

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

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Date of Decision: 15.05.2013

+ W.P.(C) 5250/2011

MAHESH AND ORS

..... Petitioners

Through: Mr V.P. Rana, Adv

versus

GNCT OF DELHI AND ORS

..... Respondents

Through: Mr Sunil Chauhan, Adv for R-4

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

During consolidation proceedings in village Pooth Khurd, one residential plot comprised in Khasra No. 154/170 measuring 2 bigha 2 biswa, three industrial plots, bearing No. 156/175, 156/176 and 156/181, measuring 6 biswas each and agriculture land measuring 4 bigha and 16 biswa comprised in Khasra No. 93/14 were allotted to the petitioners before this Court, all of whom were minors at that time. A letter dated 17.07.2006 was written by Jagdish Prasad, respondent No. 4 in this petition to SDM, Narela, referring to his earlier letter dated 04.01.2006 and informing that no action had been taken on his said application. He also complained that possession of plots was being delivered to plot owners, while he had not been given possession of any plot.

2. A letter dated 05.12.2006 was written by the petitioners to the Settlement Officer, stating therein that plot No. 156/176 measuring 06 biswa allotted to them during consolidation had also been allotted to Jagdish Prasad. It was further stated in the said letter that plot No. 156/126 had been allotted to Raghubeer Singh, son of Tohar and 156/107 had been allotted to Silak Ram, son of Siri Lal in excess of their demand/without demand and they had more than one industrial plots industrial plots in their accounts. The Settlement Officer was requested to cut excess plot from the above-referred persons and allot one of the plots in place of plot No. 156/176 to the applicants Mahesh, Satpal and Rahul. It appears by that time Mahesh had become major, whereas Satpal and Rahul were still minor.

3. The Settlement Officer, vide his order dated 04.12.2006, recorded that Smt. Kamlesh, mother of the petitioners, was present before him on 02.12.2006 and had stated that they had no objection against allotment of plot No. 154/176 to anyone. He, therefore, withdrew plot No. 156/176 from the petitioners, who were allotted another plot bearing No. 156/181, which had already been allotted to them and plot No. 156/176 was allotted to respondent No. 4 Jagdish Prasad.

4. Being aggrieved from the order of the Settlement Officer, the petitioners preferred a revision petition before the Financial Commissioner under Section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. The Financial Commissioner, vide impugned order dated 09.11.2000, noted that

three industrial plots had been allotted to the petitioners, whereas they jointly being one unit were entitled to a plot not bigger than 6 biswas. He was also of the view that even otherwise as per Rule 6(j)(iii), Delhi Holding Rules, 1959, a Bhoomidar could not be allotted more than 2 bigha and 08 biswas of total area, whereas the petitioners had been allotted three industrial plots measuring 6 biswas each and a residential plot measuring 02 bigha and 2 biswa, as a result of which excess land had been allotted to them. He accordingly directed that the concerned Consolidation Officer shall take appropriate steps for deduction/recovery of the excess land allotted to the petitioner. As regards plot No. 156/176, he found merit in the contention that the statement of the petitioners had been wrongly construed by the Settlement Officer. He, therefore, remitted the matter back to the Consolidation Officer to decide whether or not the petitioners were not entitled for allotment of plot No. 156/176.

5. It would thus be seen that two issues arise for consideration in this petition. The first being as to whether the Financial Commissioner, while hearing a revision petition filed under Section 42 of the Act, against the order dated 04.12.2006 passed by the Settlement Officer, could have directed the Consolidation Officer to withdraw what he termed 'excess land allotted to the petitioners' and the second issue which arises for consideration in this petition is as to who has got preferential

right over plot No. 156/176 whether it should go to respondent No. 4 Jagdish Prasad or to the petitioners Mahesh and others.

6. Section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act reads as under:

“The [State] Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under Act call for and examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto thinks fit: Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard [except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration]”

It would thus be seen that besides entertaining revision petition from an aggrieved party, the State Government itself can call for the record of any order passed by any officer under the said Act, examine the said record to satisfy itself as to the legality or propriety of any such order and pass such order as it may deem appropriate in the matter, but such an order cannot be passed to the disadvantage of any person, without giving a notice and opportunity of hearing to him, unless the case before the State Government was a case involving unlawful consideration. The power of the State Government under Section 42 of the Act stands delegated to the Financial Commissioner.

7. Admittedly, no notice was given by the Financial Commissioner to the petitioners stating therein that excess land had been allotted to them by the Consolidation Officer and calling them upon to show cause why such excess land be not withdrawn from them. It appears from the order passed by the Financial Commissioner that an opinion to the effect that excess land had been allotted to the petitioner came to be formed by him only during the hearing of the revision petition filed by the petitioners and no specific notice or opportunity, as envisaged in the proviso to Section 42 of the Act was given to them. Therefore, the order passed by the Financial Commissioner, to the extent he directed the Consolidation Officer to withdraw what he termed “the excess land allotted to the petitioners”, cannot be sustained and is liable to be set aside.

8. Regarding allotment of plot No. 156/176, the main contention of the learned counsel for the petitioners is that the Settlement Officer had no right to withdraw the aforesaid plot from the petitioners since such a power could have been exercised only by the Consolidation Officer and the Settlement Officer could have considered such an issue only in the event of an appeal being preferred before him against the order of the Consolidation Officer. On the other hand, the learned counsel for the respondent No. 4 has submitted that since the scheme of consolidation is required to be confirmed by the Settlement Officer in terms of Section 20 of the Act and Section 36 of the Act enables the Authority who

confirms the scheme to vary or revoke the same at any time, the Settlement Officer had the jurisdiction to withdraw the allotment of plot No. 156/176.

9. In my view, considering the fact that the Financial Commissioner has already remitted the matter back to the Consolidation Officer to decide as to who has got preferential right over plot No. 156/176 and also considering the fact that the Settlement Officer, in his order dated 04.12.2006, wrongly construed the statement made by the petitioners, it would be difficult to sustain the order which the Settlement Officer had passed on 04.12.2006, and which, in any case, stands, superseded by the order of the Financial Commissioner. It would also be pertinent to note here that respondent No. 4 has not challenged the order passed by the Financial Commissioner in this regard. Therefore, in my view, the Consolidation Officer should now examine the claim of the petitioner as well as the claim of respondent No. 4 with respect to plot No. 156/176 and pass an appropriate order after taking into consideration all relevant facts, including the statements made by the petitioners from time to time and the submissions which the parties may make before him, including the contention of respondent No. 4 that in the absence of any demand, the petitioners were not entitled to allotment of any industrial plot or residential plot. The parties shall also be entitled to raise such other submissions as they may deem appropriate with respect to their respective claim in respect of the aforesaid plot. The Consolidation Officer, after considering the rival

submissions of the parties and taking into consideration all relevant material in this regard, shall pass an appropriate order, within 08 weeks of the parties appearing before him. The order passed by the Financial Commissioner as well as the order passed by the Settlement Officer stand merged in this order.

The parties shall appear before the concerned Consolidation Officer at 11.00 AM on 27.05.2013.

The writ petition stands disposed of.

V.K. JAIN, J

MAY 15, 2013
BG