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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on :27.07.2017*
Judgment delivered on: 31.07.2017

\+ W.P.(C) 6289/2011
SANJEEV KUMAR SHARMA & ORS
..... Petitioners
Through: Mr B.R. Sharma, Adv.

versus

GOVT OF NCT OF DELHI & ANR
..... Respondents
Through: Mr Gautam Narayan, ASC for R-1
Mr Bheem Sain Jain, Adv. for R-2

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 There are five petitioners before this Court. They are aggrieved by the order passed by the Financial Commissioner dated 05.08.2011 wherein the Financial Commissioner in terms of the aforenoted order in appeal proceedings {under Section 21 (4) read with Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act,1948} had upheld the order passed by the Settlement Officer dated 20.12.2010. While passing a detailed order, he had held that the order dated 08.05.2001 passed by the Collector (heavily relied upon by the petitioners) is without

jurisdiction; it was reiterated that 14 biswas of land in possession of the petitioners had vested in the Gaon Sabha in the year 1980 and the directions of the Consolidation Officer holding otherwise was an arbitrary in nature; it was an order without any jurisdiction.

2 The petitioners are aggrieved.

3 Record shows that as per the averments of the petitioners, (i) the father and predecessor-in-interest of the petitioners were the recorded bhumidar of agricultural land in khasra No.22/16/2 (1-4) and laldora land khasra No.336 (0-4) situated in Revenue Estate of Village Bijwasan, New Delhi. The order dated 09.12.1980 wherein the land of their predecessor-in-interest actually vested with Gaon Sabha was set aside by an order dated 08.05.2001. Submission is that this order dated 08.05.2001 whereby the land vested with the petitioners has become a final order; it was never challenged.

(ii) To implement the order dated 08.05.2001, the Consolidation Officer held that respondent No.2 is having excess land to the extent of 14 biswas and accordingly ordered for its withdrawal. This was on 17.09.2001.

(iii) Respondent No.2 preferred an appeal against this order which was dismissed. This was on 03.07.2002.

(iv) Respondent No.2 was not satisfied with the order dated 03.07.2002. He filed a revision petition. This revision petition was dismissed by the learned Financial Commissioner on 27.12.2002.

(v) The petitioners have been in possession of their 14 biswas of land since 10.07.2002. This was with due process of law and in terms of the demarcation carried out by the Competent Authority on 10.07.2002. The demarcation report dated 10.07.2002 which had vested 14 biswas of land in favour of the petitioners is a final order.

(vi) Respondent No.2 filed W.P.(C) No.267/2003 before the High Court. The matter was remanded back to the Consolidation Officer for passing a fresh order after hearing both the parties i.e. the petitioners and respondent No.2. This was vide order dated 08.09.2004.

(vii) On 05.02.2005, the Consolidation Officer held that respondent No.2 did have 14 biswas of excess land; however this excess land vested with the Gaon Sabha.

(viii) Respondent No.2 meanwhile filed W.P.(C) No.2844/2005. The matter was reconsidered and vide order dated 31.07.2006, the High Court had remanded the matter for re-consideration to the Consolidation Officer. An order qua the status quo of the property was directed to be maintained. The petitioners thus continue to retain physical possession of their property.

(ix) The order dated 31.07.2006 was also the subject matter of an appeal before the Division Bench which was dismissed vide order dated 30.09.2008.

(x) The review petition was dismissed on 23.01.2009.

(xi) SLP also stood dismissed.

(xii) Meanwhile vide order dated 25.09.2006, the Consolidation Officer held that respondent No.2 had excess 14 biswas of land and this was the land belonging to the Gaon Sabha.

(xiii) Respondent No.2 filed an appeal against the order dated 25.09.2006. Contention was that he has no excess land. However, his earlier contention that he was in possession of 8 bigha and 5 biswas of land was denied and for the first time a submission was made that he was in possession of 7 bigha and 15 biswas of land.

(xiv) The property of the petitioners was sealed. However, it was ordered to be de-sealed on 16.09.2010.

(xv) On 28.05.2010, demarcation proceedings qua the aforenoted property were carried out.

(xvi) This demarcation report was the subject matter of challenge in a new W.P. (C) No. 7585/2010 filed by the petitioners. This was disposed of on 26.11.2010. The demarcation report dated 28.05.2010 was upheld. The Coordinate Bench of this Court had noted the history of litigation inter-se the parties noting several rounds of litigation which had already taken place. While disposing of the petition, this Court had clearly held that the Financial Commissioner has set out in detail and given a cogent reasoning for rejecting the case of the petitioners; he upheld the demarcation report dated 28.05.2010. Petition was dismissed. Even after the disposal of this petition on 26.11.2010, the litigation did not end.

(xvii) On 20.12.2010, the Settlement Officer (Annexure A-1) decided the appeal which had been filed by respondent No.2 against the order dated 25.09.2006. The contention of respondent No.2 that it was in possession of 8 bigha and 5 biswas and not in possession of 7 bigha and 15 biswas was the subject matter of that appeal. In that appeal before the Settlement Officer, the contention of the present petitioners was also noted. Their contention was that they were the necessary parties in those proceedings and their application seeking impleadment under Order 1 Rule 10 of the Code was pending. The demarcation report dated 28.05.2010 also found reference in the order of the Settlement Officer. Qua this report, the Settlement Officer had returned a positive finding (page 57 of the paper book) wherein it had been noted by the Settlement Officer that the findings on this demarcation report (28.05.2010) has not been challenged by the Sharmas/petitioners; as per this report, the ownership and possession of respondent No.2 was found to be 7 bigha whereas the area in khasra No. 171/1 was found to be 14 biswas. The Settlement Officer had returned a finding that the petitioners had no right to the land in khasra No. 171.

(xviii)This order passed by the Settlement Officer was the subject matter of appeal before the Financial Commissioner which was disposed of on 05.08.2011 (which is now the subject matter of the present petition). The Financial Commissioner had again to detail the entire history of the case as this was the third round of litigation which was filed before the Revenue Authorities. After noticing the facts, it had inter-alia returned the following findings:-

"The only point that remains unresolved is the spirited opposition of the petitioners to the assertion of the trial court order no. 05.02.2005 and the appeal court order on 20.12.2010 regarding the deficiency in their holding and their entitlement to any land post consolidation. For support, they rely on the order of the Collector (South –West) passed in appeal on 08.05.2001. This order had set aside the order of vesting the land of the petitioners in the

Goan Sabha under section 33 of the Delhi Land Reform Act. The land measuring (1-4) and (0-4), had been vested in the Gaon Sabha in 1980 because it had been sold by Sh. Raghubir Singh Sharma to his wife in contravention of the act. Interestingly the petition filed by Sh. Raghubir Singh in 2000 neither mentions the provision of the act under which the appeal has been preferred nor does it enclose a copy of the impugned order. The appellate authority admits the appeal, condones the delay of twenty years, overlooks the minor fact that the impugned order is not available, excuses the fact that the file is missing in the record room, and proceeds to direct the consolidation no officer to allot land to the petitioner holding in the revenue records that the land in question had been wrongly vested in the Gaon Sabha. Theorder of the collector in directing the consolidating officer must have been in appeal under section 21(4) of the East Punjab Holding Act, 1948. Such an appeal could only have been filed against an order of the settlement officer under section 21(3) of the Act. However, the order passed by Settlement Officer in this case was under section 33 of the Delhi Land Reforms Act and not under section 21(3) of the Consolidation Act and in his capacity as Revenue Assistant. The fact that the order of the Settlement Officer which was issued in 1980 was under section 33 of the Delhi Land Reforms Act has been admitted by the appellants themselves in the writ petition no. 1786/2010 filed by them in the Hon'ble High Court of Delhi at Para 6(1) thereon and it finds mention in the orders of the Consolidation Officer of 05.02.2005 and the Settlement Officer and also in the high court order of 20.02.2010. If the appeals was not filed under Section 21(4) of the Consolidation Act, but under the Delhi Land Reforms Act, then the direction to the Consolidation Officer becomes a suo-moto act, arbitrary in nature and *without jurisdiction. No suo-mot power has been conferred by sub-section (2),(3) and (4) of section 21 of the East Punjab Holding Act, 1948 on the authorities mentioned therein to pass any order relating to the scheme as they may like. Such power is vested only in the State Government through the Financial Commissioner in under section 42 of the Act. In view of the discussion, the order of the Collector (South West) of 08.05.2001 is clearly without jurisdiction and the lower courts have done the right thing by concluding that there may be no deficiency in the holding other petitioners."*

4 This order had returned fact findings in the context of narration of facts already enumerated in the said order

5 Learned counsel for the petitioners had been informed that this is the third round of litigation before the Revenue Authorities and three writ petitions have already been filed and disposed of on the same submissions and counter submissions of the parties; this Court is even otherwise not a fact finding Court.

6 The only vehement argument canvassed before this Court is that the demarcation report dated 28.05.2010 was a demarcation which had effected the rights of the petitioners and it having adversely effected their right, they should have been given prior notice before the demarcation could be carried out. Principles of natural justice have been violated.

7 On this point, learned counsel for respondent No.2 points out that the petitioners were well aware of this demarcation which was proposed to be carried out and it now does not lie in the mouth of the petitioners to state to the contrary. Learned counsel for respondent No.2 has drawn attention of this Court to the handwritten orders passed by the SDM/Consolidation Officer dated 22.02.2010 wherein Mr. Satpal Singh, learned counsel for the petitioners had put his appearance before him wherein in his presence demarcation of khasra No. 171 & 171/1 was directed to be carried out; the Competent Authority had in fact also summoned the original record from the record room qua the earlier demarcation report dated 10.07.2002. It is also not the case of the petitioners that Mr. Satpal Singh was not their counsel. Thus the argument of the learned counsel for the petitioners now canvassed before this Court that he was unaware of the proposed demarcation which was carried out on 28.05.2010 is clearly a mis-conceived submission. On 22.02.2010, learned counsel for the petitioners (Mr. Satpal Singh) was very much present before the Consolidation Officer when the demarcation of khasra No. 171 was ordered to be effected and the earlier demarcation report dated 10.07.2002 had also been directed to be requisitioned.

8 The petitioners already having availed various rounds of litigation and fact findings having been returned time and again by the Revenue Authorities have held that 14 biswas of land belonging to the petitioner in khasra No. 171/1 (of which the petitioners claim to be in physical possession) was the land which had vested in the Gaon Sabha way back in 1986. The petitioners were not able to get equitable relief from the various Courts before whom he had knocked the doors.

9 In this background, this Court is of the view that the order of the Financial Commissioner does not suffer from any infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

JULY 31, 2017
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