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

Date of Decision: 22nd September 2023

+ **W.P.(C) 1842/2023**

SUBHADRA NEHRU

..... Petitioner

Through: Mr. Y. P. Narula, Senior Advocate
with Mr. N.S. Vashisht and
Mr. Abhay Narula, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Udit Malik, ASC for GNCTD
with Mr. Vishal Chanda, Advocate.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under Article 226 of the Constitution of India, the petitioner, who is a widow about 78 years of age, impugns order dated 09.11.2022 passed by the Tehsildar (Land Acquisition), Mehrauli, New Delhi, thereby declining the petitioner's application for issuance of a No-objection Certificate ('NoC') to enable registration of a sale deed in respect of agricultural land bearing Khasra No. 91/2 situate in Village : Chandanhula, Tehsil : Mehrauli, New Delhi ad-measuring about 13 *bigha* and 10 *biswa*. ('subject land').



BRIEF FACTS

2. Briefly, the facts relevant for purposes of deciding the present petition are the following :

2.1 The petitioner and her husband purchased the subject land sometime in 1983 and constructed thereupon a farm house with a boundary wall, where the petitioner has been residing ever since.

2.2 The subject land is governed by the provisions of East Punjab Holdings (Prevention of Fragmentation) Act, 1948 ('EPH Act').

2.3 On 26.04.2003, the Consolidation Officer of Village Chandanhulla passed a General Order (Robkar) which *inter-alia* said the following :

*"It is hereby announced that the 'Scheme' of consolidation of village Chandanhulla, which was announced on 01.11.2002, by the consolidation officer, **has been confirmed** by the settlement officer of Village Chandanhulla on 17.04.2003.*

Now in pursuance of the Section 21(1) of East Punjab Holdings (Prevention of Fragmentation Act) Act, 1948 new field numbers have come in force and repartition U/s 21(1) will be made to all Haqdars accordingly. The allotment to 'Scheme kabeej' will also be made, simultaneously.

Since most of the villagers are in possession of their land they are hereby allowed to take the possession with immediate effect U/s 23(1) of the East Punjab Holdings Act, 1948, simultaneously."

(emphasis supplied)

2.4 Subsequent to the aforesaid order, the petitioner and her husband were issued a 'Pass Book Consolidation' affirming their *bhumidari* rights over the subject land.



- 2.5 The petitioner's husband passed away on 25.07.2013; whereupon the subject land devolved upon the petitioner and her two daughters, who (latter) relinquished their share in the subject land in favour of the petitioner *vide* Relinquishment Deed dated 21.08.2013.
- 2.6 *Vide* an Agreement to Sell dated 13.04.2022 the petitioner agreed to sell the subject land to one Mr. Surender Aggarwal and one M/s Vibgyor Buildprop Private Limited ('purchasers'), which agreement is the genesis of the issue raised by way of the present petition.
- 2.7 Consequent to the signing of the agreement to sell, when the parties attempted to execute a sale deed and have it registered with the concerned Sub-Registrar of Assurances, the latter insisted that the parties obtain an NoC from the Tehsildar (Land Acquisition) as required under section 30 of the EPH Act.
- 2.8 By reason of the above, the petitioner and the purchasers filed before the Office of the Executive Magistrate/Tehsildar an application dated 29.09.2022 for issuance of a land status report; which application was forwarded to the Patwari, who prepared a status report confirming that as per the revenue records *bhumidari* rights in respect of the subject land vest in the petitioner. The status report further observed that *vide* judgment dated 17.11.2021 in ***Uppal Housing Private Limited vs. Government of NCT of Delhi & Ors.***¹ the Delhi High Court had set-aside an earlier order dated 04.09.2021 issued by the Tehsildar (Mehrauli); but

¹ (2021) SCC Online Del 5078



thereafter went on to record that as per communication dated 16.09.2022 issued by the Tehsildar, registration of deeds of any kind in relation to Village Chandanhula have been stayed and it has been directed that no NoCs/Land Status Reports are to be given until further orders. By reason of communication dated 16.09.2022, the Tehsildar (Land Acquisition) did not recommend issuance of an NoC to the petitioner.

2.9 For clarity it must be mentioned that the aforesaid communication dated 16.09.2022 was issued in purported compliance of order dated 04.08.2022 made by a Co-ordinate Bench of this Court in the case of *Noor Mohammad vs. GNCTD & Ors.*², where the Bench had set-aside an order dated 02.06.2022 passed by the revenue authorities without considering the decision in *Uppal Housing* (supra) and had directed the concerned revenue officials to re-consider and pass orders afresh in view of the ratio of that judgment.

2.10 By communication dated 16.09.2022, the Tehsildar/ Consolidation Officer had also recommended/proposed that the previous consolidation proceedings in respect of Village Chandanhula be revoked and fresh consolidation proceedings be ordered under section 42 of the EPH Act, apart from “ ... *filing a revision petition before the Divisional bench of Hon’ble High Court against the order passed in W.P.(C) 10670/2021 dated 17/11/2021*” i.e., against the judgment in *Uppal Housing*.

² W.P.(C) No. 11606/2022



2.11 In this backdrop, *vide* impugned order dated 09.11.2022, the Patwari has declined to issue an NoC to the petitioner.

3. This court has heard Mr.Y.P Narula, learned senior counsel appearing for the petitioner; and Mr. Udit Malik, learned ASC appearing on behalf of the respondents. Written submissions have also been filed on behalf of the parties.

PETITIONER'S CONTENTIONS

4. Mr. Narula, learned senior counsel appearing for the petitioner has contended as follows :
- 4.1 The petitioner has been in continuous, peaceful possession of the subject land since 1983.
- 4.2 A perusal of General Order dated 26.04.2003 shows that consolidation proceedings in respect of Village Chandanhula were completed back then and based upon such consolidation proceedings, a pass-book was issued to the petitioner (and her husband) as *haqdars*.
- 4.3 No fresh draft scheme as required under sections 19 and 20 of the EPH Act has ever been issued, nor have any fresh consolidation proceedings in respect of Village Chandanhula ever been initiated by the State Government, nor has any order been passed varying or revoking the earlier consolidation scheme under section 36.
- 4.4 Land Status Report dated 14.10.2022 issued by the Patwari, which subsequently recorded on it the recommendation dated 09.11.2022 made by the Tehsildar (Land Acquisition) is clearly erroneous, since it rejects the petitioner's request for issuance of an NoC without considering the decision of the Co-ordinate



- Bench of this court in *Uppal Housing* (supra), in which case (though relating to a different party) a Co-ordinate Bench has held that consolidation proceedings in respect of Village Chandanhula stand completed; and that it was only thereafter land-holders were put in possession of their respective plots and sale deeds were executed, after the final consolidation scheme had come into force.
5. It is argued that in *Uppal Housing* (supra), the Co-ordinate Bench has clearly held that the provisions of section 30 of the EPH Act operate only when consolidating proceedings are pending; and since no cogent material had been brought on record in those proceedings to establish that consolidation had not attained finality in relation to Village Chandanhula, the invocation of section 30 was misplaced.
 6. Senior counsel points-out that the decision of Co-ordinate Bench in *Uppal Housing* (supra) has also since been upheld *vide* judgment dated 02.08.2023 rendered by a Division Bench of this court in LPA No. 573/2023 titled ***Government of NCT of Delhi vs. Uppal Housing Private Limited & Ors.***, from which no further challenge is stated to have been taken-up.
 7. It is further pointed-out that judgment dated 02.08.2023 of the Division Bench in LPA No. 573/2023 has been rendered *after* issuance of communication dated 16.09.2022 by the Executive Magistrate/Tehsildar (Mehrauli); and in any case, even as of date, no fresh consolidation proceedings have been commenced; and that therefore, there is no basis to require the petitioner to produce an NoC/Land Status Report for completing the sale of the subject land.



RESPONDENT'S CONTENTIONS

8. On the other hand, Mr. Malik, learned counsel appearing for the respondents argues that :
- 8.1 Section 30 of the EPH Act clearly mandates that no transfer of land can take place without the sanction of the Consolidation Officer during on-going consolidation proceedings.
- 8.2 General Order/*Robkar* dated 26.04.2003 cannot be relied upon to say that consolidation proceedings in respect of the subject land are complete, since that order was passed on a draft scheme and records, in so many words, that “... *most of the villages are in possession of their land ...*” but not all of them. It is submitted that consolidation proceedings as per section 14(1) of the EPH Act comprise 15 steps, of which 03 steps are still to be completed viz., finalization of allotment and preparation of the record of rights; consignment of consolidation records; and completion of consolidation proceedings.
- 8.3 Section 24 of the EPH Act cannot be taken to be the ‘*deeming provision*’ when, on point of fact, all villagers have not been put in possession of their respective lands in Village Chandanhula.
- 8.4 Order dated 04.09.2021 had been issued in view of the anomalies and irregularities reported in relation to consolidation proceedings in Village Chandanhula, by which order the issuance of NoCs was suspended by the competent authority; and though the aforesaid order was set-aside by the judgment in *Uppal Housing* (supra), pursuant to what was recorded in para 20 of that judgment itself, the Tehsildar (Mehrauli) has subsequently issued



communication dated 16.09.2022, relying on which the petitioner's application for issuance of NoC has justifiably been rejected.

DISCUSSION & CONCLUSIONS

9. Before assessing the merits and demerits of the submissions made by the rival parties, it would be beneficial to refer to sections 24 and 30 of the EPH Act, which read as under:

*24. Coming into force of scheme-(1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings, respectively allotted to them **the scheme shall be deemed to have come into force** and the possession of the allottees affected by the scheme of consolidation, or as the case may be by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21 or an order passed under section 36 or 42 of this Act.*

(2) A Consolidation officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act. 1887 (Act XVII of 1887), for purposes of compliance with the provisions of subsection(1).

*30. Transfer of property during consolidation proceedings.—After a notification under sub-section (1) of section 14 has issued and **during the pendency of the consolidation proceedings** no land-owner 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 any other land-owner or tenant having a right of occupancy therein under the scheme of consolidation.*

(emphasis supplied)

10. Coming now to the decision of a Co-ordinate Bench in *Uppal Housing* (supra). In that case, the petitioner - Uppal Housing Private Limited - had questioned the validity of order dated 04.09.2021 issued by the



District Magistrate (South), by which issuance of no-objection certificates and registration of deeds and documents had been suspended for Village Chandanhula “*till further orders*”. This was done invoking the provisions of section 30 of the EPH Act, observing that certain irregularities and anomalies had come to the notice of the authorities in relation to the consolidation proceedings conducted in Village Chandanhula earlier-on, which were still under investigation; and that consolidation proceedings in respect of that village were still in progress. The other details pertaining to the case of *Uppal Housing* do not concern us in the present proceedings.

11. After considering the submissions made in that matter and based on the record in *Uppal Housing* (supra), the court noted that no cogent material had been placed on record that may have even remotely established that consolidation proceedings were on-going in Village Chandanhula. Furthermore, the court observed that the respondent had failed to assert that a final consolidation scheme had not been published, or that the land-holders had not been put in possession of their plots, earmarked and demarcated, upon finalization of the consolidation scheme. It was further held that the provisions of section 30 of the EPH Act operate only during the phase when consolidation proceedings are pending; and section 24 of the EPH Act provides that once land-holders are inducted into possession, the consolidation scheme is deemed to have come into force and remains undisturbed until a fresh scheme is brought, or a challenge is ordered pursuant to the provisions of sections 21, 36 or 42 of the EPH Act.



12. Clearly, the purport of the judgment in *Uppal Housing* (supra) was that since land-holders had been put in possession of their respective demarcated lands, consequent upon statutory formalities having been complied with, the consolidation scheme in respect of Village Chandanhula stood completed. It was accordingly held, that since the restraint contained in section 30 of the EPH Act in relation to transferring or otherwise dealing with land operates only during the pendency of the consolidation proceedings, in the case of Village Chandanhula the invocation of section 30 of the EPH Act was misplaced. In view thereof, the Co-ordinate Bench quashed and set-aside order dated 04.09.2021 issued by the District Magistrate (South).
13. However, in the concluding part of the judgment in *Uppal Housing* (supra), the Co-ordinate Bench made the following observation :

“20. Before closing these proceedings, it must be stated that the present decision is not to be construed as either interdicting any enquiry that is contemplated by the Government or any further action that may be proposed in terms of the statutory powers so vested in the competent authorities under the EPH Act.”

14. By order dated 04.08.2022 in *Noor Mohammad* (supra) another Co-ordinate Bench set-aside order dated 02.06.2022 by which Noor Mohammad’s application for grant of an NoC had been rejected, and directed the concerned officials to pass orders afresh keeping in mind that order dated 04.09.2021 had already been set-aside in *Uppal Housing* (supra).
15. However, taking cue from the observation made in para 20 of *Uppal Housing* (supra), namely that the decision of the court was not to be construed to interdict any enquiry contemplated by the Government or



any further action proposed to be taken in terms of the statutory powers vested in the competent authorities under the EPH Act, and purporting to give certain reasoning, the Executive Magistrate/Tehsildar (Mehrauli) passed an order dated 16.09.2022, *again* recommending that an NoC/Land Status Report in respect of Khasra No.118 (min), *i.e.*, the land concerning Noor Mohammad in Village Chandanhula should not be issued till further orders by the “Higher Authorities”.

16. Therefore, relying upon the observations in para 20 of *Uppal Housing*, the Executive Magistrate/Tehsildar *yet again passed the very same order* as had been impugned and set-aside in *Noor Mohammad*. In doing so, the Executive Magistrate/Tehsildar relied upon the terms of reference of a committee constituted under the Chairmanship of the District Magistrate (East) *vide* order dated 06.04.2022 issued by the Vigilance Department citing irregularities and violations believed to have been committed in the consolidation proceedings in Village Chandanhula conducted from 1990 onwards and other related matter.
17. In communication dated 16.09.2022 it was recorded that fresh consolidation proceedings *be ordered* under section 42 of the EPH Act in respect of Village Chandanhula, apart from filing of a “ ... *revision petition before the Divisional bench of Hon’ble High Court against the order passed in W.P. (C) 1607/2021 dated 17.11.2021.*” *viz.*, the decision in *Uppal Housing* (supra).
18. However, the position is that the decision of the learned Co-ordinate Bench in *Uppal Housing* (supra) has since been upheld by a Division Bench of this court *vide* order dated 02.08.2023 in LPA No. 573/2023 titled ***Government of NCT of Delhi vs. Uppal Housing Private***



Limited & Ors., in which the Division Bench has *inter-alia* observed as follows :

“13. We have considered the contentions raised by the appellant, but find them lacking in merit. The learned single Judge’s decision to quash the order of the SDM is well-founded, as there was a notable absence of substantial evidence presented before the Court to demonstrate the ongoing nature of the consolidation proceedings, which would have justified the SDM’s issuance of the order which has been impugned in the original writ. The learned single Judge’s conclusion is founded on careful evaluation of the factual material presented before him, as is evident from the following findings:

* * * * *

“14. The pivotal issue is whether the consolidation proceedings in Village Chandanhaul were in progress or had reached a state of completion. The learned single Judge appropriately observed that the assertion regarding continuation of consolidation proceedings could not solely be based on the assertions made by the Tehsildar. While it may be correct that the Tehsildar, who is the Consolidation Officer for a specific subdivision, would have the knowledge about the factum of consolidation, however, the issue cannot be determined solely on the basis of his certification. The learned single Judge scrutinized the available records and status reports to ascertain the true status of the proceedings. He has observed that the record reflects that land holders were put into possession even prior to the execution of the sale deeds, fulfilling all statutory formalities. In this light Mr. Srivastava’s argument that the consolidation proceedings were ongoing and only 12 out of 15 crucial steps were completed, does not impress us. In fact, apart from this bare assertion, there is no material on record that would indicate that the consolidation proceedings were ongoing.

“15. The Appellant also controverts the credibility of the Register Karyawahi Chakbandi as evidence proving possession but without basis. The learned single Judge specifically notes that the



Respondents have failed to supply any evidence, documentary or otherwise, to support their assertion that the final consolidation had not been published or that the land owners had not been placed in possession of the plots earmarked and demarcated upon finalisation of the scheme.

“16. Reliance on Section 30 of the EPH Act is misplaced and untenable. The documents and evidence establish that the consolidation proceedings had indeed concluded and that the landholders had been placed in possession of their allotted plots. This negates any legal grounds for the enforcement of Section 30 in this context, rendering the order impugned in the original writ devoid of legal validity.”

(emphasis supplied)

19. In view of the foregoing discussion, what is clear is :

19.1. That the Sub-Registrar of Assurances has declined to register the sale deed presented by the petitioner and the purchasers on the ground that an NoC is required from the Tehsildar, which has not been presented. An NoC is required under section 30 of the EPH Act, which mandates that no transaction *inter-alia* for transfer of any rights in land covered by a scheme shall be permissible “ ... during the pendency of the consolidation proceedings without the sanction of the consolidation officer” (emphasis supplied);

19.2. The land that is subject matter of the present proceedings is situate in Village Chandanhula; and in the decision of the Division Bench in LPA No. 573/2023, it has been held that consolidation proceedings in respect of that village stand concluded and no fresh consolidation proceedings have been initiated. No material has been brought on record *in the present proceedings either*, to



indicate any change in circumstances from those that prevailed at the time when LPA No. 573/2023 was decided.

19.3. Though, in the proceedings relating to *Noor Mohammad* (supra) in relation to some other parcel of land in Village Chandanhula, the respondents may have *initiated some paperwork, inter-alia* by way of communication dated 16.09.2022 issued by the Executive Magistrate/Tehsildar, that communication only contains a *recommendation* that fresh consolidation proceedings *be ordered* under section 42 of the EPH Act and that issuance of NoCs be suspended; *but there is nothing to show that any such fresh consolidation proceedings have been initiated*, in accordance with law.

19.4. In fact, it would appear that the only action taken pursuant to the recommendation contained in communication dated 16.09.2022 was that LPA No. 573/2023 came to be filed before the Division Bench on 01.08.2023 (as per the case history of the High Court) against the judgment of the Co-ordinate Bench in *Uppal Housing* (supra), which LPA was however decided against the revenue authorities *vide* judgment dated 02.08.2023, thereby upholding the quashing and setting-aside of order dated 04.09.2021.

19.5. It is evident from a perusal of communication dated 16.09.2022, that the Tehsildar/Consolidation Officer has proceeded *on exactly the same basis* as order dated 04.09.2021 issued by the revenue authorities earlier-on, which order was quashed and set-aside by the Co-ordinate Bench in *Uppal Housing* (supra), which has since



been upheld by the Division Bench of this court in LPA No. 573/2023.

19.6. The fresh consolidation proceedings to which reference was made in communication dated 16.09.2022 *have admittedly not been initiated as-of-date.*

20. Accordingly, the position today is that consolidation proceedings in respect of Village Chandanhula are complete; order dated 04.09.2021 stands quashed and set-aside; and there is therefore no requirement under section 30 of the EPH Act for the petitioner to obtain any NoC for registering her sale deed in favour of the purchasers under the EPH Act.
21. Needless to add that the petitioner cannot be expected to put the transaction initiated by way of Agreement to Sell dated 13.04.2022 on hold, and to wait for fresh consolidation proceedings to be initiated by the revenue authorities, if at all, in the fullness of time.
22. In view of the above, the present petition is allowed; thereby setting-aside impugned order dated 09.11.2022; and permitting the petitioner to present the sale deed in respect of the subject property for registration before the concerned Sub-Registrar of Assurances; with a further direction to the Sub-Registrar to register the same in accordance with law, without however requiring the production of any NoC from the revenue authorities, within 3 days of presentment of the sale deed.
23. It is made clear that such registration will be done notwithstanding the provisions of sections 23 and 25 of the Registration Act 1908, if



applicable, which otherwise require presentment of a document within a maximum of 08 months from the date of its execution.

24. The petition is disposed-of in the above terms.
25. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 22, 2023

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