

(1964) 09 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1205 of 1964

Ajaib Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 02-09-1964

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21, 23(1)
Constitution of India, 1950 — Article 226, 227

Citation : (1965) 1 ILR (P&H) 118

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : G.S. Grewal, for the Appellant; B.S. Bindra, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—Ajaib Singh, and thirteen others, residents of village Kalyan Sukha, tehsil Nathana, district Bhatinda, feeling aggrieved by the order of the Consolidation Officer, Bhatinda, passed on 11th June, 1964, directing an immediate change of possessions in their holdings have sought the aid of this Court in having the order quashed under Articles 226/227 of the Constitution of India.

2. According to the Petitioners the consolidation proceedings in village Kalyan Sukha were initiated as a result of the notification gazetted on 11th February, 1960. A consolidation scheme was thereafter prepared and confirmed by the Settlement Officer (Consolidation), Bhatinda, on 29th August, 1962. The scheme was unsuccessfully challenged in the High Court on account of certain reservations made for common purposes. Some appeals are also pending u/s 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, according to the assertions made in the petition.

3. It is contended by the Learned Counsel for the Petitioners that the transference of possessions could take place u/s 23(1) of the Act as interpreted

by the Division Bench of Mahajan and Pandit JJ. in *Jiwan Singh and Ors. v. Consolidation officer Sunam and Anr.* ILR (1962) P&H 726 : 1962 P.L.R. 668. According to this authority where there is no agreement between the owners and the tenants, possession in the case of holdings allotted under repartition can only be transferred after the commencement of agricultural year next following the preparation of the record-of-rights. It is submitted by the counsel that record-of-rights not having been prepared as yet the order of the Consolidation Officer passed on 11th June, 1964, for immediate transference of possessions is illegal and invalid.

4. On behalf of the Respondent it is submitted that the principle of law enunciated in *Jiwan Singh's Case* has become obsolete and! inapplicable after the amendment introduced by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Validation Act (Punjab Act, 25 of 1962), enacted on 13th December, 1962. As the question in dispute turns very largely on the interpretation of Sub-section (1) of Section 23 of the Act before and after the amending Act (25 of 1962) the provisions in the two enactments may be set out:

Before the amendment. After amendment of Ph. 23. (1) If all the owners and tenants affected by the Scheme of consolidation or as the case may be, repartition, as finally confirmed, Act 25 of 1962. If all the owners and tenants affected by the repartition as carried out under Sub-section (1) of agree to enter into possession of the holdings allotted to them there under, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him. Section 21, agree to enter into possession of the holdings allotted to them there under, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him.

5. It would be readily observed that the effect of the amending Act is to delete the words "the scheme of consolidation" and to substitute there for "the repartition is carried out under Sub-section (1) of Section 21". The repartition in the present instance was made after the Punjab Act 25 of 1962 was enacted. In any, event the transference of possession not having taken so far the Consolidation Officer under the amended Act can certainly allow possessions to be changed by agreement if possible and on a date specified by him, on the failure of the parties to agree to this course. It matters not whether the appeals are still pending u/s 21 or other steps have yet to be taken. As soon as the repartition scheme is carried out the Consolidation Officer can assume the power to nominate a date for transference of possession. This is what has precisely been done in the present instance.

6. Mr. Grewal, the Learned Counsel for the Petitioner, submits that the amending Act has no retrospective operation and the provision with regard to transference is still that which is set out in the unamended Sub-section (1) of Section 23 of the Act under which the date of the scheme of consolidation is the relevant circumstance for consideration. (I am afraid this is not the right perspective in

which the question has to be decided. If a repartition has been made after the amending Act and it has never been asserted that the case is otherwise the operation of the law as inserted by the amending Act (25 of 1962) at once becomes effective. There is no substance in the contention of the Learned Counsel. I would accordingly dismiss this petition and direct the parties to appear before the Consolidation Officer on 21st September, 1964. The Consolidation Officer will then proceed to deal with this matter in accordance with law. There would be no order as to costs of this petition.