

\$~R-2, 3 and 5

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

% Judgment reserved on : February 21, 2013
Judgment pronounced on : February 26, 2013

+ **LPA No. 1154/2007**

RAJDHANI PARK KALYAN
KARINI SAMITI & ORS. Appellant

Versus

THE FINANCIAL COMMISSIONER AND ORS. Respondent

+ **LPA No.1183/2007**

CHARANJIT SINGH BHALIA AND ANR. Appellant

Versus

THE FINANCIAL COMMISSIONER AND ORS. Respondent

+ **LPA No.1245/2007**

PRAKASH LAND AND
HOUSING CORPORATION
versus
..... Appellant

FINANCIAL COMMISSIONER AND ORS. Respondent

Counsel for the Appellant: Mr. Ankit Jain and Mr. Ajay Mohan Gulati,
Adv. in LPA No.1154/2007.

Mr. Rajendra Dutt, Adv. in LPA No.1183/2007.

Mr. Kamal Mehta, Adv. in LPA No.1245/2007.

Counsel for the Respondent: Mr Sudhir Nandrajog, Sr Adv with
Mr Sheetesh, Adv for respondent No.4

Ms. Avnish Ahlawat with Mr. N.K. Singh and Mr. Vibhav Mishra,
Adv. for R-1 to 3.

Mr. Davinder Verma, Adv. for R-5.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

1. In the year 1972, Prakash Land and Housing Corporation (hereinafter referred to as "M/s Prakash") purchased agricultural land comprised in pre-consolidation Khasra Nos.558, 3391/599, 867/678/581, 582, 583, 580, 579, 573, 674, 2131 and 2130 in the revenue estate of Village Mundka from the original Bhumidhars of the said land. M/s Prakash divided the said land into small plots of varying sizes and sold those plots to various individuals, including petitioners No.2 to 8 in W.P.(C) No.2472/1987, who were also the petitioners in W.P.(C) No.1689/1988, for the purpose of construction of dwelling units. Since M/s Prakash had commenced construction on the aforesaid land,

proceedings under Section 81 of Delhi Land Reforms Act, 1954 were initiated against it and the said land consequently came to be vested in the Gaon Sabha. The aforesaid vesting of land in Gaon Sabha, however, came to an end on 24th April, 1977.

2. On 29th September, 1975, notification under Section 14 of the East Punjab Consolidation Land Holding Act was issued by the Lieutenant Governor of Delhi declaring intention to frame a Scheme for Consolidation. The said Scheme was prepared on 16th November, 1979 and confirmed on 27th May, 1976. Re-partition in terms of Section 21 of the Act took place between 26th June, 1976 to 15th September, 1976.

3. On 19th December, 1980, an application was filed by a Society named Rajender Singh Lakra Memorial Trust (hereinafter referred to as “the Trust”) through its Secretary Shri S.S.Verma for allotment of land under the Consolidation Scheme. Vide order dated 29th April, 1981, the Consolidation Officer made allotments in the name of some Bhumidhars, though no allotment in favour of the Trust was made. The original Bhumidhars then executed registered gift deeds in favour of the Trust whereby they gifted the aforesaid land to the Trust.

4. M/s Prakash, through its partner, Shri Nand Lal filed an application before the Consolidation Officer for allotment of land to it as per its entitlement under the Consolidation Scheme. Vide order dated 27th June, 1981, the Consolidation Officer, while recording the willingness of Shri Nand Lal allotted land in Rectangles Khasra Nos. 74 and 48(post-consolidation numbers, measuring 26 bighas and 10 biswas) to M/s Prakash. Being aggrieved from the orders dated 29th April, 1981 and 27th June, 1981, M/s Prakash filed an appeal before the Settlement Officer primarily on the ground that allotment was not made at the Centre where the original holding of M/s Prakash was situated. The appeal having been dismissed on 16th November, 1981, M/s Prakash filed two Revision Petitions one against the order dated 29th April, 1981 and the other order dated 16th November, 1981 dismissing the appeal filed by it. Vide order dated 15th November, 1984, the Financial Commissioner dismissed both the Revision Petitions. The said order dated 15th November, 1984 having not been challenged by any party thereby became final.

5. Rajdhani Park Kalyaan Karini Samiti and its office bearers had, in the meantime, filed W.P.(C) No. 722/1982 in this Court challenging the Scheme of Consolidation and expressing a grievance that land under the

Scheme had been allotted to the original Bhumidhars, overlooking the fact that the petitioners in that case had purchased the land from M/s Prakash by way of registered sale deed. The said writ petition was dismissed as withdrawn after recording the statement of the Consolidation Officer that they were considering the allotment of plots to the erstwhile purchasers of the land. Pursuant to the said Statement, lands were allotted to Prakash Sales to Petitioners No.2,3,6 & 7 in the post-Consolidation Phase.

6. On 11th February, 1985, Rajdhani Park Kalyaan Karini Samiti filed two Revision Petitions before the Financial Commissioner challenging the orders dated 29th April, 1981, 27th June, 1981 and 16th November, 1981. The Financial Commissioner vide order 9th July, 1985 set aside the orders dated 29th April, 1981, 27th June, 1981 and 16th November, 1981 and remanded the matter to the Settlement Officer for a fresh determination. He also directed that all out efforts should be made not to unnecessarily disturb the settled persons. On 21st February, 1986, the Consolidation Officer completed allotment of remaining land in the post-consolidation phase to individual land holders and also allotted some land to M/s Prakash. Vide subsequent order dated 7th April, 1986,

the Settlement Officer rejected the claim of the Rajdhani Park Kalyaan Karini Samiti after noticing that some of the members of the said Committee as well as the M/s Prakash had, in fact, been allotted land by Consolidation Officer on 21st February, 1986 and on some of those lands, houses had been built. As regards the disputed land measuring around 20 bighas, he carried out an inspection on the spot and concluded that the land in question, which had been allotted to the original Bhumidhars vide order dated 29th April, 1984, was being used only for agricultural purpose, there being no built house thereon and allotted 9 bighas and 16 biswas of the said land to M/s Prakash 9 bighas and 7 biswas to Trust and one bigha and six biswa to one Shri Lal Chand.

7. The order dated 7th April, 1986, was challenged by Rajdhani Park Kalyaan Karini Samiti before the Financial Commissioner by way of a Revision Petition. The said petition was dismissed by the Financial Commissioner who found no infirmity in the order passed by the Settlement Officer. The Consolidation Scheme in the village came to be closed on 26th May, 1988.

8. Being aggrieved from the order dated 7th April, 1986 passed by the Settlement Commissioner and the order dated 18th May, 1987 passed by

the Financial Commissioner, W.P.(C) 247/1986 and 1689/1988 were filed by Rajdhani Park Kalyaan Karini Samiti and some of its members. The learned Single Judge vide impugned order dated June 15, 2007 dismissed the said petitions. Being aggrieved, they are before us by way of this appeal.

9. The first question which comes up for consideration in this case is as to whether having dismissed the Review Petitions filed by M/s Prakash vide order dated 15.11.1984, the Financial Commissioner, on subsequent Review Petitions filed by Rajdhani Park Kalyaan Karini Samiti, could have reviewed his earlier order dated 15.11.1984 and could have set aside the orders dated 29.04.1981, 27.06.1981 and 16.11.1981. The learned Single Judge, while examining this issue, referred to the decision of Supreme Court in Harbhajan Singh vs. Karam Singh 1966(1) SCR 817 and the decision of this Court in Bimla Devi v. Financial Commissioner 166 (2003) DLT 650 and held that the Financial Commissioner lacked legal competence to review the order, which he had earlier passed on 15.11.1984. Admittedly, no power to review its orders has been conferred upon the Financial Commissioner under East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. In

Harbhajan Singh (*supra*), Supreme Court had taken a view that in the absence of an express power of review, Director, Consolidation of Holdings could not have reviewed his previous orders and, therefore, the subsequent order passed by him was ultra vires and without jurisdiction, which the High Court had rightly quashed in the writ petition. We see no reason to take a contrary view and, therefore, we are in agreement with the learned Single Judge that the Financial Commissioner was not competent to review his order dated 15.11.1984, by way of his subsequent order dated 09.07.1985. As a result, the order of the Financial Commissioner dated 09.07.1985 becomes *non est* in law and is liable to be ignored altogether.

10. Since the order of the Financial Commissioner dated 15.11.1984 became final on account of the same having not been challenged by any party and the Financial Commissioner vide said order dated 15.11.1984 had upheld the order of the Consolidation Officer dated 29.04.1981 and 27.06.1981 as well as the order of the Settlement Officer dated 16.11.1981, the orders dated 29.04.1981, 27.06.1981 and 16.11.1981 could not have been challenged by way of the writ petition, subject matter of these appeals. Since the land, subject matter of dispute in the writ

petitions, was, vide order dated 29.04.1981, allotted to the *Bhumidhars*, who later gifted the same to the Trust, the said allotment became final and, therefore, land in question, therefore, cannot be allotted to the appellants/writ petitioners.

11. The Consolidation Officer vide order dated 27.06.1981 had allotted land comprised in rectangle Khasra No. 74 and 48, measuring 26 bigha and 10 biswas to M/s Prakash. The order dated 27.06.1981 was sought to be challenged by the appellants/writ petitioners on the ground that Shri Nand Lal, who accepted the aforesaid allotment before the Consolidation Officer on behalf of M/s Prakash, was not authorized to do so. The contention cannot be accepted for two reasons. Firstly, we find that appeal against the aforesaid orders on behalf of M/s Prakash was filed by none other than Shri Nand Lal, who accepted the allotment before the Consolidation Officer on 27.06.1981 which, in turn, clearly shows that he was the person competent to act on behalf of M/s Prakash. Secondly, being a partner of the said firm, he had an implied authority to make statement and accept allotment on behalf of the firm.

12. The next question which comes up for consideration is as to whether, on merits, the orders dated 29.04.1981, 27.06.1981 and/or the

order passed by the Settlement Officer on 07.04.1986, which the Financial Commissioner upheld vide order dated 18.05.1987, are bad in law. Though in view of our having agreed with the learned Single Judge that the Financial Commissioner was not competent to review his order dated 15.11.1984, this question really does not require consideration, but, since the learned Single Judge has gone into the merits of these orders, we have examined the correctness of the view taken by the learned Single Judge in this regard.

13. As noted by the learned Single Judge, the objections in respect of the Consolidation Scheme could be filed between 16.11.1975 to 27.05.1976. Admittedly, no objections during this period were filed by the appellants other than M/s Prakash. Admittedly, no application was made by them to the Consolidation Officer for allotment of land in lieu of the land which they had purchased from M/s Prakash. Admittedly, they had not got the land purchased from M/s Prakash mutated in their name in revenue record. While making allotment in terms of the Consolidation Scheme, the Consolidation Officer was expected to look only into the revenue record as available to him and the objections filed by the land owners with him. The Consolidation Officer, in the absence of mutation

in the name of purchasers from M/s Prakash, was very much justified in making allotment to M/s Prakash, particularly in view of the fact that even the partner of M/s Prakash did not take the plea that they having already sold land in question, it were the purchasers who were entitled to allotment on re-partition under the provisions of the Consolidation Scheme. If these persons had purchased land against which allotment in the Consolidation Scheme was made to M/s Prakash, before the Consolidation Scheme was notified, they ought to have filed objections before the Consolidation Officer and ought to have appeared before him along with the documents, evidencing purchase of land purchased by them from M/s Prakash. That having not been done, it is not open to such persons to question the allotment made by the Consolidation Officer in terms of the order dated 27.06.1981.

14. We have earlier taken a view that the order passed by the Financial Commissioner on 09.07.1985, remanding the matter back to the Settlement Officer was *non est* on account of his not being competent to review his earlier order 15.11.1984. However, even if the said order dated 09.07.1985 is taken to be a valid order, we find no illegality in the order passed by the Settlement Officer on 07.04.1986, which was upheld

by the Financial Commissioner on 18.05.1987. The only ground taken by the appellants, in support of their contention that land in question ought to have been allotted to them and not to the Trust, is that under the provisions of the Scheme, they were entitled to allotment of land at the centre of their pre-consolidation holding. Admittedly, while remanding the matter back to the Settlement Officer, the Financial Commissioner had directed the Settlement Officer to carry out spot inspection and make all out efforts, not to disturb the settled persons unnecessarily. In compliance of the said order, the Settlement Officer carried out inspection and found that as far as the land allotted to the Trust was concerned, the same was being used for agriculture purpose and there were no residential houses built on it. He also found that the persons, who had purchased the land from M/s Prakash, had built up houses on the land purchased by them. Therefore, he, in compliance of the order of the Financial Commissioner, dated 09.07.1985, decided not to disturb either the purchaser from M/s Prakash or the Trust from the land in which they were conveniently settled at that time. He also allotted additional land comprised in Kila No. 50/21, 50/22/1 (North) and 51/25 so as to fulfil the demands of the remaining plot holders. Therefore, the order passed by

the Settlement Officer was in consonance with the directions given to him by the Financial Commissioner on 09.07.1985. The view taken by the Settlement Officer has found favour not only with the order of Financial Commissioner, but also with the Writ Court. We, on examination of the matter, find no good reason to take a contrary view in this regard. In our opinion, considering the fact that these plots holders did not file any objections before the Consolidation Officer between 16.11.1975 and 27.05.1976, did not claim allotment in repartition in lieu of the land which they had purchased from M/s Prakash, did not get the land purchased from M/s Prakash mutated in their name and raised construction on the land which they had purchased from M/s Prakash, though it was meant for agriculture purpose, coupled with the order of Financial Commissioner dated 09.07.1985, directing the Settlement Officer to make all out efforts not to disturb the settled persons unless necessary, they can have no grievance with respect to the land not being allotted to them at the centre of the land which they had purchased from M/s Prakash.

15. During the course of arguments, it was contended by the learned counsel for the appellants that the transfer of land by *Bhumidhars* to the

Trust was illegal, being in contravention of the provisions of Delhi Reforms Act. However, there is no material before us to show that the aforesaid gift by these *Bhumidhars* to the Trust was in contravention of the provisions of Delhi Reforms Act. The requirement under Delhi Reforms Act is that the person transferring the land should either transfer whole of his land or after the transfer he should be left with at least eight standard acres of land. There is no material before us to show that the persons, who made gifts in favour of the Trust, contravened the aforesaid provisions of Delhi Reforms Act.

16. It was also submitted on behalf of the appellants that since the Trust was formed after the Consolidation proceedings had begun in the village, it had no legal right to apply for allotment of land. However, the appellants have failed to tell us how the Trust was prohibited in law from seeking allotment of land in its favour. Moreover, as noted earlier by us, vide order dated 29.04.1981, the land was allotted to *Bhumidhars* and not to the Trust and thereafter the said land was gifted by them to the Trust. Therefore, no illegality appears to have been committed in the matter since there is no material on record to show that gift of the land in favour of the Trust was illegal. In any case, allotment to the Trust can be

challenged only by the land owners, who gifted their land to the Trust and the appellants/writ petitioners being strangers have no *locus standi* to challenge either the gift or the allotment made to the Trust. Section 30 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, on which reliance has been placed by the appellants, to the extent it is relevant, provides that after issue of notification under sub-section (1) of Section 14 and during the pendency of the consolidation proceedings no landowner or tenant having a right of occupancy upon whom the scheme will be binding, shall have power without the sanction of the Consolidation Officer to transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of the other landowner or tenant having a right to occupancy therein under the scheme of consolidate on. This Section, therefore, applies only to original holding and not to the land allotted in re-partition under the Consolidation Scheme. Moreover, the transfer is prohibited only if it affects the right of any other land owner or tenant having a right of occupancy therein under the Scheme of Consolidation. No land owner or tenant having a right of occupancy in the land, subject matter of the gift, has claimed that the gift in favour of the Trust had affected his rights in

the land in respect of which gift deed was executed. Therefore, there was no contravention of Section 30 of the said Act, on account of gift made in favour of the Trust.

17. For the reasons stated hereinabove, we find no merit in the Appeals and the same are hereby dismissed. There shall be no order as to costs.

V.K.JAIN, J

CHIEF JUSTICE

FEBRUARY 26, 2013
‘sn’/BG

