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HIGH COURT OF DELHI : NEW DELHI

Reserved on : January 25, 2012
Pronounced on : February 21, 2012

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W.P.(C) No. 6189/2011
& C.M.No. 15744/2011

RANDHIR SINGH AND ANR Petitioners
Through: Mr.Rajendra Dutt, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Mr.Sachin Datta, CGSC with Mr.Kapil
Wadhwa, Advocate for respondent No. 1
to 3 with Mr.Krishan Kumar, Patwari for
respondent No.3-Tehsildar.
Mr.P.S.Vats, Advocate for respondent
No. 4.

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W.P.(C) 6191/2011
& C.M.No. 15745/2011

SANJEEV KUMAR SAINI AND ORS Petitioners
Through: Mr.Rajendra Dutt, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Ms.Sana Ansari, Advocate for
Ms.Zubeda Begum, Advocate for
respondent – GNCTD.
Mr.Krishan Kumar, Patwari for
respondent No.3-Tehsildar Mr.Devinder
Singh, Advocate for respondent No. 5 to
8.
Mr.P.S.Vats, Advocate for respondent
No. 9&10.
AND

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W.P.(C) 6354/2011
& C.M.No. 12806/2011

BHIM SEN KUSHWAH & ORS Petitioners
Through: Mr.Rajendra Dutt, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Mr.Neeraj Grover, Advocate for
Mr.Dhanesh Relan, Advocate for
respondent No. 1 to 3 with Mr.Krishan
Kumar, Patwari for respondent No.3-
Tehsildar.
Mr.Devinder Singh, Advocate for
respondent No.4.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
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ORDER
21.02.2012

1. Writ Petition filed by *Sanjeev Kumar and others* pertains to Khasra No.1032 (3-5); whereas Writ Petition of Petitioners – *Randhir Singh and others* relates to Khasra No.1027 (2-0); and the Writ Petition of Petitioners – *Bhim Sen and others* is in respect of Khasra No.1029 (2-11). Afore-noted subject lands, are situated within the Revenue Estate of Village Mundka, Delhi.

2. The commonality amongst these three Writ Petitions is that the Petitioners herein claim to have purchased the subject lands from Hari Singh and Ran Singh son of Shri Goverdhan of this Village on 15th July, 1987 through Agreement to sell, General Power of Attorney, Will, etc and Petitioners had constructed their houses thereon. On 20/24th March 2009, upon Respondent's application the concerned Settlement Officer

(Consolidation) had passed an order directing the Tehsildar concerned to deliver the possession of the subject lands to the private Respondents. Petitioners claim that they had filed their objections to Notice (Annexure P-1) which have not been considered, as the Petitioners were not heard by the concerned Settlement Officer (Consolidation) before passing of order by Settlement Officer (Consolidation).

3. Aggrieved by the aforesaid order of 20/24th March, 2009 of the Settlement Officer (Consolidation), Petitioners had filed a Revision Petitions which stands dismissed by the Financial Commissioner, Delhi vide impugned order of the same date, i.e., 11th August 2011, but vide separate orders. It is in this background, these three Writ Petitions were heard together, as the grounds of challenge in these three Writ Petitions to the impugned order are the common.

4. Learned counsel for the Petitioners had stated at the outset that the submissions advanced by him in one of these three matters would hold good even for the other two matters. So, with the consent of parties, these three Writ Petitions, were heard together and are being disposed of together by this common order.

5. As per learned counsel for the Petitioners, the consolidation proceedings commenced in the Village Mundka, Delhi in the year 1975 and the Scheme was published and was confirmed by the Settlement Officer (Consolidation) in July, 1976 and re-partition in terms of Section 21 of The East Punjab Holdings (Consolidation And Prevention Of Fragmentation) Act , 1948 took place and the allotments in terms of the Scheme were made and the respective possessions were taken and thus, the allotments upon repartition became final under Section 21(4) of the aforesaid enactment.

6. According to the Petitioners, the subject land, prior to the consolidation were bearing Khasra No.108/2, 108/3 and 108/4 and plots were carved out therein and this area took the shape of East Mundka Extension Colony and Government of NCT of Delhi had issued Provisional Certificate for regularization of this colony on 17th September, 2008. It is asserted by Petitioners' counsel that demand of residential plots was not recorded in the original consolidation scheme of the Village and as such, the villagers were not allotted any residential plot in the extended abadi and they had approached the Consolidation Officer for amendment of the Scheme which commenced in May, 1979 but the said Scheme was dropped by the Settlement Officer (Consolidation) .

7. Again in the year 1988, Consolidation Officer had proposed amendment of the Consolidation Scheme by including 92 Bighas 8 Biswas in the extended Lal Dora and the land of Hari Singh and Ran Singh belonging to the Petitioners was also included therein. In July 1989, the Consolidation Officer made the allotment of plots which was challenged before the Financial Commissioner, Delhi and in the year 1982, in the Writ Petition filed, the matter was remanded back to the Financial Commissioner, Delhi, who upon remand, had accepted and approved the amended scheme. It is the case of the Petitioners that the consolidation scheme formulated earlier was set aside on 31st October, 1989 and the amended scheme of 15th June, 1988 confirmed by the Settlement Officer (Consolidation). Writ Petition preferred in the year 1986, was allowed directing the Respondents to amend the scheme in such a way to accommodate the Petitioners in the extended abadi area.

8. In light of the afore-noted projection, the contention of learned counsel for the Petitioners is that under Rule 16 of *Delhi Holdings*

(*Consolidation And Prevention Of Fragmentation*) Rules 1959, Notice was required to be issued to affected parties and no notice was issued to the Petitioners and this vital aspect has not been considered in the impugned order and therefore, the impugned order deserves to be set aside.

9. The aforesaid stand of the Petitioners is controverted by learned counsel for the Respondents who drew the attention of this Court to the impugned order to point out that the order of the Settlement Officer (Consolidation) which is self-speaking about the notice being not only issued but the copy of the notice being pasted at the subject premises and since none had appeared on behalf of the Petitioners, therefore, there was no option with the Settlement Officer (Consolidation) except to have passed the order of 20/24th March 2009, directing that the actual physical possession of the subject land be handed over by the private Respondents. Thus, it is asserted by learned counsel for the Respondents that there is no violation of Section 23 of *The East Punjab Holdings (Consolidation And Prevention Of Fragmentation) Act , 1948* or Rule 16 of *Delhi Holdings (Consolidation And Prevention Of Fragmentation) Rules 1959*, and so, the decisions reported in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Ors.*, AIR 1976 SC 789 and *Krishan Kumar vs. Financial Commissioner, etc.*, 169(2010) DLT 136 relied upon by the Petitioners' have no application to the instant matters.

10. Since it was asserted by learned counsel for the Petitioners at the first hearing in these matters that the issue of violation of Section 23(2) of *The East Punjab Holdings (Consolidation And Prevention Of Fragmentation) Act, 1948* and Rule 16 of *Delhi Holdings (Consolidation And Prevention Of Fragmentation) Rules 1959* was urged before the Financial Commissioner, but the same has not been considered in the

impugned order, therefore notice was issued to the Respondents limited to the aforesaid legal aspect of afore-noted violation. It is in this context, the afore-noted provisions are required to be looked into.

11. Sub-section 2 of Section 23 of *The East Punjab Holdings (Consolidation And Prevention Of Fragmentation) Act, 1948* reads as under:-

“23. Right to possession of new holdings.

(1) xxx

(2) If all the owners and tenants as aforesaid do not agree to enter into possession under sub-section (1), they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed manner in the estates concerned; and the Consolidation Officer shall, if necessary, put them in physical possession of the holding to which they are so entitled, including standing crops, if any, and for doing so may exercise the powers of Revenue Officer under the Delhi Land Revenue Act, 1954, or the U.P. Land Revenue Act, 1901, as in force in the Union Territory of Delhi, as the case may be.”

12. Rule 16 of *Delhi Holdings (Consolidation And Prevention Of Fragmentation) Rules 1959* reads as under:-

“16. Eviction – The Consolidation Officer shall serve a notice on the person or persons liable to ejectment under sub-section (2) of Section 23 requiring him or them to vacate the land within fifteen days of the receipt of the notice. If such notice is not complied within the time specified the Consolidation Officer may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 for the purpose of putting into physical possession of the holding the persons entitled thereto.”

13. The question which falls for consideration herein, is whether petitioners were put to notice before they were proceeded against under Section 23(2) of *The East Punjab Holding (Consolidation & Prevention*

of Fragmentation) Act, 1948 by the Settlement Officer (Consolidation). The concurrent findings of the Settlement Officer (Consolidation) as well as of the Financial Commissioner, Delhi are to the effect that service upon the petitioners was effected by way of affixation and still none had appeared on their behalf. On this aspect, the finding returned in the impugned order is as under:-

“Notice of the present application was issued. The notice and copy of the application were also affixed by the bailiff on the Khasra no. of the aforesaid residential plot. However, none has appeared in response of the service of notice.”

14. What was least expected from the petitioners was to assail the afore-noted concurrent findings but instead thereof, what is asserted by the petitioners is that there is violation of Rule 16 of the *Delhi Holding (Consolidation & Prevention of Fragmentation) Act, 1959* but it has not been shown as to in what manner the aforesaid Rule stands violated. It is so said, for the reason that in the writ petition filed by the petitioners, there is no denial that they were served by way of affixation before being proceeded against under Section 23 of the *East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948*. Having not done so, petitioners cannot legitimately assert that they stand prejudiced merely because the order of 20/24th March, 2009 has been passed by the Settlement Officer (Consolidation) and not by the Consolidation Officer. At the most, this is a mere irregularity, which does not go to the root of the matter for the reason that the aforesaid order has not been passed by an authority lower than the Competent Authority but in fact has been passed by an authority, who is higher than the Competent Authority. Therefore, on this account the impugned order cannot be faulted with. Reference by the petitioners to the decision of the Apex Court in ***Hukam Chand*** (supra) is of no avail, as in the said decision the powers were

exercised by the General Manager, whereas it should have been issued by the Divisional Engineer, i.e., exercise of drastic powers by a person who was lower in rank, was found to be an apparent defect. It is not so, in the instant case.

15. Since the merits of this case are not being considered, therefore, the decision of the coordinate Bench of this Court in ***Krishan Kumar*** (supra) is not required to be dealt with, as while entertaining these petitions, opposite side was put to a limited notice of examining as to whether there is violation of the provisions of section 23(2) of *East Punjab Holding (Consolidation & Prevention of Fragmentation) Act, 1948* and Rule 16 of *Delhi Holdings (Consolidation And Prevention Of Fragmentation) Rules 1959*.

16. In light of the afore-going narration, it becomes crystal clear that there is no violation of the aforesaid provisions of law and therefore, these petitions must necessarily fail. Accordingly, these petitions are dismissed with no orders as to costs. Pending applications are rendered infructuous and disposed of as such.

(SUNIL GAUR)
JUDGE

February 21, 2012
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