

(2004) 05 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4838 of 1984

Ajit Singh and Others

APPELLANT

Vs

Additional Director, Consolidation of Holdings and Another

RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (2004) 138 PLR 360 : (2004) 3 RCR(Civil) 559

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Manjeet Kaur, for the Appellant;

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—In this petition under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari quashing the orders dated 28.6.1984, Annexure P-2 in petition No. 139 of 1984 filed by Mahla Singh son of Kishan Singh and dated 11.10.1984, Annexure P-3, in petition No. 162 of 1984 (questioning order dated 28.6.1984, Annexure P-2) filed by Ajit Singh, Gurdial Singh and Daljit Singh etc. passed by the Additional Director, Consolidation of Holdings, Punjab, respondent No. 1 u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act), 1948 (for short "the Act").

2. Brief facts are that in accordance with the scheme prepared u/s 20 of the Act, repartition of the village Kotkapur was carried out in the year 1964-65. The dispute between the parties relate to path No. 2513 shown as ABCDE in the plan attached with the petition as Annexure P-I, which was approved in the village scheme. During partition, the land from points A to B was allotted to Niranjn Singh, Chhajju and Dharam Singh son of Kharak Singh etc. Neither of them challenged the scheme of the path at the time when repartition proceedings were carried out or thereafter and the said portion of land, which leads to points CDE

onwards continued to be used by them and the other residents of the village. About five years of the repartition, aforesaid Naranjan Singh and Chhaju Singh sold their land to Gurnam Kaur wife of Malila Singh and his sons Major Singh, Balwinder Singh, Sukhminder Singh and Jalandhar Singh whereas Dharam Singh son of Kharak Singh exchanged his land with Mahla Singh on 27.12.1971. Neither Mahla Singh nor his wife or sons preferred any revision against the existing path AB as they, being not the right holders in the village at the time of repartition had no locus standi to do so.

3. Respondent No. 2, however, preferred a revision for cancellation of the old path on 7.4.1984 wherein he did not implead the present petitioners Alia Singh, Nachhattar Singh and Angrez Singh whose land adjoined his land. Similarly, petitioners 1 to 5 whose land is situated around the path from points C to D the petitioner No. 9 whose land falls between points D and E were also impleaded as respondents in the revision petition. The Additional Director, Consolidation of Holdings, Punjab, however, notwithstanding the fact the petitioners were not impleaded as respondents nor were heard, accepted the revision petition preferred by respondent No. 2, vide order dated 28.6.1984, Annexure P-2. Having come to know of order, Annexure P-2, the petitioners preferred a petition for setting aside the said order. The petition was however, dismissed by the Additional Director, Consolidation of Holdings, Punjab vide order dated 11.10.1984, Annexure P-3. This is how, the petitioners have filed the present writ petition challenging the orders Annexures P-2 and P-3.

4. None has appeared on behalf of respondent No. 2 nor has any written statement been filed on his behalf. No written statement has been filed even on behalf of respondent No. 1.

5. I have heard learned counsel for the petitioners and the counsel for respondent No. 1, and have gone through the record of the case. Learned counsel for the petitioners submitted that the impugned orders are liable to be set aside on the following grounds:-

(i) In accordance with the provisions of Section 42 read with Section 21 of the Act, it was only a right holder at the time of repartition of the village, who could challenge the repartition. At the time of repartition, the land shown as path A and B was held by the right-holders, Naranjan Singh, Chhajju Singh and Dharam Singh to whom the said path was acceptable, but they did not make any challenge thereto, whereas respondent No. 2 was not the right holder at that time, he being a subsequent vendee, and thus he was not competent or had any locus standi to challenge the repartition. In support of the submission, learned counsel relied on a Division Bench judgment of this Court in Banarsi Dass v. Director Consolidation of Holdings, Haryana and Ors..1 1995 P.L.J. 314 and Single Bench judgment of this Court in Harjit Singh and Ors. v. State and Ors.2 1997(1) P.L.J. 174

(ii) The next contention raised by the counsel for the petitioners is that petition u/

s 42 of the Act was filed by respondent No. 2 after a lapse of about 19 years of the conclusion or repartition proceedings in the village and no reason had been put forth nor any affidavit had been filed by him explaining or seeking condonation of such inordinate delay.

(iii) The next submission of the counsel for the petitioners is that there was no provision in the Village Scheme to make alignment of a new path or even to make changes in the existing paths, at the instance of a subsequent vendee or the transferees from the original right-holders who were the right holders at the time of repartition. It was thus submitted that since path No. 2513 had been provided and reserved in the Village Scheme, no modification or amendment thereof could be made without bringing about amendment of the Village Scheme.

(iv) Learned counsel for the petitioners lastly contended that in view of civil court decree dated 28.11.1993, a copy of which has been placed on record as Annexure P-4, in a suit filed by some of the petitioners for permanent injunction restraining the respondent No. 2 and others from constructing a Kotha and installation of tube-well in the path in question, re-alignment of the said path could not be ordered by the Additional Director in exercise of power u/s 42 of the Act. Learned counsel also submitted that even after purchase of land, the subsequent vendee remained silent and did not raise any objection to the existing path No. 2513 for over a period of ten years.

6. I have considered the submissions made by the counsel for the petitioners and the learned counsel appearing on behalf of respondents, who only submitted that no interference is called for with the orders impugned in this petition.

7. As regards the first contention, a Division Bench of this Court in *Bansari Dass's case* (supra), while considering providing of a path to the purchaser of land from a subsequent vendee from the original owner, held that it was not within the jurisdiction of the Director of Consolidation, u/s 42 of the Act and the same fell within the domain of the revenue authorities or the civil court. It was further held that where petition u/s 42 of the Act was filed much after the consolidation proceedings had been finalised in the village, the consolidation authorities became *funtus officio* thereafter and could not exercise jurisdiction u/s 42 of the Act. The observations made in the aforesaid case, relevant for our purpose are extracted as under-

"In the case in hand, application u/s 42 of the Act was made by M/s Jagadhri Bricks Co. through its partner Shri Jawahar Lal, respondent No. 3 who was admittedly was neither a right holder nor a party interested at the time of consolidation which was held in the village in the year 1962-63. Obviously, thus, he could not be aggrieved against the scheme prepared or re-partition made in consequence of the scheme at the time of consolidation proceedings. Respondent No. 3 came into picture only in the year 1991-92 when he purchased the land in question (for which he demanded a path) and that also from Rakhu Ram and Puran Chand who inherited the property from their father who had purchased the property from the original land owner in the village. Consolidation proceedings

had been finalised in the village near about the year 1963-64. The records were consigned to record room and the Consolidation Authorities became functus officio thereafter. Naturally, there was a change of land owners after the consolidation when the original land owner sold the land to some other parties. In that situation, if any dispute arises about the title of the land or other rights in the land and a question arises about the providing of the path to the land of a subsequent vendee from an original owner, then it falls within the jurisdiction of Revenue Authorities or by the concerned civil court and certainly not by the Director, Consolidation u/s 42 of the Act and that also on the application of a stranger who became interested in the property on purchase from the original land owner after a passage of 25 years or so. There is no quarrel with the proposition of law settled by this Court and the Supreme Court in *The Gram Panchayat Village Kanonda v. Director Consolidation of Holdings and Ors.* 1990 P.L.J. 213 that under Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, bar of limitation of six months is applicable only to orders and it does not apply to proceedings in which scheme is prepared or confirmed or re-partition made is challenged, though it would be exercised within a reasonable time and what is reasonable time is always a question of fact depending upon the facts and circumstances of such case. In this case, neither any scheme . prepared or confirmed nor re-partition made has been challenged before the Additional Director by respondent No. 3. It was an application by a person who was neither an owner nor a party interested at the relevant time, i.e. the one who purchased the land of a subsequent vendee of an original owner after about 25 years of the consolidation proceedings and repartition of the land in question. Moreover, even if there was an application of a right-holder before the Director Consolidation, it was incumbent upon him to give the reasons for filing an application u/s 42 of the Act before the Director Consolidation after 28 years of the repartition, though in this case even this question does not arise, as the applicant before the Director was not in any way connected with the re-partition proceedings. *Gram Panchayat village Kanonda's* case (*supra*) goes against the petitioners. Neither the application u/s 42 of the Act explained the delay of 30 years in filing the application before the Director, nor the Director gave any reasons for condoning the delay. At the cost of repetition, in such a situation when with the passage of time rights of different people go on accruing due to sale etc. of the land and some dispute arises about the partition of land, providing of paths etc., to the subsequent vendees by the vendors or other right-holders, then to settle such latter disputes does not fall within the ambit and scope of Section 42 of the Act. The disputes in such a situation can only be settled by a civil court of competent jurisdiction."

8. In *Harjit Singh's* case (*supra*), a Single Bench of this Court while dealing with the rights of the purchaser of land after consolidation proceedings became final more than 30 years ago, laid down that application u/s 42 of the Act was not maintainable for providing a fresh passage or path to the land of subsequent purchaser once the consolidation scheme had been framed and implemented.

9. Now advertent to the second contention put forth by the learned counsel for the petitioners, whether an application filed for amendment or modification of the re-partition carried out in the village, can be filed after a long time gap, the same was considered by the Supreme Court in *Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana, Chandigarh and Others*, and *Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another*, wherein it was held that even though, the limitation prescribed in Rule 18 of the *Rues ibid*, is not applicable to an application filed u/s 42 of the Act, the competent authority cannot entertain an application petition filed under that Section after long lapse of time. The proposition of law laid down by the Supreme Court in *Gram Panchayat, Kakran's case (supra)* reads thus:-

"Even where no period of limitation is prescribed, the party aggrieved is required, to move the appropriate authority for relief within a reasonable time. In fact, this Court in the case of *Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana, Chandigarh and Others*, dealing with Rule 18 itself, said that when no limitation is prescribed for an application u/s 42 dealing with confirmation of the scheme, the application should be made within a reasonable time and this question will have to be decided on the facts of each case. In that case, the delay of about 3 years and 8 months in filing an application u/s 42 by the Panchayat was held to be not unreasonable. In the present case, however, the delay is of 40 years. We have tried to ascertain from the 2nd respondent whether there is any explanation for this reasonable and inordinate delay. But no satisfactory explanation appears to be there for his inordinate delay in making the application u/s 42.

xxx xxx xxx xxx But even if Rule 18 is not directly attracted, an application which is made after such inordinate delay ought not to have been entertained."

10. The aforesaid view was followed by a Division Bench of this Court in *Jaswinder Kaur v. Additional Director of Consolidation and Ors.*⁵ (2003)134 P.L.R. 60 and the order passed by the Additional Director, Consolidation granting path to respondent Nos.3 to 5 in that case was set aside. Again, this view was followed by a Letters Patent Bench of this Court in *L.P.A. No. 124 of 1994 Rishi Parkash v. Director Consolidation of Holdings*,⁶ decided on 20.2.2004. Yet on another occasion, by applying the ratio of the aforesaid view of the Supreme Court, a Division Bench of this Court in *Civil Writ Petition No. 7249 of 2001 Biru Ram v. Additional Director of Consolidation of Holdings, Punjab and Ors.*⁷ decided on 9.10.2003. held as under:-

"We hold that respondent No. 1 did not commit any illegality by dismissing the application filed by the petitioners u/s 42 of the Act on the ground of unexplained delay of 34 years."

11. In the case in hand, revision petition u/s 42 of the Act was filed by respondent No. 2 after about 19 years of the conclusion of the re-partition proceedings. No explanation or affidavit had been filed by respondent No. 2 for

filing the same after such an inordinate delay of about 19 years. Even before this Court, respondent No. 2 did not file any reply to controvert or deny the averments contained in the writ petition. In these circumstances, I am clearly of the view that respondent No. 1 could not have entertained the petition u/s 42 of the Act at the behest of the subsequent vendee, once the repartition scheme had been framed and already implemented in the year 1964-65. Further it may be noticed that on the basis of averments made in the petition which have not been controverted by filing any written statement, respondent No. 2 had sought amendment of the scheme in respect of path No. 2513 whereas there was no provision made in that regard in the village Scheme. Ground Nos. (iii) and (iv) as pleaded by the petitioners in the writ petition may be re-produced as under:-

(iii) That there is no provision in the Village Scheme either to make alignment of a new path or even to make changes in the existing paths at the instance of the subsequent vendees or transferees from original right-holders at the time of repartition. Accordingly, the order under challenge is Untenable.

(iv) that admittedly path No. 2513 had been provided reserved in the Village Scheme of the Village and no modification or amendment thereof could be made by the Additional Director without making amendment of the Village Scheme.

12. Since the above averments have not been controverted by filing any written statement by respondent No. 2, it shall be taken that no alignment could be made in path No. 2513 without modification or amendment of the original scheme. This was not legally permissible under the provisions of the Act. Re-alignment could not have been ordered on account of civil court decree Annexure P-4, which was a decree for permanent injunction restraining respondent No. 2 and others from constructing a Kotha and installation of tube-well in the passage comprised in Khasra No. 2513, situated in Kotkapura, District Faridkot.

13. No other point has been urged before me.

14. For the reasons stated above, this petition succeeds and is allowed. Accordingly, orders Annexures P-2 and P-3 passed by the Additional Director, Consolidation of Holdings, Punjab are quashed. There shall however be no order as to costs.