellant had not been able to manage. It is further contended that the correction carried out in the year 1993 is also inconsonance with the Resolution passed during the consolidation proceedings. In fact the senior counsel for the contesting respondents no.3 to 9 has argued that the appellant having indulged in such interpolations ought not to be heard even by this Court.

14. The counsel for the appellant lastly contended that even the allotment of 12 biswas of land in Khasra No.123 to the ancestors of contesting respondents no.3 to 9 was in excess of their entitlement. We do not find the relevance of the same plea. The proceedings from which the writ petition and the present appeal have emanated, were concerning the location of the respective lands and not qua the entitlement of the contesting respondents. The senior counsel for the contesting respondents no.3 to 9 has even otherwise contended that the said question has also been settled in proceedings between the contesting respondents no.3 to 9 and the mother of the present appellant and which were fought right till the Supreme Court.

15. We therefore do not find any merit in this appeal and dismiss the same. The matter having been heard on the very first date, we refrain from imposing any costs on the appellant.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 20, 2012

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