

(2011) 05 DEL CK 0299

Delhi High Court

Case No: Writ Petition (C) 2519 of 2011

Chand Ram and Others

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision: May 12, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 - Section 14, 24, 42

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Rohit Kumar, Udai Bhan and Bhagirath Verma, for the Appellant; Najmi Waziri, Zeenat Masoodi and Neha Kapoor, for the Respondent

Final Decision: Allowed

Judgement

Rajiv Sahai Endlaw, J.

The 70 Petitioners claim to be the Bhumidhars of 70% of the land in village Mundela Khurd, Najafgarh, New Delhi. It is their case that a scheme for consolidation was mooted for the said village in the year 1972 but which inspite of passage of nearly 40 years has not been concluded as yet. They further claim that they are still in possession of their pre-consolidation holdings.

2. The Petitioners themselves have in the writ petition disclosed an earlier round of litigation relating to the consolidation proceedings in the village. One Mr. Sarup Singh and others had filed W.P.(C) No. 4144/1998. From the order dated 23rd July, 2007 in the said writ petition, it transpires that it was found by the Single Judge that the Consolidation Proceedings stood concluded.

3. Intra court appeal being LPA No. 1185/2007 was preferred and in the order dated 27th January, 2009 disposing of the said appeal also, the Financial Commissioner is quoted as having found on going through the records in the year 1999 that 80% of

the work of consolidation had been concluded and the remaining 20% work was also nearing conclusion.

4. It is the contention of the Petitioners herein that the findings in the aforesaid round of litigation inter alia to the effect that the consolidation proceedings begun in the year 1972 stood concluded is collusive and an incorrect finding. The Petitioners in this regard rely on the office notings obtained through the medium of RTI and the averments in a contempt petition arising out of the said earlier proceedings.

5. The averments made in the petition require a lot of investigation of facts including into the records as to consolidation. It has been enquired from the counsel for the Petitioners as to whether the remedy of a revision petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 would not be a proper remedy for making the grievances as made in the present writ petition. It is felt that the Financial Commissioner in exercise of powers u/s 42 of the Act is better equipped to go into and answer the questions as raised in this writ petition.

6. The counsel for the Petitioner has contended that since there is no order to be challenged before the Financial Commissioner, the remedy u/s 42 of the Act is not available. However, the scope and ambit of Section 42 of the Act is much wider. Thereunder the Financial Commissioner has been given supervisory power, to be exercised at any time over the consolidation proceedings and to call for and examine the record of the consolidation proceedings whether pending or disposed of.

7. The counsel for the Petitioner has expressed apprehension that the Financial Commissioner may oust the Petitioners for the reason of the findings in the earlier writ petition as to the consolidation proceedings having concluded.

8. The Petitioners rely upon certain notings in the files of the Respondents to the effect that the consolidation has not been concluded. I am sure that if the averments as made in the present petition are made before the Financial Commissioner, the Financial Commissioner would deal with the same and give reasons qua the material relied upon by the Petitioners to contend that the consolidation proceedings were not concluded.

9. The counsel for the Petitioners has also contended that with the passage of time, the scheme of consolidation earlier mooted is no longer viable. It has been enquired from the counsel for the Petitioners as to what is the right, if any, of the Petitioners to seek a fresh scheme. The counsel for the Petitioners in this regard relies upon Section 14 of the Act which provides for a scheme being initiated either by the government itself or on the application of any other person. However, the reason for the Petitioners in the present case to demand a fresh consolidation is of the consolidation scheme of 1972 having remained unimplemented. If the Financial Commissioner on examination of the records of consolidation finds that the

consolidation in fact stood concluded and there is no merit in the averments of the Petitioners, then the same would entail finality u/s 24 of the Act. Moreover, if that be so, it will be seen that the scheme was under implementation as late as in the year 2007 and the argument raised of the passage of 40 years would not be available to the Petitioners.

10. It has been enquired from the counsel for the Petitioners whether the Petitioners had preferred any objection to the scheme and to the re-partition admittedly done though stated to be only on paper. The counsel states that objections were preferred but which remained undecided. If that be so, then the Petitioners have all the more reasons to invoke the remedy of Section 42 rather than approaching this Court directly by way of this writ petition.

11. The petition is therefore dismissed as pre-mature / not maintainable with liberty to the Petitioner to approach the appropriate authority under the Act for redressal of their grievances as made in this petition.

CM No. 5350/2011 (under Section 151 CPC for exemption)

Allowed, subject to just exceptions.