

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

Date of decision: 13th March, 2012

+ **LPA 200/2012**

% **SH. RANDHIR SINGH & ANR. Appellants**

Through: Mr. B.S. Maan with Ms. Smita Maan
& Mr. Jitin Tewathia, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advs.

AND

+ **LPA 201/2012**

% **SH. BHIM SEN KUSHWAHA & ORS. Appellants**

Through: Mr. B.S. Maan with Ms. Smita Maan
& Mr. Jitin Tewathia, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advs.

AND

+ **LPA 202/2012**

% **SH. SANJEEV KUMAR SAINI & ORS. Appellants**

Through: Mr. B.S. Maan with Ms. Smita Maan
& Mr. Jitin Tewathia, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advs.
Mr. Dhanesh Relan & Ms. Sweta,
Advs.

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 impugning the common order dated 21.02.2012 of the learned Single Judge dismissing the W.P.(C) Nos.6189/2011, 6354/2011 and 6191/2011 preferred by the appellants respectively. The said three writ petitions were filed impugning the separate but identical orders dated 11.08.2011 of the Financial Commissioner, Delhi dismissing the revision petitions under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 preferred by each set of appellants. The said revision petitions in turn were preferred assailing the order / notice issued by Revenue Assistant / Settlement Officer notifying the appellants to deliver possession of the land in village Mundka in their possession.

2. The learned Single Judge has in the impugned order recorded that the facts and the issue involved in all the matters are identical. These appeals are also identically drafted and common arguments have been addressed by the counsel for the appellants and are as such dealt with together.

3. All the appellants claim to have acquired rights in different plots of land all in Khasras No.108/2, 108/3, 108/4/1, 4/2 of village Mundka, Delhi on 15.07.1987, from Sh. Hari Singh and Sh. Ran Singh residents of the said village, by delivery of possession in pursuance to Agreement to Sell, General Power of Attorney, Will, etc.

4. It is recorded in the orders of the Financial Commissioner and is not controverted, that the consolidation proceedings in village Mundka started in the year 1974-75; that the private respondents, being the *bhumidhars* of the village had filed applications for residential plots but were not made any allotment in the draft Consolidation Scheme; that the private respondents preferred objections and the process of amendment of the Scheme was initiated; that though the name of the private respondents figured in the proposed amended draft Consolidation Scheme published on 14.05.1979 but the same was challenged by some other persons and could not be confirmed; that another amended Consolidation Scheme was republished on 06.08.1980 but the same was also dropped by the Settlement Officer vide order dated 24.05.1982 on the ground that the area within the *phirni* was not enough and the villagers were opposed to the amended scheme; that the private respondents preferred revision petition to the Financial Commissioner who set aside the order of the Settlement Officer and remanded the matter for decision on merits; that the Settlement Officer again dropped the amended draft Scheme vide order dated 04.04.1983; that the private respondents and others again preferred revision petitions to the Financial Commissioner which were dismissed vide order dated 25.11.1983; that the private respondents approached this Court, which vide order dated 22.10.1986 allowed the writ petition and directed the consolidation authorities to amend the Scheme in such a way that the demand for additional residential plots of all the rightful claimants was met within the extended abadi area, though not necessarily at the same place; in accordance with the order dated 22.10.1986 of this Court, the Consolidation Scheme was amended and an area measuring 92 Bighas and 8 Biswas including the land in Khasras No.108/2,

108/3, 108/4/1, 4/2 belonging to Sh. Hari Singh and Sh. Ran Singh were included within the extended abadi of the village; Sh. Hari Singh and Sh. Ran Singh were given alternate land in lieu thereof; that in the said amended Consolidation Scheme, the private respondents in these appeals were allotted plots in erstwhile Khasras No. 108/2, 108/3, 108/4/1, 4/2; thereafter another round of litigation commenced and finally the amended Scheme stood confirmed after dismissal of writ petition No.348/1993 vide order dated 02.07.2007. The private respondents thus could not be put into possession of the plots so allotted to them under the amended consolidation scheme till the order dated 02.07.2007 (supra) of this Court.

5. It is the case of the authorities as well as of the private respondents that once the land aforesaid was put in the amended Consolidation Scheme and Sh. Hari Singh and Sh. Ran Singh allotted land in lieu thereof, Sh. Hari Singh and Sh. Ran Singh lost any right in the said land bearing Khasras No. 108/2, 108/3, 108/4/1, 4/2 and were thus not entitled to execute any documents viz. Agreement to Sell, Power of Attorney, Will, etc. with respect thereto, even if the said documents are believed to have been executed by them. It is further the case of the private respondents as well as of the authorities and again not controverted by the appellants that the names of the appellants were at no time recorded in the record of rights with respect to the said land.

6. Upon the finalization of the other disputes qua Consolidation Proceedings as aforesaid on 02.07.2007, the private respondents applied for being put into possession of the plots allotted to them and the Revenue Assistant / Settlement Officer, Punjabi Bagh, Delhi vide order dated

24.03.2009 directed the Tehsildar, Punjabi Bagh to handover actual physical possession of the plot allotted to the private respondents at spot and by availing police assistance if became necessary.

7. It is in pursuance thereto that the Tehsildar, Punjabi Bagh called upon the appellants to vacate the land in their respective possession.

8. The appellants claim to have learnt of the order dated 24.03.2009 of the Settlement Officer only upon being so called to vacate the land in their respective possession. They first filed objections before the Settlement Officer but thereafter abandoned the same and preferred the revision petitions aforesaid to the Financial Commissioner. It was the case of the appellants in the said revision petition that the order dated 24.03.2009 of the Settlement Officer was an *ex parte* order made without issuance of notice to them and bad in law and thus sought setting aside of the same.

9. The Financial Commissioner vide orders dated 11.08.2011 found / held:

- (i) that the appellants neither produced any Sale Deeds nor copy of any Khasra Girdawari and Khatoni establishing their title over the land;
- (ii) that in consolidation proceedings Khasras No.108/2, 108/3, 108/4/1, 4/2 belonging to Sh. Hari Singh and Sh. Ran Singh were brought into the extended abadi and Sh. Hari Singh and Sh. Ran Singh were allotted land in lieu thereof elsewhere;
- (iii) thus, at the time when Sh. Hari Singh and Sh. Ran Singh are claimed to have “sold” the land to the appellants, the land was

not theirs and over which they had no title;

- (iv) that the sales claimed by the appellant in their favour were void *ab initio* as no permission under Section 30 of the Act had been taken from the Tehsildar;
- (v) that even otherwise the land could not have been cut up into plots and sold as claimed by the appellants. Such fragmentation of holding hits at the very heart of the Scheme of Consolidation;
- (vi) that the proceeding sheets of the Settlement Officer showed that the Settlement Officer before passing the order dated 24.03.2009 had issued notice of the application of the private respondents to be put into possession of the land allotted to them with a direction to affix the notice at some conspicuous place;
- (vii) thus principles of natural justice were followed and appellants were given opportunity of being heard;
- (viii) that the objections and the revision petitions had been filed by the appellants to prolong the proceedings;
- (ix) that the appellants not having any title over the land were trespassers / interlopers; on the other hand the private respondents were the recorded owners of the land to whom possession pursuant to amended Consolidation Scheme could not be given on account of litigation which stretched to almost twenty years.

The Financial Commissioner accordingly dismissed the revision petitions.

10. A perusal of the order of the learned Single Judge dismissing the writ petitions preferred by the appellants shows that the appellants had raised two fold argument. Firstly, that the order dated 24.03.2009 of the Settlement Officer of directing private respondents to be put into possession by dispossession of the appellants was in violation of Section 23 of the Act and Rule 16 of the Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959 requiring service of a notice of application for being put into physical possession of the holding to which the appellant claims to be entitled to on the persons liable to ejectment. Secondly, it was contended that the power of directing delivery of possession under Section 23 is to be exercised by the Consolidation Officer but in the present case had been exercised by the Settlement Officer.

11. The learned Single Judge, with respect to the first of the aforesaid contentions has held, that both the Settlement Officer in the order dated 24.03.2009 and the Financial Commissioner in the order dated 11.08.2011 held that service was effected by affixation; but the appellants had not assailed the said concurrent finding of fact and had merely asserted violation of Rule 16 without showing as to in what manner the Rule stood violated. It was further held that the appellant had not even denied having been served by affixation.

12. We may also notice that the argument of the appellant before the Financial Commissioner was “that they are not claiming their *bhumidhari* rights..... rather they are claiming that they be not dispossessed without

due process of law.” The appellants have had ample hearing and opportunity in the last over two years and cannot have the grievance of the due process of law having not been followed.

13. Qua the second contention aforesaid of the appellants, the learned Single Judge held that the exercise of power of delivery of possession by Settlement Officer instead of Consolidation Officer was at the most an irregularity which did not go to the root of the matter. It was further observed that the Settlement Officer was higher to the Consolidation Officer and the power to be exercised by the lower authority if exercised by the higher authority could not be faulted.

14. The counsel for the appellants before us has urged that the exercise of jurisdiction / power by an authority other than that designated, even if higher, cannot be described as a mere irregularity. It is urged that once the law has prescribed the power of delivery of possession to be exercised by the Consolidation Officer, the exercise of such power by the Settlement Officer has to be but a nullity.

15. We have enquired from the counsel for the appellant as to what prejudice has been suffered by the appellants owing to the power under Section 23 of the Act being exercised by the Settlement Officer instead of by the Consolidation Officer. No answer is forthcoming. We even otherwise fail to see as to how any prejudice can be suffered, by exercise of powers under Section 23 of the Act, though prescribed to be exercised by the Consolidation Officer, if exercised by the Settlement Officer. It is worthwhile to mention that the power under Section 23 is not of determination of any rights but the said power is executory in nature i.e. of

putting the person, who has already been allotted the plot, into possession of the plot, so allotted to him. As aforesaid it is not in dispute that the plots aforesaid, in the amended Consolidation Scheme have been allotted to the private respondents. It does not matter whether the direction for delivery of possession thereof to the private respondents is issued by the Settlement Officer or by the Consolidation Officer. There is thus no merit in the said contention of the appellants. We may also notice that the occasion for the private respondents to seek delivery of possession arose long after the allotment in their favour, i.e. only after the challenge to the amended Consolidation Scheme was dismissed; since the consolidation proceedings were under litigation for long, it is well nigh possible that the Consolidation Officer may not have been in place and the applications to the Settlement Officer were made for the said reason. The appellants have no right and hence no locus to take any objection to the private respondents who have already been deprived of possession of their entitlement, being so put into possession. We may also notice that neither the Agreements to Sell nor the Power of Attorney and the Will set up by the appellants are registered. The appellants did not even get their possession recorded in the revenue records. Their claims are even otherwise steeped in illegality i.e. violation of the provisions of the Consolidation Act. Such persons cannot be said to be having any right to come in the way of the rightful owners being put into possession of their land.

16. The counsel for the appellants has also argued that the land in possession of the appellants is part of the unauthorized colony of East Mundka which had been issued provisional certificate of regularization. It

is further argued that the appellants themselves are poor persons who had acquired land aforesaid in the unauthorized colony for their residence. The said arguments, besides being without any basis cannot change the legal position aforesaid. The appellants cannot be permitted to take advantage of their own illegality / wrong and to the deprivation of legitimate title holders of the land.

17. We therefore do not find any merit in these appeals and dismiss the same. We refrain from imposing any cost on the appellants.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 13, 2012

‘gsr’