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

+ W.P.(C) 10876/2009 & CM APPL. 2981/2013

TARIF SINGH DABAS AND ANR. Petitioners
Through: Mr. J.P. Sengh, Senior Advocate with
Mr. Sumeet Batra and Ms. Ankita Gupta,
Advocates and petitioner No. 1 in person

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through: Mr. V.K. Tandon, Advocate for
respondents No.1 to 6.
Mr. Deepak Dhingra, Advocate
with Mr. Rajesh Kumar Verma,
Advocate for R-7 and respondent
No.7 in person.

% Date of Decision: 02nd September, 2013

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J:(Oral)

1. The present writ petition has been filed challenging the order dated 26th June, 2009 passed by the Financial Commissioner whereby respondent No. 7's revision petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act, 1948') for exclusion of his land bearing Khasra Nos.38/6 and 38/7 situated in the extended

abadi/phirni of Village Kanjhawala, Delhi, from phirni/extended abadi was allowed.

2. The facts of the present case are that in 1993, a notification under Section 14(1) of the Act, 1948 was issued by the Government of NCT of Delhi regarding consolidation of holdings in Village Kanjhawala. On 14th November, 1996 and 24th April, 1997 the scheme of consolidation was prepared and finalized by the Consolidation Officer. The said scheme was also confirmed by the Settlement Officer. The scheme of consolidation envisaged that apart from consolidation of the agricultural holdings of the right holders, land was also reserved for common purposes including extension of abadi area/phirni/lal dora of the Village. The abadi area of the Village was extended for the purpose of providing ample residential space to the right holders and their families and to accommodate them. As per the consolidation scheme and rules, it was provided that in the extended abadi/phirni a maximum of 2 bigha 8 biswas of land would be allotted to the right holders subject to their surrendering twice the value of the agricultural land in lieu of such allotment.

3. In May, 1998, re-partition was carried out under Section 21(1) of the Act, 1948 in the said village and the petitioners and their family members were allotted residential plots/land on southern side of the village in extended abadi at different places.

4. On 28th February, 2000, combined objections filed by the petitioners and their family members with regard to the allotment made to them was decided by the Consolidation Officer. It was the case of the petitioners that the Consolidation Officer arbitrarily and

illegally allotted them residential plots on the other side, i.e. Southern side of the Village at different places and in village pond.

5. The said order was challenged by the petitioners by way of revision petitions under Section 42 of the Act, 1948 before the Financial Commissioner.

6. On 20th June, 2003, the revision petitions filed by the petitioners were allowed and the petitioners were allotted plot Nos.142/94/15 and 142/94/14 in North-East direction of the Village Abadi by withdrawing the same from the original allottees/successors-in-interest namely, Mr. Rattan son of Mr. Net Ram.

7. Upon writ petitions bearing Nos.4473/2003 and 4815/2003 being filed by the successors-in-interest of original allottees of plots bearing Nos. 142/94/15 and 142/94/14, the order dated 20th June, 2003 passed by the Financial Commissioner was set aside on the ground of violation of principles of natural justice and the matters were remanded back.

8. In the remand proceedings, the petitioners moved applications for impleadment of original allottees/legal heirs of plots bearing Nos. 142/94/15 and 142/94/14. However, the impleadment applications were dismissed. The petitioners challenged the said orders by filing separate writ petitions bearing W.P.(C) Nos.8600/2005 and 8604/2005.

9. During pendency of the aforesaid writ petitions, the Financial Commissioner on 05th August, 2005 allowed respondent no.7's petition being case No.43/2003-CA under Section 42 of the Act, 1948 for inclusion of respondent no.7's land comprising pre-consolidation

Khasra Nos.38/6 and 38/7 (13-1), which fell in North-East direction and which had earlier been left out of the extended abadi/phirni.

10. When the fact of additional land being included in phirni/extended abadi was brought to the notice of this Court in W.P.(C) Nos. 8600/2005 and 8604/2005, this Court disposed of the said petitions on 17th November, 2005 and 16th December, 2005 by directing the Financial Commissioner to take note of the additional land included in the phirni/extended abadi and to satisfy the demands of the petitioners for allotment of residential plots.

11. Respondent No.7 moved an application for impleadment in the petitioners' revision petitions on the ground that there is a possibility that he may not be given double the value of agricultural land surrendered by him. The said application for impleadment was allowed by the Financial Commissioner vide order dated 16th February, 2006.

12. The said order of impleadment was challenged by the petitioner No.1 by filing W.P.(C) No.2615/2006 before this Court and the said writ petition vide order dated 17th April, 2006 was allowed. The relevant portion of the said order is reproduced hereinbelow:

“1. In the year, 1993, a notification was issued under Section 14 of the East Punjab (Consolidation and Prevention of Fragmentation) Act 1948 for consolidation of holdings in village Kanjhawala. On 14.11.1996, draft Consolidation Scheme was announced by the Consolidation Officer in the village. After finalising the scheme, in the year 1998, repartition was carried out under Section 21 of the said Act. Petitioner demanded a plot on the Northern side of the village. His other family members also demanded a plot on the said side. Obviously, aim was for the entire family to be

residing in adjoining houses.

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7. When WP(C) No.8600/05 was pending, Revision Petition No.43/2003-CA filed by respondent no.3 was disposed of by the Financial Commissioner vide order dated 5.8.2005.

8. In this Revision Petition, respondent no.3 had sought inclusion of land comprised in Khasra no.38/6 and 38/7 (pre-consolidation) within the extended abadi. Vide order dated 5.8.2005 the Financial Commissioner accepted the request of respondent no.3 and aforesaid lands were included within the extended phirny.

9. WP(C) No.8600/05 was disposed of on 17.11.2005 directing the Financial Commissioner to dispose of revision petition filed by the petitioner after taking note of the fact that additional land was available within the extended abadi.

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16. To give teeth to the Act, Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules 1959 have been framed. Clause J of Rule 6 of the Rules reads as under:-

"(J)(i) Bhumidar whose land has been included in the extension of the village abadi may be given agricultural land worth two times the value of land surrendered.

(ii) Bhumidar who has applied for allotment of plot in the extension of the village abadi shall surrender in exchange during consolidation two times the size of agricultural land subject to the size of plot and his eligibility.

(iii) The maximum size of a residential plot to be provided in the extension of the village abadi to a bonafide resident of the village shall be two bighas and eight biswas out of

which the "bhumidar" can take industrial plot upto a maximum size of six biswas. Allotment of such plot shall be done through draw of lots.

(iv) Wherever necessary, the maximum "Muzarai" that may be deducted shall be two biswas per bigha only (when adequate gaon sabha land is not available in the village for common purpose).

17. A perusal of Clause (iii) of Rule 6 (J) shows that within the extended abadi, a villager is entitled to a maximum of 2 bighas and 8 biswas of land. Further, as per Clause (i) of the said Rule a Bhumidar whose land has been included in the extension of the village abadi is entitled to land worth two times the value of the land surrendered.

18. It is not in dispute that respondent no.3 has been allotted land within the extended abadi much more than 2 bighas and 8 biswas. He has accepted the said allotment. He can have no further claim to any other land within the extended abadi. Land allotted to respondent no.3 within the abadi is not the subject matter of any claim by any party.

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20. In my opinion, in the facts and circumstances of the present case, respondent no.3 cannot be impleaded as a party in the said proceedings for the reason in the said proceedings claim of land owners for satisfaction of their claims for allotment of land within the abadi would be adjudicated.

21. Reasoning given by the Financial Commissioner is that if land of respondent no.3 is included within the extended phirny, he would have to be given land outside the phirny of twice the value of the land included within the phirny and since Gaon Sabha states that so much land may not be available outside the phirny, respondent no.3 must be permitted to join in the litigation for, according to the Financial Commissioner, he may have to be given this land

which is included within the phirny.

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24. *Learned counsel for parties did not dispute that as per the scheme finalized, enough Gaon Sabha land is available outside the phirny. That apart, all those who would get plots within the phirny i.e. plots on the land in dispute which has been included within the extended phirny would have to surrender twice the value of their pre consolidation holdings outside the extended phirny. This would mean that even from non Gaon Sabha land outside the phirny respondent no.3 could be given land outside the phirny.*

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27. *Given the facts as noted above, respondent no.3 is neither a necessary nor a proper party in the revision filed by the petitioner.*

28. *The writ petition stands disposed of quashing impugned order dated 16.2.2006. Application filed by respondent no.3 under Order 1 Rule 10, scheme implement in the revision filed by the petitioner is dismissed.*

(emphasis supplied)

13. Respondent no.7's appeal being LPA No.777/2006 was dismissed by the Division Bench on 11th September, 2008. A Special Leave petition impugning the order of the Division Bench was also dismissed by the Supreme Court vide order dated 2nd April, 2009. The order of the Supreme Court is reproduced hereinbelow:

“We are not inclined to interfere with the impugned order passed by the High Court. The Special Leave Petition is accordingly dismissed.

However, we make it clear that the Civil Court shall not be influenced by the observations, if there be any, made by the learned Single Judge as well as by the Division Bench of the High Court.”

14. On 13th September, 2008, respondent No.7 filed a fresh revision petition before the Financial Commissioner being No.200/2008-CA under Section 42 of the Act, 1948 seeking directions to the Consolidation Authorities to allot double the value of the land to him in lieu of his pre-consolidation land being Khasra No. 38/6 and 37/7 included in phirni/extended Abadi. It was alternatively prayed that if the authorities failed to allot the double value, then the respondent no.7's land should be excluded from the phirni/extended abadi.

15. The said revision petition was allowed by the Financial Commissioner vide the impugned order dated 26th June, 2009. The relevant portion of the impugned order is reproduced hereinbelow.

“In view of the petitioner's plea and legal position in the case of consolidation and the ground realities forcing non compliance of the statutory requirements of the Act governing the consolidation scheme, the Financial Commissioner's order dated 5th August, 2005 in case no.43/03—CA is therefore being revised and the Consolidation officer is directed to revert back to the petitioner the land which was taken into extended abadi vide FC's order dated 5th August, 2005. This land has to be taken out of the extended abadi and reverted back to the petitioner in view of non fulfilment of the mandatory requirement of Rule 6J(1) of the Delhi Holdings Rules, 1959 and the inability to allot double value of agricultural land by the Consolidation Authorities in one consolidated place.

16. Mr. J.P. Sengh, learned senior counsel for the petitioners submits that the Financial Commissioner had no jurisdiction to revise/review his predecessor's earlier order passed on 05th August, 2005 under Section 42 of the Act, 1948. He contends that the petitioners had raised all possible objections in the earlier round of litigation, which did not find favour with this Court. He points out that respondent no.7's challenge was repelled right till the Apex Court. He further submits that the petitioners cannot be permitted to re-agitate the issues which had been conclusively determined by this Court and by the Supreme Court.

17. On the other hand, Mr. Deepak Dhingra, learned counsel for respondent no. 7 submits that petitioners have no locus standi to file the present petition as they were not parties to the revision petition filed by respondent no.7. He states that though the petitioners were always aware of the proceedings filed by respondent no.7, yet they never filed an application for impleadment. He points out that respondent no. 7 had only sought compliance with Rule 6(j)(i) of Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 by seeking double the allotment of agriculture land in lieu of his plots being included in the extended abadi and in the event the Consolidation Officer expressed his inability to allot, then to keep the said plots outside the scheme of consolidation.

18. Mr. Dhingra further submits that petitioner no. 2 has no locus standi to file the present petition as at the time the consolidation scheme was put into operation, petitioner no. 2 was not a bhumidar of Village Kanjhawala. He contends that a Sale Deed was executed on

22nd January, 1998 and registered in Mumbai by petitioner no. 1 in favour of his son, petitioner no.2, only to make him a bhumidar. He submits that the Act confers rights only upon a bhumidar and thus the petitioner no.1 by virtue of the aforesaid sale deed attempted to bestow those rights upon petitioner no. 2. He points out that this Court in a judgment dated 24th December, 2010 in writ petition being W.P.(C) No. 8730/2010 on similar facts quashed the allotment in favour of such persons on the ground that the scheme of consolidation had already been announced and confirmed.

19. Mr. Dhingra also submits that a writ petition under Article 226 of the Constitution cannot be filed to seek a plot of land in a “desired direction” as stated in the preamble of the present writ petition. He points out that petitioners in their two applications dated 4th July, 1996 and 5th July, 1996 never demanded any plot on the North-East side of Village Kanjhawala and that petitioner never held any land in the area where plots bearing Nos. 38/6 and 38/7 are located. Consequently, he submits that petitioners' prayer in W.P.(C) 10877/2008 for allotment of land out of respondent no.7's plots is not maintainable. Mr. Dhingra also submits that in the event W.P.(C) 10877/2009 is dismissed, the present writ petition will become a public interest petition, which would not be maintainable.

20. Mr. Dhingra submits that the orders dated 17th November, 2005, 16th December, 2005, 26th July, 2006 and 17th April, 2006 offer no assistance to the petitioners. He contends that the orders dated 17th November, 2005 and 16th December, 2005 passed by this Court in W.P.(C) 8600/2005 and W.P.(C) 8604/2005 respectively only recorded

that the respondent no.7's land had come within the phirni and the competent authorities may take note of the said fact. Mr. Dhingra lays considerable emphasis on the fact that in none of the aforesaid orders, respondent no. 7 was a party.

21. Mr. Dhingra submits that Rule 6(j)(i) of Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 makes it imperative that a bhumidar whose land has been included in the extended village abadi has to be given agricultural land worth two times the value of the land surrendered. He points out that though plot nos. 38/6 and 38/7 measure 13 bighas 14 biswas, respondent no. 7 has only been allocated till date 4 bighas and 17 biswas towards satisfaction of this Rule and that too, in 14 different fragmented pieces in different directions. Consequently, Mr. Dhingra submits that agricultural land of respondent no. 7 cannot be taken away and that too to satisfy the demand of the petitioners in a particular "direction".

22. Mr. Dhingra repeatedly lays emphasis upon the fact that under a scheme of consolidation, handing over and taking over of land has to be simultaneous and non-fragmented. He places reliance on *S. Nagaraj & Ors. vs. State of Karnataka, 1993 Suppl.(4) SCC 595*; *Shafiq and Ors. vs. Deputy Director, Consolidation and Ors. in Civil Misc. Writ Petition No.21282/1995* and *Roop Chand vs. State of Punjab, 1963, Suppl. SCR 439*.

23. Mr. V.K. Tandon, learned counsel for respondent nos. 1 to 6 states that the Village Kanjhawala is still under consolidation and many villagers have not received their entire entitlement of land. He states that efforts are being made to allocate contiguous land to all the

villagers who have not received their full entitlement. Mr. Tandon points out that there is deficiency in allotment of land even to the petitioners.

24. Mr. Tandon lays considerable emphasis on the fact that respondent no. 7's land bearing khasra nos. 38/6 and 38/7 had not been initially included inside the phirni of the Village while preparing the scheme of consolidation. He points out that it was only on respondent no.7's insistence and that too, by virtue of the Financial Commissioner's order dated 05th August, 2005 that the aforesaid land was included in the consolidation scheme. He states that even the Gaon Sabha was opposed to inclusion of respondent no. 7's land in the consolidation scheme. The relevant portion of the application filed by the Gaon Sabha for impleadment in respondent no. 7's revision petition is reproduced hereinbelow:-

“5. That it is a provision in the scheme that if the land of any person falls within the extended abadi, he shall get double of his land out side the extended abadi. It is pertinent to mention here that if the double land is to be allotted to a person whose land falls within the extended abadi, the same shall be allotted from the khata of Gaon Sabha as such the Gaon Sabha shall be effected if any person with his malafide intention succeed to include this land in the extended abadi area by orders of this Hon'ble Court. It is further pertinent to mention here that 40 bighas of land in the extended abadi (Lal Dora) is still lying unalloted and if this revision petition is allowed/accepted, then the said land become about 50 bighas and the petitioner will be benefited by allotment of double of his land which will be a total loss to the Gaon Sabha as such the Gaon Sabha is proper and necessary party in the present Revision Petition. The petitioner

intentionally and deliberately has not impleaded the Gaon Sabha in the array of respondent.”

25. Mr. Tandon points out that in response to said application, respondent no. 7 had given an undertaking to the Financial Commissioner that he will not claim any land from Gaon Sabha. The relevant portion of respondent no. 7's undertaking reads as under:-

“3. That the reply was filed on behalf of the petitioner to said application taking various objections in respect of the maintainability and the bonafide of the said application. However, in Para 4 of the Preliminary objections of the said reply, that if the land of the petitioner is included inside the pherini then he will not claim that his land be taken by the Gaon Sabha and double of the land be allotted to him outside the pherini from Gaon Sabha land.”

26. It is pertinent to mention that on 05th August, 2013, this Court in the presence of the Consolidation Officer had passed the following order:-

“ Mr. Ranbir Singh, Consolidation Officer is personally present and he states that twenty-seven bighas of land can be allocated to respondent No.7, but in fragmented portions.

Mr. Deepak Dhingra, learned counsel for respondent No.7 is stated to be unwell.

In the interest of justice, adjourned to 06th August, 2013.”

27. Having heard learned counsel for parties, this Court is of the opinion that any person whose allotment of residential plots remains unsatisfied has the locus standi to challenge any order of the revenue authority excluding any land from the extended abadi/phirni.

28. In fact, the petitioners' earlier writ petitions being W.P.(C) Nos. 8600/2005 and 8604/2005 were disposed of on 17th November and 16th December, 2005 with a direction to the Financial Commissioner to take note of respondent no.7's land which had been subsequently included in the extended abadi/phirni and to satisfy the demands of petitioners for allotment of residential plots out of the said additional land. The relevant portion of the order dated 17th November, 2005 reads as under:-

“4. Counsel agree that the writ petition could be disposed of with a declaration that the order impugned shall be without prejudice to the rights and contentions of the parties and that the learned Financial Commissioner could dispose of the revision petition filed by the petitioner taking note of the facts stated in the counter affidavit filed in the present writ petition by respondent No.3 and satisfying the claim of the petitioner for allotment of a plot out of the additional land brought within the phirni on which additional plots have been carved out.

5. For record, as per the counter affidavit filed by respondent No.3, additional land brought within the phirni is the land comprised in pre-consolidation khasra No.38/6 and 38/7.

6. Writ petition stands disposed of in the consent terms aforementioned. Respondent No.3 would bring to the notice of the learned Financial Commissioner the facts stated in the counter affidavit.”

29. Also no declaration with regard to the Sale deed dated 22nd January, 1998 in petitioner no.2's favour can be passed in the present proceedings as till date the Sale Deed dated 22nd January, 1998 has neither been challenged nor set aside. In any event, if writ petition by petitioner no.1 is maintainable, then the locus standi of petitioner no.2 is irrelevant.

30. The fact that the Financial Commissioner has reviewed his predecessor's order dated 05th August, 2005 is apparent from the following extract of the order dated 05th August, 2005 and the impugned order dated 26th June, 2009:-

A. Order dated 05th August, 2005

"6. In view of this it is clear that the land of the petitioners (Respondent no.7 in the present proceeding) conformed to the norms laid down under the consolidation scheme for inclusion within Firni but the same has not been included. Evidently, it is a mistake which needs to be corrected. I therefore, direct the consolidation officer of village Kanjhawala to include the land of the petitioner (Respondent no.7 in the present proceeding) comprising in Khasra No.38/6 and 38/7 in the revenue estate of village Kanjhawala inside the Firni of the village."

B. Order dated 26th June, 2009

"29. In view of the petitioner's (Respondent no.7 in the present proceeding) plea and legal position in the case of consolidation and the ground realities forcing non compliance of the statutory requirements of the Act governing the consolidation scheme, the Financial Commissioner's order dt. 5.8.05 in case no.43/03—CA is therefore being revised and the Consolidation officer is directed to revert back to the petitioner (Respondent no.7 in the present proceeding) the land which was taken into extended abadi vide FC's order dated 5.8.05. This land has to be taken out of the extended abadi and reverted back to the petitioner (Respondent no.7 in the present proceeding) in view of non fulfilment of the mandatory requirement of Rule 6 J (1) of the Delhi Holdings Rules, 1959 and the inability to allot double value of agricultural land by the Consolidation Authorities in one consolidated place."

31. In the opinion of this Court, no one can seek plots in a particular or desired direction, but the issue which arises for consideration in the present proceedings is whether the Financial Commissioner can review his predecessor's earlier order dated 5th August, 2005 of including respondent no.7's land in the extended abadi/phirni. In view of the aforesaid issue which arises for consideration, this Court is of the opinion that the present petition is not a public interest litigation and the petitioners have the locus standi to file the present petition.

32. This Court is further of the opinion that the Financial Commissioner had no jurisdiction or power to review in the facts of the present case the earlier order dated 05th August, 2005 passed under Section 42 of the Act, 1948.

33. In ***Harbhajan Singh vs. Karam Singh and Others, AIR 1966 SC 641***, a three-Judge Bench of the Supreme Court has categorically held that there is no provision in the Act granting power of review to the State Government, i.e., Financial Commissioner with regard to an order made under Section 42 of the Act 1948 and as such any subsequent order passed by the Financial Commissioner is ultra vires and without jurisdiction and the High Court would be justified in quashing that order by granting a writ under Article 226 of the Constitution.

34. A Division Bench of this Court in ***Rajdhani Park Kalyan Karini Samiti vs. Financial Commissioner & Ors., 142 (2007) DLT 226***, has held that Financial Commissioner lacks the power to review his order passed under Section 42 of the Act, 1948. This Court also held that the decision in ***Harbhajan Singh vs. Karam Singh and***

Others (supra) is a complete answer to the argument that the Financial Commissioner under Section 42 can review an order passed earlier by him or his predecessor on the very same subject matter.

35. In *S. Nagaraj & Ors.* (supra), *Shafiq and Ors.* (supra) and *Roop Chand* (supra), the Courts have held that the Financial Commissioner has the power to review/recall or modify an order on limited ground/grounds that the order was passed on mistake of law or fact, fraud or mis-representation or on the ground that the order sought to be reviewed if allowed to stand would result in perpetration of injustice. But, in the opinion of this Court, neither the impugned order nor the order dated 05th August, 2005 falls within the aforesaid limited grounds.

36. It is pertinent to mention that the earlier order dated 05th August, 2005 was passed by the then Financial Commissioner on a revision petition filed by respondent no.7 himself.

37. Consequently, this Court is of the opinion that the Financial Commissioner had no power and/or jurisdiction in the facts of the present case to review and revise his predecessor's earlier order dated 05th August, 2005 passed under Section 42 of the Act, 1948.

38. It is also not understood as to how after dismissal of respondent no. 7's Special Leave petition, a petition being Case No.-200/2008-CA under Section 42 of the Act was filed because the Supreme Court had given him liberty to only file a civil suit.

39. Undoubtedly, every villager is entitled to consolidated/non-fragmented portion of land. However, in the event there is lack of contiguous and/or sufficient land, the Consolidation Officer is to

undertake the exercise on best effort basis. If there is deficiency of land, then the deficiency would have to be equally borne by all the villagers, but the same cannot be a ground for excluding a villager's land from the consolidation proceedings.

40. This Court is further of the opinion that the Financial Commissioner by the impugned order has not only reviewed his predecessor's order dated 05th August, 2005, but has acted contrary to the findings rendered by this Court in a litigation between the same parties in W.P.(C) 2615/2006.

41. It is pertinent to mention that this Court in its order dated 17th April, 2006 in W.P.(C) 2615/2006 has already held that once additional land is included in the extended phirni and becomes part of the common pool, the same cannot be excluded/deleted. The findings of the learned Single Judge that have been set aside by the Financial Commissioner are reproduced hereinbelow:-

“22. The perversity in the reasoning is writ large. Under no circumstances can respondent no.3 (Respondent no. 7 in the present proceeding) be given land more than 2 bigas and 8 biswas within the extended phirny. He has already got more than said share. Under no circumstances can respondent no.3 (Respondent no. 7 in the present proceeding) be allotted the land in question.

23. Further, the order passed by the Revenue Authorities including the land in question within the extended phirny i.e. amendment of the scheme of consolidation has attained finality. As is to be noted, respondent no.3 (Respondent no. 7 in the present proceeding) himself wanted the aforesaid land to be included within the phirny. It was at that stage that Gaon Sabha could have objected by pleadings that if the land in question is included within the phirny, to satisfy the

requirement of law and the claim of respondent no.3 (Respondent no. 7 in the present proceeding), twice value of land outside had to be allotted to respondent no.3 (Respondent no. 7 in the present proceeding) and that so much land was not available. At such objections being filed by the Gaon Sabha, matter would have been decided with a reference to availability of land outside the phirny. But this has not happened.

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25. In any case, the principal focus of inclusion of the writ land within the extended phirny having attained finality and that under no circumstances can respondent no.3 (Respondent no. 7 in the present proceeding) get any further land within the extended phirny has been lost sight by the Financial Commissioner. Under no circumstances can respondent no.3 have any interest in the writ land.

(emphasis supplied)

42. Consequently, as the Financial Commissioner, by way of the impugned order dated 26th June, 2009, has reviewed his predecessor's order dated 05th August, 2005 by virtue of which respondent No.7's land was included in the phirni/extended abadi, the same is quashed and set aside. Moreover, as pointed out hereinabove, the impugned order has been passed in utter disregard of the orders and directions of this Court which were upheld right till the Apex Court.

43. However, keeping in view the undertaking given by Consolidation Officer on 5th September, 2013, this Court directs the Consolidation Officer to allocate to respondent no.7 and petitioners their full entitlement of land in four months. This Court also directs the Consolidation Officer to allocate as far as possible large non-

fragmented/consolidated pieces of land inside extended abadi/phirni to the petitioners and agricultural land outside extended abadi/phirni to respondent no.7 so that their entire entitlement is satisfied.

44. With the aforesaid observations and directions, the impugned order dated 26th June, 2009 is set aside.

MANMOHAN, J

SEPTEMBER 02, 2013

NG/rn/js