

SUPREME COURT OF INDIA

Rajender Singh

Vs.

Govt. of N.C.T. of Delhi & Ors.

C.A.No.1427 of 2016

(Shiva Kirti Singh and R.K.Agrawal,JJ.)

16.02.2016

JUDGMENT

Shiva Kirti Singh, J.

[Arising out of S.L.P.(C)No.15921 of 2013]

1. Heard the parties at some length. Leave granted.
2. By the impugned order dated January 15, 2013 the High Court of Delhi has dismissed L.P.A. No.39 of 2013 preferred by the appellant. As a consequence the judgment and order passed by the learned Single Judge dated 13.12.2012 passed in W.P.(C)No.7124/2009 as well as order passed in review from that order, dated 18.12.2012 stand affirmed.
3. The relevant facts leading to the aforesaid orders of the High Court need to be noticed only in brief. Consolidation proceedings under The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 [hereinafter referred to as ‘the 1948 Act’] commenced in Village Karala, Delhi around 1975 and concluded in 1976. After about 23 years of closure of consolidation proceedings, on 16.4.1999 the contesting respondents no.4 to 7 filed an application under Section 43A of the 1948 Act, seeking allotment of land of Khasra No.168 on the ground that during the consolidation proceedings their father late Rajender Singh was found to be in possession over the area of 11 biswas of Scheme Khasra No.168 (old Khasra No.703). Such possession was allegedly reflected in the Scheme of Consolidation of the village and described as - “Scheme Kabizan”. The consequent Case No.2/CO/1999 was initially dismissed by the Consolidation Officer by order dated 11.05.1999 on the ground that consolidation proceedings had been completed long back and hence the Consolidation Officer had become functus officio. That order was however reversed by the Financial Commissioner before whom the parties agreed that the Consolidation Officer still had jurisdiction in respect of an application invoking powers under Section 43A of the 1948 Act. After remand, the Consolidation Officer commenced hearing of the case but it was disrupted on account of a necessity to implead legal

representatives of late Baljit Singh on whom notices were ordered to be issued on 04.10.2004. The order passed on 04.10.2004 did not indicate any further date for hearing. The next order dated 18.10.2004 noted service of notices on the concerned legal representatives of Baljit Singh. It also recorded presence of the applicant Tej Ram along with his counsel. Evidently the appellant or his counsel were not present on that date or on the next date which was fixed as 16.11.2004. On the next further date, i.e., 24.12.2004, the Consolidation Officer allowed the claim after noticing presence of only Tej Ram. In spite of the presence of the appellant or his counsel not mentioned, at one place the order records that the counsel for respondent had argued the case at length and had pressed for dismissal of the petition because father of the claimants did not claim during his lifetime and allegedly the claim was inappropriate at such late stage. The order also records that as per revenue records the aforesaid land had been allotted in the name of respondents no.3 to 7 as joint holding of the respondents separated during consolidation proceedings. It was also noticed that the encumbrances on the said land were only against the appellant Rajender Singh son of Hoshiar Singh. As per order the revenue records were perused along with the consolidation scheme leading to fresh allotment to Tej Ram and others of new Khasra No.168 having area of 11 biswas on the basis of "Scheme Kabizan". In light of such allotment the Halka Patwari was directed to make corresponding entries in the revenue records.

4. Against the order of Consolidation Officer allowing the claim of respondents Tej Ram and others the appellant and the proforma respondents filed a Revision Petition in the court of Financial Commissioner, Delhi bearing Case No.47/2005-CA. The case of the appellant was that no opportunity of hearing was given by the Consolidation Officer and the order was passed by manipulating the records when in fact no notice of hearing was ever issued after the decision to issue notice to legal representatives of late Baljit Singh. The plea of possession being with the appellant and the proforma respondents as also of inordinate delay of 23 years was also raised. However, the revision case was dismissed on 03.02.2009 only on the basis of a record showing Scheme Kabiz which was allegedly never challenged by any body.

5. That order of the Financial Commissioner was impugned through a writ petition first before the Single Judge and then also before the Division Bench through L.P.A. as already noticed earlier. Since the appellant was unsuccessful throughout, he has preferred the present appeal to raise three-fold grievances. The first grievance is that in fact no opportunity of hearing was afforded by the Consolidation Officer and as a consequence the appellant could not place his case properly to show that there was no occasion to know of the entry of "Scheme Kabiz" or to challenge the same when it was never made known to affected persons by making allotment on its basis. According to appellant the land remained under their possession which was also reflected in the revised revenue records prepared pursuant to the finalization of consolidation proceedings. The second grievance is that no inquiry was made as to what was the nature of possession reflected as Scheme Kabiz. According to learned counsel for the appellant, if the possession was not through any method of encumbrance known to law but only that of a rank trespasser, such possession could not have been made the basis of allotment under Section 43A of the 1948 Act as has been done by the order of the Consolidation Officer dated 24.12.2004. The last grievance is that the Consolidation

Officer as well as other authorities of the High Court failed to appreciate that claim under Section 43A was made after 23 years and such belated claim should not have been entertained or allowed. In support of the second and third contentions noted above, learned counsel for the appellant has placed reliance upon judgment of this Court in the case of *Mange Ram v. Financial Commissioner & Ors*¹.

6. Learned counsel for the contesting respondents has on the other hand taken us through the Scheme of Consolidation as provided in the 1948 Act and has highlighted that the grievance of the applicants before the Consolidation Officer under Section 43A was within the scope of that Section and no objection can be raised on account of delay of 23 years because once Scheme Kabiz was recorded in favour of applicants, Section 26 of the 1948 Act required such encumbrance by way of possession to be transferred and attached to the holding or tenancy allotted under the scheme to the land owner or the tenant who had suffered the encumbrance. Learned counsel for the respondents made a further submission that on account of encumbrance noted in the scheme, the respondents/applicants had continued in possession and their grievance was only in respect of mistake or omission in preparation of new record of rights prepared under Section 22 of the 1948 Act and such mistake or omission in the preparation of record of rights cannot have material effect on the substantive rights of parties which they continued to enjoy and once the mistake was realised by the authorities, the exercise of power under Section 43A for correction of clerical or arithmetical mistakes was appropriate and the High Court rightly did not interfere with such correction of clerical errors. He reiterated that from the wordings appearing in the order of the Consolidation Officer dated 24.12.2004 it is beyond any doubt that order was passed after hearing learned counsel for the appellant. In support of his submissions based upon Section 26, learned counsel placed reliance upon judgment in the case of *Amar Singh, Jagram (Dead) by LRs. v. Chandgi (Dead) by LRs*²

7. After hearing the parties and perusal of the relevant orders and material on record, we are satisfied with the submission that the final order passed by the Consolidation Officer on 24.12.2004 was without opportunity or notice of hearing to the appellant and proforma respondents subsequent to adjournment of the matter without further dates on 04.10.2004. The order itself mentions only the presence of Tej Ram and not the appellant or any one from his side. The order does not name any advocate from either of the sides and the observation that ‘the counsel for the respondent has argued the case at length’ may be a mistake or a casual observation based upon inconclusive and ineffective hearing on earlier dates. On this ground alone which has not been properly considered either by the revisional authority or the High Court, the matter deserves to be remitted back to the Consolidation Officer for fresh hearing and re-determination in accordance with law.

8. However, it is deemed proper to clarify some relevant aspects of the case as well as legal issues that must be kept in mind by the Consolidation Officer for proper adjudication after remand. A perusal of the order passed by the Financial Commissioner discloses that he was of the view that the recording of “Scheme Kabiz” had attained finality as it was never challenged. Such conclusion should not have been drawn without examining whether this entry was duly published inviting any objections or in the alternative whether such recording

in a chart was further acted upon leading to allocation or allotment of the land with the corresponding encumbrances. So far as the case of Amar Singh (supra) is concerned, it was not a case of exercise of power under Section 43A and the issue whether the defendants of that case were tenants in respect of the lands in question was found to be beyond any cavil and concluded by concurrent finding of facts. In that case, since the power and jurisdiction of Consolidation Officer under Section 26 was questioned, this Court held that the officer had jurisdiction to define the portion of the land newly allotted under the scheme and put the holder of the encumbrance in possession of the corresponding part of the substituted holding allotted to the land owner in lieu of his original holding.

9. In the case of Mange Ram (supra) this Court found that the appellant had advanced claim of possession over a piece of land measuring 5 biswas on the basis that his predecessor had trespassed over that land and had carried out cultivation. The appellant had relied on a list of 1982 showing his possession. The consolidation operation had been concluded and closed in the year 1982 whereas application for being put in possession was filed by the appellant after 11 years in 1993. In such circumstances this Court held that a mere trespasser could not be treated as an encumbrancer as envisaged under the 1948 Act. The Court further held that the appellant must fail on account of long delay and laches of 11 years in approaching the authorities for relief.

10. From the materials on record we could not find anything throwing light on the nature of possession claimed by the contesting respondents which is relevant for one of the propositions emerging from the judgment in the case of Mange Ram (supra). In several of the pleadings the appellant has claimed that they continued to enjoy allotment in their favour and possession has remained with them over the 11 biswas of land in the concerned Khasra. However, during arguments learned counsel for the contesting respondents has made a counter claim that possession has remained with the contesting respondents and therefore delay of 23 years cannot be material. We expect the Consolidation Officer to keep these aspects in mind while deciding the matter afresh. From the prayer made on behalf of the contesting respondents before the Consolidation Officer it is evident that they had not prayed for mere correction in the new record of rights prepared at the instance of the Consolidation Officer under Section 22 of the 1948 Act, rather they had prayed for allotment or allocation which was the relief granted by the Consolidation Officer who ordered for revising the record of rights as a sequel to such allotment. However, if even without the allotment or allocation made by the Consolidation Officer through his order dated 24.12.2004, the applicants/contesting respondents could continue with possession over the land in question and whether in fact they continued to enjoy such possession, needs to be enquired into because it will have an important bearing at least over the effect of delay of 23 years. Lastly, the Consolidation Officer should keep in mind that although it has jurisdiction to look into the claim under Section 43A of the 1948 Act, such jurisdiction can be exercised only to correct errors which are clerical or arithmetical in nature. The mere fact that the appellant conceded to jurisdiction under Section 43A leading to an order of remand will not have the effect of enlarging such jurisdiction beyond what is prescribed by the law.

11. The aforesaid clarifications are relevant in the facts of the case to ensure that no further unnecessary time is wasted in deciding the real controversy. Hence while setting aside the impugned orders of the High Court and also the orders passed by the Consolidation authorities on or after 24.12.2004, we remand the matter to the Consolidation Officer for re-hearing the parties and fresh determination within six months, in accordance with law keeping in mind the legal principles and other relevant observations recorded earlier in this order as guidelines. It is also made clear that we have not expressed any opinion on the merits of the case of either parties.

12. The appeal is allowed to the aforesaid extent but without any order as to costs.

Judgment Referred.

¹(2003) 2 SCC 0001

²(1989) 1 SCC 0308