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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 6.3.2012

+ LPA No.659/2009 & CM APPL. 18750/2009 (for additional documents)

ANAND PRAKASH APPELLANT
Through: Mr. Rajesh Yadav, Advocate with Mr.
Swastik Singh, Advocate.
versus

CONSOLIDATION OFFICER RESPONDENT
BASANT VIHAR
Through: Mr. S.D. Salwan, Advocate with Mr.
Neeraj Chaudhary, Advocate.

AND

+ LPA No.660/2009 & CM APPL. 18752/2009 (for additional documents)

SATPAL & ORS APPELLANTS
Through: Mr. Rajesh Yadav, Advocate with Mr.
Swastik Singh, Advocate.
versus

CONSOLIDATION OFFICER RESPONDENT
BASANT VIHAR
Through: Mr. S.D. Salwan, Advocate with Mr.
Neeraj Chaudhary, Advocate

CORAM:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKIRI, ACTING CHIEF JUSTICE: (ORAL)

1. These two appeals are filed against common judgment dated 11.11.2009 rendered by the learned Single Judge in the two writ

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petitions filed by the appellants herein. The case of both the appellants is similar based on almost identical grounds.

2. In the revenue estate of Village Bamnoli, Delhi consolidation proceedings were started sometime in the year 1993 by issuance of Notification under Section 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act'). This Scheme was finalized on 11.4.1997. The provisions of the said Act and the Scheme entitled the Bhumidars of the agricultural land to in the consolidation proceedings, claim a residential plot. The appellants claim to have made applications on 15.7.1996 for allotment of plot. According to the appellants, no action was taken thereupon. The case of the respondents is that no such applications were filed. Applications to the same effect were filed on 21.9.2005 but were dismissed by the Consolidation Officer on 19.11.2005 and 26.10.2005 respectively on the ground that the file had been consigned to the record room and he had become *functus officio*.

3. The appellants filed revision petitions thereagainst under Section 42 of the said Act, before the Financial Commissioner. Those were also dismissed vide orders dated 5.12.2008. The reason given

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by the Financial Commissioner for dismissing the revision petitions was that the appellants were not the bona fide residents of the village Bamnoli, Delhi and in fact they were residing in village Bijwasan.

4. Against the orders of the Financial Commissioner, the appellants had preferred the aforesaid writ petitions which were dismissed by the learned Single Judge vide orders dated 11.11.2009.

5. Perusal of the impugned order of the learned Single Judge would show that it was not disputed by the appellants that as per Rule 6 of the Delhi Holdings (Consolidation & Prevention of Fragmentation) Rules, 1959, only persons holding agricultural land for a period of 20 years would be entitled to consideration for allotment of residential plots under a scheme of consolidation. The learned Single Judge has observed that the only grievance made was that one Bhagwan s/o of Sh. Dalel who was a joint khatedar and co-bhumidar of the petitioner was allotted a residential plot under the similar circumstances. This contention has been rejected by the learned Single Judge observing that even if the allotment in favour of Sh. Bhagwan has been made on an erroneous consideration of the rules, that would not create or confer any right on any other person even if similarly situated; in case allotment is effected which is in violation of the statutory rules,

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the proper remedy is to proceed against such an allotment. This line of action of the learned Single Judge is perfectly in order. Merely because Mr. Bhagwan was allotted plot erroneously would not mean that any right accrues to the appellants as well, even when they do not fulfill the conditions of allotment as per the Delhi Holdings Rules.

6. Learned Counsel for the appellants, however argued that the appellants had made out a specific case that they were bona fide residents of the village Bamnoli for more than 20 years and have placed documents in support of their claim which were not looked into and ignored by the Financial Commissioner while passing the order. The appellants have even filed some more documents with application under Order XLI Rule 27 CPC to bolster the aforesaid submission of being bonafide residents of village Bamnoli.

7. In the first instance, we may observe that the order of the learned Single Judge does not show that this contention was taken at the time of arguments. There is no whisper of any such contention, which therefore has not been dealt with. On the contrary, the learned Single Judge has observed that even when additional affidavit has been filed by the appellants, the factual position, (namely that the appellants are not the bona fide residents for the last 20 years of

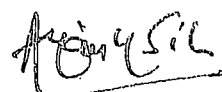
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village Bamnoli) is not disputed.

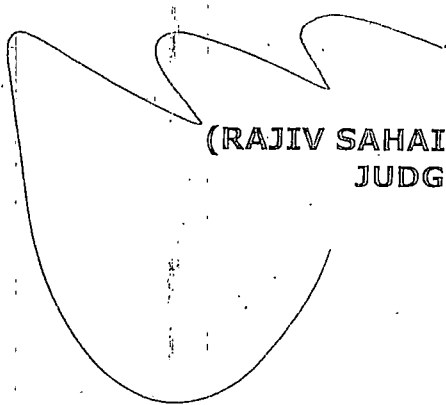
8. In any case, we find that the matter was examined by the Financial Commissioner on this aspect as well. In the application filed by the appellants for allotment of residential plots in village Bamnoli, they had shown themselves as resident of village Bijwasan, New Delhi. There was another application made by the appellants before the Consolidation Officer stating that they were the owner of agricultural land in village Bamnoli and requesting for allotment of residential plot. On those applications inquiry was held and it was found that they do not reside in the said village. These are the findings of fact arrived at by the Revenue authorities on the basis of which the finding is arrived that the appellants are not the bona fide residents of village Bamnoli and at least not residing there for the last 20 years. No ground is made out for interference with such findings of fact in exercise of powers under Article 226. The appellants had the liberty to file the documents in support of that claim before the authorities below and they failed to do so. In these circumstances, when this Court is not to go into the question of fact, we reject the application under order XLI Rule 27 CPC. Even otherwise, the documents filed by the appellants appear to be of recent years and of no relevance as to residence prior to consolidation.

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9. We find no error in the orders passed by the learned Single Judge. These appeals are accordingly dismissed.



ACTING CHIEF JUSTICE



(RAJIV SAHAI ENDLAW)
JUDGE

March 6, 2012
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