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

% Judgment delivered on: 10.01.2024

\+ W.P.(C) 1674/2017 & CM APPL. 7470/2017

SUKHBIR SINGH ..... Petitioner

versus

CONSOLIDATION OFFICER (C.O) & ANR ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ashutosh Rana, Advocate

For the Respondent : Mr. Rishikesh Kumar, ASC (GNCTD) with Ms.Sheenu Priya, Mr. Atik Gill, Mr. Sudhir Kumar Shukla, Mr. Sudhir and Mr. Sumit Choudhary, Advocates

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner has filed the present writ petition seeking the following prayers:-

> "*[1] Issue an appropriate writ, order or direction thereby setting –aside the Impugned Judgment/order dt. 09-12-2016, passed by the Financial Commissioner, in Revision Petition No-175/2011, Titled Sh. Sukhbir Singh Vs Consolidation Officer (Kanjhawla) & Another, in the interest of Justice and Equity.*

[2] Issue a writ of mandamus or any other appropriate writ order or direction, thereby directing the respondent No.l i.e. Consolidation officer (Kanjhawla) to correct the entries in the Field Book of the residential plot of petitioner as per his original allotment made between 05-05-1998 to 29-05-1998 U/S 21 (1) Of the East Punjab Holdings (Consolidation & prevention of fragmentation) Act 1948 and rules made there under, in the interest of Justice and Equity.

[3]. Further be pleased to restrain the respondent No.l from implementing the wrong and illegal entries of the Field Book in the revenue record of the residential plot of petitioner, in the interest of Justice and Equity…."

2. The petitioner submits that in the consolidation proceedings conducted between 05.05.1998 to 29.05.1998, the Consolidation Officer had allotted plots of land to petitioner as also to respondent no.2. According to the petition, the petitioner was allotted 1025 square yards in the plot No. 142/225. The Passbook of consolidation was drawn up and handed over to the petitioner showing that his plot of land was towards the North of Khasra No. 142/225.

3. The case of the petitioner further is that from the year 1998 through till May 2011 the plot bore with the same measurement as also the North direction. In support of the aforesaid contention, learned counsel relies upon the passbook of the consolidation proceedings at page 27, first entry is of 1998; second one being of 30.05.2010 and the third one of 11.08.2010.

4. According to learned counsel, sometime in the month of May, 2011 when the petitioner visited his plot, he saw that the boundary wall

has been demolished. According to learned counsel for the petitioner, when the petitioner sought information in respect thereto from respondent no.2, the respondent no.2 had allegedly informed him that the Consolidation Officer had redrawn the field book and according to that he had now demolished the boundary wall pertaining to the petitioner's plot of land.

5. The case of the petitioner is that without issuing any notice, the Consolidation Officer could not have carried out a unilateral change in the measurements of the field book as noted by the Consolidation Officer in the year 1998.

6. Learned counsel submits that the petitioner had filed a revision petition before the Financial Commissioner challenging the unilateral change in the measurements and the directions of the plot allotted to the petitioner as also challenged the same on the ground that no notice of hearing was issued by the Consolidation Officer.

7. Learned counsel invites attention of this Court to written submission filed by the Consolidation Officer before the Financial Commissioner. At page 71 the written submissions were filed by the Consolidation Officer, who had categorically stated that the file wherein the order regarding separation of *Tatima* was passed, is not available on record and therefore, it would not be possible for him to submit as to whether any opportunity was ever provided to the petitioner or not.

8. Learned counsel submits that the changes now brought about are clear from the field book maintained by the Consolidation Officer, which is placed at page 99 of the counter affidavit which shows as to what was existing and what changes have been brought subsequently.

On that basis, learned counsel submits that this issue ought to have been decided by the Financial Commissioner, which was overlooked.

9. Learned counsel draws attention of this Court to para-7 of the impugned order to submit that the Financial Commissioner skirted the issue as to whether the petitioner was ever served by the Consolidation Officer before effecting, in what the petitioner considers, the changes in the measurements of plot No. 142/225.

10. Learned counsel also submits that the observation by the Financial Commissioner in para-7 as to the consent given by the petitioner is factually incorrect. To that extent, learned counsel draws attention of this Court to the written submissions filed by petitioner before the Financial Commissioner to show that the challenge to the changes were actually taken and therefore there was no possibility of the petitioner having admitted or consented to as observed in para-7.

11. Learned counsel submits that the non-consideration of the aforesaid vital issue would be contrary to the principles of natural justice and the Financial Commissioner also did not consider the same, leading to the Financial Commissioner's order becoming *non est* in law.

12. *Per Contra*, learned counsel appearing for respondent no.2/private party submits that in the entire petition before this Court or even before the Financial Commissioner, the petitioner has been unable to show what were the actual changes effected, as alleged. Learned counsel submits that the petitioner has not shown any field book prepared during the period when the consolidation proceedings were carried out in the year 1998 and compared them to the documents placed by the respondent at page 99 to show that there are actual changes carried out

or there is any interpolation, etc.

13. Learned counsel submits that in the entire proceedings, once the petitioner is unable to show the changes as alleged, there is nothing either in the revision petition or before this Court for this Court to take note of. Learned counsel asserts that there is no change from what the field book contained in the year 1998 through till 2014. He prays that the present petition be dismissed, as such.

14. Learned counsel appears for the Consolidation Officer and submits that notice was issued on 09.08.2022 to the Standing Counsel, however, no response or affidavit or any document worth its name has at all been filed by the department till date. Though learned counsel for respondent no.1 submits that notice was to learned Standing Counsel subsequently by this Court, however, the order dated 27.02.2017 passed by this Court shows the presence of the counsel for respondent no.1.

15. Learned counsel also submits that the consolidation proceedings or the alleged unilateral redrawing of the consolidation proceedings could not have been carried out except in accordance with law, since the petitioner has failed to show any such changes apparent, the petition does not have any merit and ought to be dismissed.

16. Despite passage of so many years, no counter affidavit has at all been filed.

17. By that as it may, this Court has considered the arguments of learned counsel for the petitioner as also for the respondents.

18. The fundamental challenge of the petitioner to the impugned order passed by the Financial Commissioner is that, the Financial Commissioner did not take into consideration or note the aspect that the

grievance of the petitioner emanated from the fact that no notice was ever issued to him before the alleged change in the field book or the field measurements of Khasra No. 142/225.

19. So far as the grievance of the petitioner is concerned in respect of the aforesaid, the written submissions filed on behalf of the Consolidation Officer before the Financial Commissioner would suffice.

20. The said written submissions are extracted herein for clarity:-

1. "*That the main grievance of the petitioner is that while making the separation of Tatima, no opportunity was afforded to him. He further aggrieved on the ground that he had been allotted less land/area than his entitlement. He is also alleging that the land which has been allotted to him is not in accordance with the scheme of consolidation.*"

2. *The record of the consolidation has been looked into and it has been transpired that the file, wherein the order regarding separation of Tatima was passed, is not available in the records. Therefore it can't be said as to whether any opportunity was ever provided to the-petitioner or not.*

3. *That in so far as allotment of less value is concerned it is submitted that the scrutiny of the consolidation records is going on and if; at a later stage, it is found that there is any deficiency, the same shall be made good in accordance with the law.*"

21. It is manifest from the aforesaid written submission, particularly para-2 above, that the Consolidation Officer himself was unable to answer as to whether any opportunity of hearing was ever provided to the petitioner or not which only leads to the penultimate conclusion that no notice was ever issued by the Consolidation Officer before the alleged changes in the Khasra No. 147/225 was effected, as alleged by

the petitioner.

22. In view thereof, it is unfathomable as to why the Financial Commissioner would not consider the said aspect in the first instance itself and directs the Consolidation Officer to rehear both the parties and yet again consider as to whether there is any material or ground on which the petitioner is alleging changes in the Khasra No. 142/225.

23. None of the parties, i.e. particularly the petitioner and respondent no.2 have placed on record the original field book, which ought to have been drawn up by the Consolidation Officer in the year 1998 while conducting the consolidation proceedings in accordance with law.

24. Learned counsel appearing for the respondent no.2 has also drawn attention of this Court to page 102, which is the part of the counter affidavit and stated to be the *aks-sijra* of the plot in question, which shows the directions of the plot. In comparison thereto, learned counsel now subsequently referred to page 103, which is the site plan drawn up by the respondent no. 2 to show that there is no change in fact in the directions or in the measurements and that the petitioner's claim is unsustainable.

25. This Court has viewed both the site plans, one stated to be the *aks-sijra*, drawn up by the authorities and the other one is the map drawn up by the respondent no.2 himself.

26. This Court finds that there is a slight discrepancy in the site plan placed on record on behalf of respondent no.2. This Court cannot make any observations or comment, other than what has been observed above, since this issue is within the exclusive domain and jurisdiction of the Consolidation Officer and cannot be considered by this Court under writ

proceedings.

27. In that view of the matter, this Court is of the considered opinion that the Financial Commissioner, while passing the impugned order dated 09.02.2016, has committed an illegality in overlooking the fact that the petitioner was never issued a show cause notice in the consolidation proceedings before the Consolidation Officer, as alleged, and as such the impugned order is unsustainable on that aspect since it entails civil consequences of drastic nature.

28. In terms of the judgment of this Court in ***Ms. Shilpi Modes vs. Directorate of Enforcement &Ors,*** **W.P.(CRL.) 2206/2021** dated 16.10.2023, rule of *Audi Alteram Partem* is fundamental to the policy of Indian law and as such any order by any quasi-judicial authority or any administrative authority entailing drastic civil consequences cannot be sustained except after affording an opportunity to the person who would have to face such civil consequence. There is no doubt in the mind of this Court that there has been violation of principles of natural justice in the present case.

29. This conclusion is further reiterated by the written submissions by none other than the Consolidation Officer before the Financial Commissioner, which too was overlooked and ignored by the Financial Commissioner while passing the impugned order. Since there appears to be some discrepancy in regard to as to whether there is any change or not and the fact that the Financial Commissioner had not addressed the issue, it is appropriate at this stage, to quash and set aside the impugned order dated 09.12.2016 and remit the same before the Financial Commissioner to take a fresh consideration of the entire conspectus of

the matter, including the written submissions placed on record by the Consolidation Officer before passing any appropriate order thereon.

30. The Financial Commissioner may also call for entire set of records pertaining to Khasra No. 142/225 and ascertain and satisfy himself as to whether there was any unilateral changes effected by the Consolidation Officer, as alleged by the petitioner.

31. The aforesaid exercise shall be carried out without prejudice to the rights and contentions of respondent no.2. Respondent no.2 will be at liberty to assist the Financial Commissioner and file all documents and objections in his interest.

32. The parties are directed to appear before the Financial Commissioner on 01.02.2024.

33. The Financial Commissioner is requested to give a suitable date for considering the matter *de novo*. The Financial Commissioner is also requested to dispose of the revision petition as expeditiously as possible, preferably within three months.

34. The petition and pending application stand disposed of, in above terms.

35. A copy of this order be sent to the Financial Commissioner forthwith.

TUSHAR RAO GEDELA, J.

JANUARY 10, 2024

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