

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

Judgment reserved on: July 10, 2012

Judgment delivered on: July 23, 2012

+ W.P.(C) 2156/2012 & C.M. No. 4654/2012 (Stay)

HANSRAJ GUPTA AND CO. (P) LTD Petitioner

Through: Mr. Anand Yadav, Advocate

versus

CONSOLIDATION OFFICER

(VILLAGE BIJWASAN) & ORS.

..... Respondents

Through: Mr. V.K. Tandon, Advocate for

Respondent No. 1

Mr. Najmi Waziri, Standing Counsel
for Respondent No. 2

Mr. B.S. Maan & Mr. Jitin Tewathia,
Advocates for Respondent No. 3 to 8

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. The finding returned in the impugned order of 27th March, 2012 by the Financial Commissioner, Delhi against the petitioner is as under:-

'I have gone through the revision petition, the reply of the respondents No. 3 to 7, as well as the comments of the Consolidation Officer. I have also gone through the order of the Hon'ble High Court dated 18.03.2008, and also the impugned order. The respondents no. 3 to 7 have been clamoring for years for a public right of way in order to access their holdings, and the Hon'ble High Court vide its order of 18.03.2008 granted them liberty

to approach the Consolidation officer with a prayer for granting them this public passage. It transpires that the petitioner has encroached upon land which belongs rightfully to the respondents, and they have voluntarily surrendered this land which was under the occupation of the petitioner, in order to have the public passage to their holdings. The right of the respondents to ask for a public passage as a means of egress and ingress to their holdings cannot be questioned. Nor can the Consolidation officer be faulted for providing them with such a passage. He was merely acting in terms of the order of the Hon'ble High Court. Simply because the petitioner had mistakenly encroached upon the land of some-one else, does not mean that it becomes his by efflux of time. He had made a mistake and now he must accept his mistake with good humour and gracefully. His contention that he was not heard cannot be accepted, as the Consolidation Officer had issued notice to him. The impugned order is unexceptionable in all respects as it has discussed all aspects of the issue. The revision petition is dismissed and the impugned order is upheld.'

2. A Coordinate Bench of this Court vide Order of 18th March, 2008 in W.P.(C) No. 3774-78/2006 while balancing out the equities, had issued the following directions:-

'(i) Liberty is granted to the petitioners to initiate proceedings against owners/ bhumidars of khasra No.80/16/2 or to file an application before Consolidation Officer of village Bijwasan for

providing alternative access/road to the petitioners.

- (ii) The petitioners may file an application/representation in this regard within a period of three weeks from the date judgment is pronounced. The Consolidation Officer or the revenue authorities will process the application/representation filed by the petitioners expeditiously and preferably within a period of three months thereafter. The demarcation reports dated 5th August, 1997 and 26th September, 1997 will be binding on the authorities.*
- (iii) Each of the five petitioners will pay Rs.1,000/- per month to respondent No. 2 school for use of the passage till alternative passage is made available to the petitioners. Petitioners will not be entitled to carry out any construction or install any gate on the passage but the petitioners; their employees/servants will be entitled to use the same. If the aforesaid arrangement is continued beyond six months, then each of the five petitioners will be liable to pay enhanced amount of Rs.1500/- per month to the respondent No.2- school. In case there is delay beyond a period of 12 months the respondent No.2 will be entitled to file an application in this Court for further enhancement of the said amount.'*

3. Relevantly, petitioner herein was not a party in W.P.(C) No.

3774-78/2006 wherein the aforesaid directions were issued. The precise contention urged on behalf of the petitioner is that it is nobody's case that excess land had been allotted to the petitioner and notice under Rule 16 of *Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959* was ever issued to the petitioner before withdrawing the excess land from the petitioner's holding. Learned counsel for the petitioner had urged that the finding returned in the impugned order of petitioner encroaching upon the alleged excess land in question runs counter to the provisions of Sections 84 to 86 of *Delhi Land Reforms Act, 1954*, as there can be no dispossession of anyone without following the due process of law.

4. Based upon the aforesaid submissions the questions posed by the petitioner's counsel are as under:-

Q.1. Whether C.O. has authority to accept the donation on behalf of Gaon Sabha and to declare the said land as passage?

Q.2. Whether C.O. can dispossess the petitioner if he is encroacher and in illegal possession of the land of respondent no.3 and Shri H L Kohli?

Q.3. Whether if land owned by the respondent no.3 abuts the main road even then they are required to be provided passage?

Q.4. Whether petitioner can be dispossessed from the land in his possession without due process of law?

Q.5. Whether C.O. can pass order for providing passage in respect of persons, who were no petitioner to W.P.(C) No.3774/ 2006?

5. The retort of respondent's counsel to petitioner's aforesaid stand and the questions posed, is that the jurisdiction to comply with the afore-noted directions issued by this Court in W.P.(C) No.3774-78/2006 preferred by the third respondent, was of the concerned Consolidation Officer as the consolidation proceedings had not come to an end and it is not shown by the petitioner's counsel as to where is the bar to the Gaon Sabha concerned to accept donation of the land from the party to whom an ingress passage is to be provided. It is also urged by learned counsel for the private respondents, i.e., on behalf of respondent No. 3 to 7 that the basic error in the demarcation at the initial stage of repartition, due to which petitioner had got excess land than its actual holdings, is corrected and the Consolidation Officer concerned has the power to correct or rectify the mistake in demarcation during currency of demarcation proceedings and the Consolidation Officer does not become *functus officio* and therefore, there is no illegality in the impugned order.

6. In support of the above submissions, reliance is placed by learned counsel for the private respondents upon the decision in *Shri Leo Puri vs. Consolidation Officer & Ors.*, 2008 X AD (Delhi) 446.

7. Upon considering the submissions advanced, the impugned order, the decision cited and the material on record, this Court finds that since the consolidation proceedings had not culminated, therefore, the jurisdiction would be of the Consolidation Officer concerned and resort to Sections 84 to 86 of the Delhi Land Reforms Act, 1954 has been rightly not made by the authorities concerned. There is no basis for the petitioner's counsel to assert that an affected party cannot donate its land to the Gaon Sabha to seek provision of an

ingress passage to its land locked holding. So far as the question of following due process of law to provide a ingress passage to an affected party is concerned, the pertinent observations of a Division Bench of this Court in **Leo Puri** (*supra*) provide a complete answer, which are as under:-

“In light of the above observations, the contention raised by the appellant to the effect that the Consolidation Officer has become functus officio is misconceived on facts and untenable in law. However, as the village is still under consideration and the Scheme had not been consigned, the Consolidation Officer was not functus officio and the power and jurisdiction to withdraw the excess area from the holder of the land to whom an excess allotment was made over and above his actual entitlement due to some mistake which is also in accordance with the specific provision in the Consolidation Scheme made in respect of Village Bijwasan.”

8. In the considered opinion of this Court, the Consolidation Officer concerned has correctly invoked Section 43(A) of the *East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948*, to provide an ingress passage to the land locked holding of the private respondents. As regards the applicability of Rule 16 of *East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rule, 1959*, is concerned, the same stands substantially complied with, as it remains uncontroverted that petitioner had received the notice of 16th June, 2009 from the concerned Consolidation Officer requiring the petitioner to demolish

one side of the boundary wall of his holding to enable the authorities concerned to provide an ingress passage to the land locked holding of the private respondents and the petitioner was called upon to appear before the authority concerned on 19th June, 2009 but instead thereof, the petitioner had preferred a W.P.(C) No.9685/2009 against the aforesaid notice which was ultimately withdrawn vide order of 6th April, 2011 and thereafter, the petitioner had preferred the revision petition which stands dismissed vide impugned order.

9. Otherwise also, the settled legal position is that rules of procedure are meant to advance the cause of justice and not to defeat them. Therefore, the rules of procedure are required to be substantially complied with and not literally. Since petitioner has not been able to show, if it has any case on merits, therefore on technicalities the afore-noted directions issued by this Court in W.P.(C) No. 3774-78/2006 cannot be allowed to be scuttled as the order of 18th March, 2008 in W.P.(C) No. 3774-78/2006 was required to be complied in letter and spirit.

10. Consequently, finding no merits in this petition, it is dismissed while leaving the parties to bear their own costs. Pending application for stay is disposed of as infructuous.

(SUNIL GAUR)
JUDGE

JULY 23, 2012
rs/pkb