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

+ W.P.(C) 11375/2016

OM PARKASH SOMANI

..... Petitioner

Through: Mr. J.P. Singh, Sr. Adv. with Mr.
V.P. Rana, Ms. Manisha Mehta and
Mr. Gaurang Bindra, Advs.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Devesh Singh, ASC with Ms.
Neelam Choliya, Adv. for R-1 to R-
3.

Mr. N.S. Dalal and Ms. Toral
Banerjee, Advs. for R-4 to R-10.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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23.05.2017

Petitioner was allotted a plot of land bearing no. 108/220 (0-6) within the extended Lal Dora under Section 21 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (the Act, for short) in lieu of his agricultural land between 7th December, 1999 and 10th December, 1999. It appears that petitioner had purchased the agricultural land in the year 1996. Complaints were made to the Settlement Officer, by some villagers, regarding the irregularities in the allotment. It was alleged that some outsiders were allotted plots even though they were not entitled to the same within the extended Lal Dora, in view of the Rule 6 of the Delhi

Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959.

Rule 6, as originally stood, reads as under :-

“6. Statement of principles etc. of the Scheme. - In preparing a scheme of Consolidation, the Consolidation Officer shall have regard to the following principles:-

(a) Blocks shall comprise of homogenous land of similar quality.

(b) The number of plots to be allotted to an owner shall not except with the previous sanction of the Settlement Officer and for reasons to be recorded in writing exceed the number of blocks into which a village has been divided. (c) As far as possible only those owners shall be allotted land in any particular block who already held land therein.

(d) Every owner shall, as far as possible, be allotted land in a block at the place where he holds the biggest plot.

(e) The owner holding land in two contiguous villages shall, as far as possible, be allotted land on the common boundary line.

(f) The owners belonging to the same family, shall, as far as possible, be given neighbouring plots. Explanation:- The family of a person includes the wife or husband, the sons and their wives, the daughters, grand-children and great grand children.

(g) If a land-owner has all his land in one compact block of 8 acres or upwards, his existing holding shall not, as far as possible, be disturbed or divided, irrespective of the multiplicity of blocks.

(h) The alignment of canal water courses shall be as determined by the Irrigation Department. The well water courses shall as far as possible run straight and along the boundaries of the plot.

(i) All agricultural labourers and village artisans who are without accommodation or who have insufficient accommodation shall be allotted land for residential purposes, free of compensation, upto 2 ½ biswas (126 square yards) at a suitable place.

(j) Such other matters as the Settlement Officer (Consolidation) may consider necessary in this behalf.”

This Rule was amended on more than one occasions. Lastly, the Rule was amended on 12th June, 1996 whereby clause (l) was renumbered as clause (k) and the following was inserted:

“(l)(A) cases fit for regularization as „Kayami“ shall be as under:- (l) Residential units constructed for self occupation, on the individual’s own holding, by a person who has resided in the village for a period of at least twenty years, and subject to the condition that the size of the plot does not exceed the area of half an acre (2 bighas and 8 biswas).”

During the enquiry conducted pursuant to the complaint, it was revealed that petitioner was not a resident of the village for the past 20 years prior to the date of allotment, that is, December, 1999 and did not qualify for the allotment of a plot within the extended Lal Dora in view of the above quoted Rule. Accordingly, his allotment was cancelled on 16th September, 2010 by the Consolidation Officer.

It is noted that counsel for the petitioner, on instructions of the petitioner, had conceded in court on 9th December, 2016 that petitioner was not the resident of village.

Petitioner preferred a Revision Petition under Section 42 of the Act before the Financial Commissioner which has been dismissed by the order impugned in this writ petition. Learned Financial Commissioner has categorically observed that since petitioner was not a resident of the village

for the past 20 years as on the date of allotment of the plot to him by the Consolidation Officer in the year 1999, the allotment was rightly withdrawn. Learned Financial Commissioner has placed reliance on the judgment dated 15th February, 2010 of the Division Bench of this Court passed in W.P. (C) 7392/2002 titled Sh. Raghubir Singh & Ors. vs. Financial Commissioner & Ors. wherein it has been held that condition of 20 years residence prior to the start of consolidation in the village is valid. Validity of the Rule 6 has been upheld by the Division Bench. In the similar facts, Division Bench has held that since the petitioners or their predecessor were neither original bhumidhar nor have the bhumidhari records for the last 20 years from the date of notification under Section 14(1), therefore, they are not entitled to any plot.

Financial Commissioner, in the facts of this case has further observed that after the sanction/approval of Settlement Officer dated 01.09.2010, consolidation officer had passed resolution no. 155 dated 16.09.2010 whereby allotment of petitioner's plot was withdrawn. Therefore, no irregularity could be found in the action of withdrawal of allotment. It is noted here that under Section 42 of the Act, Financial Commissioner has vide powers to even take *suo motu* cognizance and set right any irregularity

or illegality. On merits also, in this case, in my view, petitioner was not entitled to the allotment of plot within the extended Lal Dora, admittedly, not being a resident of the village.

For the foregoing reasons, I do not find any jurisdictional error in the impugned order. Writ petition is dismissed.

A.K. PATHAK, J.

MAY 23, 2017
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