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

+ LPA 39/2013 and CM No. 754/2013 (Stay) & 755/2013 (Exemption)

RAJENDER SINGH

..... Appellant

Through: Counsel for the appellant.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr V.K. Tandon, Adv for respondents 1 to 3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

ORDER

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15.01.2013

The consolidation of land holdings of village Karala started in the year 1975-76. During consolidation proceedings, the appellant Rajender Singh and respondents 8 to 20 were allotted land in lieu of their pre- consolidation holding, including the land comprised in Khasra No. 168, measuring 11 biswas, in re-partition under Section 21(1) of East Punjab Holdings (Consolidation and Prevention Of Fragmentation) Act 1948 (hereinafter referred to as the “Act”) and they were put in physical possession of the said land. Respondents No. 4 to 7 in this appeal, namely, Shri Tej Ram, Shri Satbir Singh, Shri Ranbir Singh and Master Navin, filed an application under Section 43-A of the Act, before the Consolidation Officer, seeking allotment of Khasra No. 168 (old Khasra No. 703)

in their favour, on the ground that their names appeared in *Scheme Kabizan* prior to consolidation of holdings. The application was dismissed by the Consolidation Officer vide order dated 11.05.1999 on the ground that he had no jurisdiction in the matter. The order of the Consolidation Officer was challenged before the Financial Commissioner, who vide order dated 17.08.2000, remanded the matter back to him to decide the application under Section 43-A of the Act, afresh on merits. During pendency of the matter before the Consolidation Officer, after remand by the Financial Commissioner, respondent No. 2 in that matter Shri Baljit Singh expired. An application was, therefore, filed by Tej Ram and others for impleading his legal representatives. The said application was allowed vide order dated 04.10.2004. Vide order dated 24.10.2004, the Consolidation Officer took note of the certified copy of the Register proceedings dated 08.06.1976 in which the father of Tej Ram and others had been shown as Scheme of Khasra No. 168 (old Khasra No. 703), measuring 11 biswas in revenue estate of village Karala. The Halka Patwari was then called along with consolidation scheme of the village and the said entry was found duly reflected in the scheme of consolidation holding of the village. It also transpired that the predecessor-in-interest of the appellant Rajender Singh and others had been mentioned as *Bhoomidars* of the said land. Relying upon the decision of Supreme Court in *Amar Singh, Jagram (Dead) by Lrs. v. Chandgi (Dead) by Lrs.* AIR 1989 SCC 413, the Consolidation Officer held

that Tej Ram and others were entitled to allotment/allocation as *Scheme Kabizan*. He was of the view that it was incumbent upon the Consolidation Authority to allot/allocate the equivalent value/area during the consolidation proceedings. It was also noted by him that the aforesaid land had been allotted in the name of respondents 3 to 7 before him, as the joint holding of the respondents, got separated during consolidation and the encumbrances over the said land was individually on the appellant Rajender Singh, who was respondent No. 2 before him. The Halka Patwari was again called with revenue records and on the basis of consolidation scheme of revenue records, the allotment of land measuring 11 biswas in Khasra No. 168 was made to Tej Ram and others.

2. Being aggrieved from the order passed by the Consolidation Officer on 24.12.2004, Rajender Singh and others filed a Revision Petition before the Financial Commissioner. The Revision Petition was dismissed vide order dated 03.02.2009. Being still aggrieved, Shri Rajender Singh and others filed a writ petition being WP(C) No. 7124/2009, challenging the order passed by the Consolidation Officer and the Financial Commissioner. The writ petition having been dismissed vide order dated 13.12.2012 and the review petition filed by the writ petitioner having been dismissed vide order dated 18.12.2012, the appellant Shri Rajender Singh is before us by way of this appeal.

3. The following three submissions are made by the learned counsel for the appellant:-

i. the Consolidation Officer had no jurisdiction under Section 43-A to make allotment after the consolidation proceedings in the village were over;

ii. the order dated 24.12.2004 was passed, without giving opportunity of hearing to the appellant and the Legal Representatives of late Baljeet Singh since they had no notice of the hearing after 04.10.2004;

iii. respondents 4 to 7 being trespassers, no allocation of land could have been made to them.

4. The learned counsel for the appellant is correct in submitting that the consolidation proceedings in village Karala had come to an end much before application under Section 43-A of the Act was filed before the Consolidation Officer. This was acknowledged by the learned Single Judge in his order dated 18.12.2012 when he noted that the consolidation proceedings had concluded in the year 1976. The learned Single Judge, relying upon the decision of this Court in **Shri Leo Puri v. Consolidation Officer & Ors.** LPA No. 1734/2006, held that non-recognition of status of contesting respondents as *Scheme Kabizan* was indeed an accidental omission, which could be corrected in exercise of the power under Section 43-A of the Act. We also take note of the fact that at the time of disposal

of the writ petition vide order dated 13.12.2012, the learned counsel for Tej Ram and others had also placed reliance upon Master Construction Co. (P) Ltd. v. State of Orissa and Anr. AIR 1966 SC 1047, Jayalakshmi Coelho v. Oswald Joseph Coelho, AIR 2001 SC 1084, Rishi Prakash & Ors. v. Financial Commissioner & Ors. 2009 (110) DRF 14.

5. It is an admitted fact that at the time of remand of the matter to the Financial Commissioner dated 17.08.2000, the appellant and other petitioners before the Financial Commissioner had specifically stated that they had no objection to the case being remanded back to the Consolidation Officer, for being decided on merits. Having aggrieved to the Consolidation Officer deciding the matter on merits, it is not open to the appellant to now say that the Consolidation Officer did not have the jurisdiction to make allotment to Tej Ram and others in exercise of the powers conferred upon him by Section 43-A of the Act. He is, therefore, estopped from contending that the said order could not have been passed after the consolidation proceedings in the village had concluded. We, therefore, need not go into the question as to whether failure to make allocation/allotment to Tej Ram and others was an error capable of being rectified under Section 43-A of the Act or not. We, however, take note of the decision of this Court in Shri Leo Puri (*supra*), where the order of the Consolidation Officer, withdrawing excess land from the holder of the land, to whom excess land was allotted, was assailed *inter alia* on the

ground that the Consolidation Officer having become *functus officio*, could not have passed such an order. Rejecting the contention, it was held that a mistake having been committed by him by allotting excess land, such mistake was capable of being rectified under Section 43A of the Act.

6. As regards the second contention that the order dated 24.12.2004 was passed, without giving opportunity of hearing to the Legal Representatives of Baljeet Singh, we take note of the proceedings dated 18.10.2004 recorded by the Consolidation Officer. It was noted by him that the notice had been served upon the LRs of Shri Baljit Singh, namely, Smt. Laxmi Devi, Smt. Sarla Devi and Smt. Sarita, who had refused to accept the notice saying that they had nothing to do with the case. After recording the service of notice upon the legal representatives of Shri Baljit Singh, the Consolidation Officer adjourned the matter to 16.11.2004 on which date, it was adjourned to 24.12.2004, when the order in question came to be passed by the Consolidation Officer. The question as to whether the appellant had notice of the hearings held after 04.10.2004 and whether the notice sent to the legal representatives of Shri Baljit Singh was refused by them or not are questions of fact which cannot be gone into either in the writ petition or in this appeal. A perusal of the order passed by the Financial Commissioner on 03.02.2009 would show that no argument alleging denial of hearing to the petitioners before the Financial Commissioner was advanced at the time of hearing. Therefore, even if

the petitioners before the Financial Commissioner had taken the plea of denial of hearing in the revision petition filed by them, it is quite obvious that the said plea was not pressed by them during the course of arguments. Had that not been the position, nothing prevented them from filing an application before the Financial Commissioner, seeking review of the order dated 03.02.2009 on the ground that he had not dealt with their submission alleging denial of hearing to them. We, therefore, find no merit in the second contention raised by the learned counsel for the appellant.

7. In supports of the last contention that no allotment could have been made to a trespasser, the learned counsel for the appellant has relied upon in **Mange Ram v. Financial Commissioner and Ors.** (2003) 2 SCC 1, where the Apex Court, *inter alia*, held that the word “encumbrancer” has to be read in the sense of a legal encumbrance like a lease or a mortgage and a mere trespasser cannot be elevated to the position to an emcumbrancer in the context of the statue. It was also noted in para 5 of the aforesaid decision that the appellant was claiming a piece of land comprising an area of 250 square yards and such a small piece of land could hardly be said to be the land meant for cultivation and, therefore, the case of the appellant before the Supreme Court, seen from every angle, was without any merit. However, in the case before us, there is no material before us to show that the status of respondents 4 to 7 before the consolidation scheme was that of a

trespasser. Neither the Consolidation Officer nor the Financial Commissioner held that the status of respondents 4 to 7 or their predecessor-in-interest was that of a trespasser. The order passed by the Financial Commissioner does not indicate any such contention having been raised before him, at the time of hearing. It was noted by the Consolidation Officer as well as the Financial Commissioner that the name of their father was recorded as a *Scheme Kabizan* of Khasra No. 169, which was never challenged by anybody, including the appellant Rajender Singh and, therefore, the said record had attained finality. It is not open to us to go into the disputed questions of fact, while considering appeal against the order passed by the learned Single Judge, in exercise of his powers under writ jurisdiction. We cannot examine the status of respondents no.4 to 7 in these proceedings and cannot proceed on the assumption that their status was that of a trespasser. We, however, would like to say that it is not necessary to make allotment only to the *Bhoomidars*. In *Amar Singh, Jagram* (*supra*), one Chandgi, respondent before the Supreme Court had inducted two tenants who were in possession of two different parcels of land in Village Bawana in Delhi. In the consolidation proceedings initiated under the Consolidation Act, a scheme of repartition was framed and in lieu of the aforesaid parcels of land he was allotted some land. Thus the lands originally comprised in his holding were substituted by the lands comprised in the aforesaid parcels which were allotted to him under the consolidation scheme. The tenants

were in actual possession and were actually tilling two parcels out of the original holding prior to consolidation. However, after the allotment of the other parcels of land in substitution of the original parcels of land the tenants in possession of the corresponding parcels in the substituted lands. Thereupon they approached the Consolidation Officer viz. the Naib Tehsildar at Delhi by initiating proceedings under Section 21/26 of the Consolidation Act. Each of them made a separate application on the premise that in lieu of the land which he was cultivating as a non-occupancy tenant prior to consolidation the corresponding parcels should be restored to him from out of the re-allotted lands substituted in lieu of original holding under the Consolidation Scheme. The landowner, Chandgi, lodged an objection. He raised the plea that Amar Singh and Jagram no doubt were tenants in 1950 but that they had voluntarily given up the possession thereof prior to the consolidation and that the land-owner himself was in possession prior to consolidation.

The Consolidation Officer upheld the claim of the tenants and passed an order in their favour on 28th April, 1960 whereby he directed that the corresponding parcels of land in the substituted killa numbers be allotted to the tenants. Chandgi, thereafter instituted civil suits challenging the orders of the Consolidation Officer. The challenge was repelled firstly by the Trial Court and then by the first Appellate Court. The first Appellate Court returned a finding that

the tenants were in possession of the land prior to the consolidation proceedings. The order passed by the Senior Civil Judge was set aside by the High Court. The order passed by the High Court was challenged by the legal representatives before the Apex Court.

Allowing the appeal filed by them, the Supreme Court noticing the provisions contained in Section 26 of the Act held that the rights of the non-occupancy tenants or mortgagee and other holders of encumbrances in respect of pre-repartition of original holdings stood transferred from the original holdings to the substituted holdings allotted to the land owners and the occupancy tenants under the scheme and sub-section 3 of Section 26 confers the jurisdiction on the Consolidation Officer to put in possession of substituted holding such a lessee or mortgagee or holder of encumbrance of the original holding of the land owner (or occupancy tenant) who has become the owner of the substituted land on confirmation of the scheme and repartition made pursuant thereto. It was further held that Section 26 creates a right in favour of an encumbrance holder, including a non-occupancy tenant and jurisdiction has been conferred on the Consolidation Officer to put the holder of the encumbrance in possession of the corresponding part of the substituted holding allotted to the land owner in lieu of his original holding, if he was in possession of the original holding. The Court was of the view that what the Consolidation Officer does under Section 2 of the Act is to

define the portion of the land newly allotted under the scheme to which the right of the holder of the encumbrance would be attached by operation of law by virtue of Section 26, though the right already existed. Thus, the allotment to the non-occupancy tenant made by the Consolidation Officer was upheld by the Apex Court.

8. In the case before us, if the respondents No.4 to 7 were not rank trespassers and held encumbrance of any nature whether as occupancy tenants or as non-occupancy tenants, it was incumbent for the Consolidation Officer to make allotment of land in question to them. Of course, no such allotment could be made to a rank trespasser, but, then, there is no finding returned by the Consolidation Officer or the Financial Commissioner holding respondents No.4 to 7 to be land trespassers.

9. For the reasons stated hereinabove, we find no merit in the appeal and the same is hereby dismissed. There shall be no order as to costs.

The pending applications also stand disposed of.

CHIEF JUSTICE

V.K. JAIN, J

JANUARY 15, 2013/BG