
(1982) 03 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 417 of 1973

Ajaib Singh

APPELLANT

Vs

Additional Director, Consolidation of Holdings, Punjab

RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Citation : (1984) PLJ 342 : (1984) RRR 173

Hon'ble Judges : J.M.Tandon, J

Advocate : Mr. Kuldip Singh Keer, Advocate., Advocates for appearing Parties

Judgement

J.M. Tandon, J.

1. Ajaib Singh petitioner is a resident of village Motlewal, Tehsil Muktsar, District Faridkot. Feeling dissatisfied with the order of the Settlement Officer, 3rd April 1964, he filed an appeal under section 21(4) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act). Bhag Singh, father of the petitioner, was impleaded as one of the respondents. That appeal was disposed of by Assistant Director vide order dated 8th of January, 1965 (Annexure `A'). Some changes were made in the Kurrah of Bhag Singh, father of the petitioner. Ajaib Singh petitioner filed a petition under section 42 of the Act against the order of the Assistant Director, Annexure `A", in which Narain Singh was impleaded as a respondent. The Additional Director vide order dated 18th of December, 1968 (Annexure `B") proceeded exparte against Narain Singh holding that he had not turned up in spite of service by affixation of notice at his residential house. In this order, some changes were made in the Kurrah of Bhag Singh, father of the petitioner and Narain Singh. Ajaib Singh and/or Bhag Singh felt satisfied with the order Annexure `B". Narain Singh (now deceased and represented by respondents Nos. 3 to 6) approached the Additional Director on 8th January, 1969, for setting aside the exparte order Annexure `B" against him. During the pendency of this petition, Narain Singh died and his son Darshan Singh (Gurdarshan Singh) pursued those proceedings. The Additional Director, vide order dated 17th December, 1971 (Annexure `C")

held that Narain Singh had not been properly served and the exparte order Annexure `B" already passed was liable to be set aside. He further held that petition under section 42 of the Act having been filed by Ajaib Singh and not Bhag Singh himself was not maintainable. The order Annexure `B" was, consequently, set aside and the position obtaining prior thereto was restored. Ajaib Singh has assailed the order Annexure `C" in the present writ.

2. The learned counsel for the petitioner has argued that the petitioner had a joint khata with his father Bhag Singh. Some changes were made in the Kurrah of Bhag Singh vide order Annexure `A". The petitioner being a joint Khewatdar with his father was also adversely affected with this change in the Kurrah. The petitioner had, therefore, a right to file a petition under section 42 of the Act against the order Annexure `A". The finding of the Additional Director to the contrary in the order Annexure `C" is liable to be reversed. I am impressed by this contention. In the order Annexure `A", some change was made in the Kurrah of Bhag Singh. It has been specifically averred in the petition that the petitioner had a joint khata with his father. This averment has not been controverted. This being the factual position, Ajaib Singh had a right to file the petition under section 42 of the Act against the order Annexure `A". The finding of the Additional Director in the order Annexure `C" that it was only Bhag Singh who could file the petition under Section 42 of the Act against the order Annexure `A" and not his son Ajaib Singh petitioner cannot be sustained.

3. The learned counsel for the petitioner has argued that Narain Singh had been rightly proceeded against exparte in the order Annexure `B" and the Additional Director had no jurisdiction to review that order. The order Annexure `C" is liable to be set aside on this score. This contention is without merit. The order Annexure `C" has not been passed by way of review by the Additional Director. The order Annexure `B" had been passed exparte against Narain Singh who approached the Additional Director on 8th January, 1969 for setting aside the exparte against him. The Additional Director could set aside the exparte order against Narain Singh by holding that he had proceeded against exparte wrongly. And this is what happened in the instant case. The Additional Director, in order Annexure `C", held that Narain Singh had been wrongly proceeded against exparte. He, therefore, set aside the exparte order Annexure `B" passed against Narain Singh.

4. Learned counsel for the petitioner has argued that the application for setting aside the exparte order against Narain Singh was filed on 23rd April, 1970 whereas the exparte order Annexure `B" had been passed on 18th December, 1968. The application for setting aside the exparte order was time barred. The Additional Director while passing the order Annexure `C" did not condone the delay in filing the application for setting aside the exparte order Annexure `B". The order Annexure `C" is, therefore, liable to be set aside. This contention again is without merit. The Additional Director has specifically found in order Annexure `C" that the petition for setting aside the exparte order Annexure `B"

had been filed on 8th January, 1969. This application had, therefore, been filed within limitation. Narain Singh was alive on 8th January, 1969. He had died on 2nd April, 1970. It is obvious that after the death of Narain Singh on 2nd April, 1970, his son Darshan Singh came in the picture and may be, on 23rd April, 1970. In view of the fact that the application for setting aside the exparte order Annexure `B" had been filed within time, there was no occasion for condonation of delay in filing thereof.

5. In view of the above discussion, the order of the Additional Director, Annexure `C", setting aside the exparte order Annexure `B" against Narain Singh is maintained. The order Annexure `C" holding that Ajaib Singh petitioner had no locus standi to file the petition under section 42 of the Act against the order Annexure `A" is, however, set aside. The Additional Director shall decide the petition under section 42 of the Act filed by Ajaib Singh against the order of the Assistant Director, dated 8th January, 1965 (Annexure `A") afresh, after hearing the parties. This writ petition is disposed of accordingly. No order as to costs.