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

% *Decided on: 14th March, 2023*

+ W.P.(C) 3061/2023 & CM APPL. 11849/2023
NOOR MOHAMMAD Petitioner

Through: Ms. Smita Maan with
Mr. Vishal, Mr. Aditya and
Mr. Shitiz Agnihotri,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI AND
ORS. Respondents

Through: Mr. Shadan Farasat, ASC,
GNCTD with Mr. Aman,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

CM APPL. 11849/2023 (Application on behalf of petitioner under Section 151 CPC seeking exemption from filing original documents, certified copies and/or typed copies of the dim documents/annexures)

1. Allowed, subject to just exceptions.
2. Application is disposed of.

W.P.(C) 3061/2023

3. The present writ petition has been filed with prayer for directions to the respondent no. 6 to consider the application of the petitioner for grant of permission under section 30 of the East Punjab Holdings (Consolidation and Prevention Of Fragmentation) Act, 1948 (herein after referred as "Punjab Holding Act").

4. There is further prayer for issuance of land status report in respect of the land in question measuring 5 biswas i.e. 250 sq. yards comprised in khasra no. 118/1 (min) situated in the extended abadi lal dora of village Chandan Hola, New Delhi under the provisions of Delhi Land (Restrictions on Transfer) Act, 1972.

5. It is the case of the petitioner that his father owned and possessed residential built up properties in the Lal Dora Abadi in village Chandan Hola being pre-consolidation Khasra Nos. 108/3,4 (2-00), 112/1 (2-13) and 112/2 (0-11).

6. It is submitted that on or about 05.04.1997, the process of consolidation under the provisions of Punjab Holding Act and Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 was commenced for consolidation of the land situated in village Chandan Hola.

7. During the repartition proceedings carried out in the said consolidation process, the said built up residential properties owned and possessed by father of the petitioner i.e. Sh. Uday Bhan were treated as Kayami. During the said consolidation proceedings, land admeasuring 5 Bighas and 5 Biswas was allotted to Sh. Uday Bhan by changing the pre-consolidation Khasra number of the said properties into new Khasra numbers. Thus, for Khasra No. 108/3,4 (pre-consolidation number) admeasuring 2 bighas, a new Khasra Number was allotted, i.e., Khasra No. 115/1 (2-00). Similarly, in place of the old pre-consolidation Khasra No.112/1,2, a new Khasra No. 118/1 (3-05) was allotted. Thus, it is submitted that Sh. Uday Bhan has always been in possession of the said land both during pre-consolidation as

well as during the post consolidation period.

8. The said Uday Bhan expired in the year 2002 leaving behind his 4 legal heirs, including the petitioner herein. It is submitted that the mutation in regard to the same has also been effected in the revenue record on 26.04.2016.

9. It is the case on behalf of the petitioners that on 04.09.2021, respondent no. 5 passed an order in regard to village Chandan Hola, New Delhi thereby suspending the registration of the deed/document under the Registration Act, 1908 and issuance of No Objection Certificate for transfer and sale-purchase of the land.

10. It is submitted that said circular dated 04.09.2021 issued by respondent no. 5 was subject matter of challenge in writ petition, W.P. (C) No. 10670/2021, titled as ***Uppal Housing Pvt. Ltd. Vs. Govt. of NCT of Delhi & Ors.*** By order dated 17.11.2021, this Court held that the consolidation proceedings in Village Chandan Holla had already been completed. Attention of this Court has been drawn to order dated 17.11.2021 passed in W.P. (C) No. 10670/2021, wherein the Court held as follows:-

“18. In fact, the record to the contrary reflects that upon completion of consolidation proceedings, the land holders were put into possession of the plots as a consequence of a final consolidation scheme coming to be enforced and it is only thereafter and consequent to all requisite statutory formalities being complied with that the sale deeds came to be executed in favour of the petitioner. Regard must be had to the fact that the provisions of Section 30 of the EPH Act operate only while consolidation proceedings are pending. The restraint operates upon a landowner or a tenant from transferring or otherwise dealing in any portion of the

original holding only during the pendency of consolidation proceedings. The assumption on which the impugned order is based is clearly belied from the disclosures made in the various status reports and affidavits submitted by the respondents which have been referred to hereinabove. In the absence of any cogent material having been brought on record and which may have established that consolidation had not attained finality, the invocation of Section 30 of the EPH Act is clearly misplaced.

19. Regard must also be had to the fact that the respondent No.2 while proceeding to pass the impugned order has failed to advert to any valid circumstance which may have warranted a review of the position as taken by the Collector, South and embodied in the order of 22nd September, 2020 and which confined the dispute to the two plots which formed subject matter of the exchange sanctioned in 2007. Accordingly, and for all the aforesaid reasons, this Court finds itself unable to sustain the order impugned.

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21. The writ petition is accordingly allowed. The impugned order dated 04th September, 2021 passed by the respondent no.2 shall consequently stand quashed and set aside."

11. It is submitted that out of the above land which came to the share of the petitioner, the petitioner desires to gift 250 sq. yards land out of khasra no. 118/1 (min) to his grandson namely Sh. Salim Khan. Thus, the petitioner applied for application dated 25.04.2022 before respondent no. 6. It is submitted that respondent no. 6 has declined to proceed and issue the land status report/NOC for transferring the above said land.

12. It is submitted that this is despite the fact that vide order dated 17.11.2021 passed in W.P. (C) No. 10670/2021, the order dated

04.09.2021 as passed by the Office of District Magistrate (South), Government of NCT of Delhi, has already been quashed.

13. Attention of this Court is also drawn to order dated 04.08.2022 passed by a Coordinate Bench of this Court in W.P.(C) 11606/2022, wherein the order passed by Revenue Authority refusing to grant No Objection Certificate (NOC) for registration of gift deed to the petitioner herein, was set aside.

14. It is submitted that after the passing of the aforesaid order dated 04.08.2022 passed by this Court in W.P. (C) No. 11606/2022, the petitioner filed letter dated 08.08.2022 before the respondent no. 6 requesting therein to comply with the aforesaid order dated 04.08.2022 passed by this Court. Subsequent requests were made by the petitioner. However, the respondent no. 6 issued a letter dated 16.09.2022, wherein it was stated that respondent no. 6 was of the opinion that the land status/NOC for Khasra No. 118 min (0-5) in Village Chandan Hola, New Delhi should not be issued till further orders by the higher authorities.

15. Thus, it is the case on behalf of the petitioner that on 04.10.2022, the petitioner filed a representation before respondent no. 3 to 6 submitting therein that during the consolidation proceedings, there is no absolute bar to transfer the land by the recorded owner/bhumidar as per Section 30 of the Punjab Holding Act.

16. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as imposed by the Consolidation Officer. Learned counsel for petitioner further submits that the present is not a case of transfer of the land as such, as petitioner wants to gift

the land in question to his grandson. Thus, the transfer is only a transfer within the family.

17. Issue notice.

18. Notice is accepted by learned Additional Standing counsel for the respondents.

19. Learned Additional Standing counsel very fairly submits that the application of the petitioner pending with respondent no. 6 shall be dealt with expeditiously and order thereto shall be passed expeditiously.

20. In view of the aforesaid, respondent no. 6 is directed to consider the application of the petitioner for granting permission under Section 30 of the Punjab Holding Act and pass a reasoned/speaking order expeditiously, preferably within one month from today.

21. With the aforesaid directions, the present writ petition is disposed of.

MINI PUSHKARNA, J

MARCH 14th, 2023

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