

(1969) 05 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 258 of 1967

Atam Singh and anothers

APPELLANT

Vs

The Additional Director, Consolidation of Holdings, Ferozepur
and others

RESPONDENT

Date of Decision : 12-05-1969

Acts Referred:

Constitution of India, 1950 — Article 31A

Citation : (1969) 05 P&H CK 0044

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : B.S. Chawla, for the Appellant; T.S. Mangat, for Advocate General, Punjab and Mr. B.S. Bajwa, for the Respondent

Final Decision : Allowed

Judgement

B.R. Tuli, J.—Atma Singh and his two sons are the petitioners and they along with respondent No. 3 are right holders in the revenue estate of Fatta Khera, Tehsil Muktsar, District Ferozepur. Respondent 4 is the Gram Panchayat of that village.

2. The consolidation proceedings started in that village in 1961 and an area of 257 kanals 5 marks (118 kanals 12 marlas nehri and 138 kanals and 13 marlas barani) was reserved for the income of the Gram Panchayat respondent 4. According to the petitioners, repartition proceedings were not started till after 1st July, 1964, because there were appeals, cross-appeals and revisions between the various right holders and repartition remained stayed. For that reason, the reservation of the land for the income of the Panchayat is challenged as unconstitutional being violative of second proviso of Article 31-A of the Constitution of India. Respondents 1 and 2 in their written statements have admitted the reservation of the said land for the income of the Panchayat and it is asserted that the right holders changed the possessions on their own according Rabi 1962. Consequently, the Gram Panchayat also got all the land reserved for

its income, which was 271 kanals and 19 marlas according to the written statement, before 28th December, 1962, when the records of consolidation were consigned to the record room after completion of the entire proceedings. The Constitution (Seventeenth Amendment) Act, 1964, whereby second proviso was added to Article 31-A of the Constitution, came into force with effect from 20th June, 1964, and as the possession of the land had been taken by the Gram Panchayat before the date, the reservation of the land for the income of the Panchayat cannot be assailed in the writ petition. Reliance has been placed on the provisions of section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 hereinafter called the Act read with definitions of "Common Purpose" in section 2 (bb) of the Act. u/s 18, land could be reserved for common purpose of the village and common purpose included "providing income for the Panchayat of the village concerned for the benefit of the village community." It was held by a Full Bench of this Court in *Kishan Singh and Another Vs. State of Punjab and Others*, 1, that "a Panchayat clearly falls within the meaning of 'local authority' given in clause 31 of section 3 of the General Clauses Act. That being so, it is clear that the vesting of the property in the local Panchayat amounts to acquisition by the State. Article 31-A permits acquisition by the State of an estate or a portion of an estate without paying any compensation to the proprietor."

3. In *Jagat Singh Didar Singh and Others Vs. The State of Punjab and Others*, a Full Bench of five Judges of this Court held that "The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is a valid piece of legislation and cannot be struck down as unconstitutional. It is thus immune from attack by virtue of Article 31-A (1) (a) of the Constitution." In *Jagir Singh v. The State of Punjab* (1963) 65 P.L.R. 754, a Division Bench of this Court (Capoor and Pandit JJ.) held that the provision of land for extension of the village abadi for the use of non-proprietors or for enhancing the income of the Gram Panchayat was not illegal.

4. Their Lordships of the Supreme Court in *Ranjit Singh and Others Vs. State of Punjab and Others*, held that the Act had the protection of Article 31-A of the Constitution and was, therefore, valid.

5. In view of these weighty judgments, there is force in the submission of the learned counsel for the respondents that the reservation of land for the income of the Panchayat of which possession had been taken by the Panchayat before the Constitution (Seventeenth Amendment) Act came into force cannot be challenged in the present writ petition.

6. The other matter raised in the writ petition is with regard to the allotments of land made to the petitioners and Shrimati Sham Kaur, respondent 3. It is alleged that the petitioners and Shrimati Sham Kaur, respondent 3, were not fitted at their proper places in accordance with the scheme of consolidation and they filed objections u/s 21(2) of the Act before the Consolidation Officer. During the adjudication of their objections by the Consolidation Officer, a compromise was

arrived at between Shrimati Sham Kaur and the petitioners and they were fitted in accordance with that compromise. The compromise on behalf of Shrimati Sham Kaur was entered into by her son Rajwant Singh as she was an elderly lady and could not attend to the routine formalities of consolidation. In the resolution recorded in the scheme of consolidation, it was specifically stated that the interests of Shrimati Sham Kaur were to be watched by her son Rajwant Singh.

7. After the petitioners and Shrimati Sham Kaur were fitted in accordance with the order of the Consolidation Officer dated 21st June, 1962, made on the basis of the compromise between the petitioners and Rajwant Singh on behalf of Shrimati Sham Kaur, the latter filed an appeal u/s 21(3) of the Act before the Settlement Officer and complained that she had not been fitted on her major portion. Her appeal was dismissed by the Settlement Officer on 8th March, 1964, on the short ground that it was not competent as the order was based on the compromise between the petitioners and respondent 3. Not satisfied with that order, Shrimati Sham Kaur filed a revision petition u/s 42 of the Act which came up for hearing before the Additional Director, Consolidation of Holdings, Ferozepur, on 19th May, 1965. At the hearing, the petitioners raised an objection that the petition was not competent because of the compromise between the parties on the basis of which the Consolidation Officer had passed the order on 21st June, 1962, and both the parties had been fitted strictly in accordance with that compromise. This plea was rejected by the learned Additional Director on the ground that the compromise entered into between Rajwant Singh on behalf of respondent 3 with the petitioners was not binding on her as she was not a party to it. The learned Additional Director ordered that Shrimati Sham Kaur should get the land adjoining to her major portion from Atma Singh. He directed the Settlement Officer to examine the whole case after hearing the parties and to send a suitable proposal for consideration u/s 42 of the Act. The Settlement Officer further directed the Consolidation Officer to hear the parties and make a proposal as directed by the learned Additional Director. The Consolidation Officer made his proposal on 23rd May, 1966 which was forwarded by the Settlement Officer to the Additional Director for consideration. The application u/s 42 of the Act was again heard by the Additional Director on October 12, 1966 in the presence of the parties and their counsel. At this hearing also the learned counsel for Atma Singh raised the plea that according to the resolution recorded in the scheme by the Consolidation Officer the interests of Shrimati Sham Kaur were to be watched by her son Rajwant Singh and, therefore, the compromise entered into by Rajwant Singh on her behalf was binding on her. The learned Additional Director again considered this plea and found that there was no assent or consent given by Shrimati Sham Kaur for Rajwant Singh being appointed as her guardian to watch her intents. Rajwant Singh had a separate Ktata from that of his mother and the learned Additional Director came to the conclusion that he had not rightly watched the interests of his mother and in fact acted against her interests. She was entitled to receive the whole of her A grade land at A-1

centre in preference to Atma Singh whose percentage was much less than that of Shrimati Sham Kaur. The learned Additional Director thus held that the alleged compromise entered into by Rajwant Singh on behalf of his mother Shrimati Sham Kaur with Atma Singh was not binding on her. The learned Additional Director then considered the proposal which had been received by him from the Settlement Officer and marked it as Exhibit P.A. In his order he has stated that he discussed the proposal with the parties and finding them just and equitable ordered the changes as given in his order dated October 12, 1966.

8. While assailing the decision of the learned Additional Director, Shri Bhagat Singh Chawla, the learned Advocate for the petitioners, has relied upon rule 15 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, which is as under:

Where any of the landowners is a minor, the Consolidation Officer may, after making such enquires as may be necessary and by an order in writing, appoint a suitable person whose interest is not averse to that of the minor as guardian ad litem. Similar action may be taken in the case of widows, absentees soldiers or others, if considered necessary.

9. It is submitted by the learned counsel that the Consolidation Officer in the scheme itself, which was proposed by him, had provided that interests of Shrimati Sham Kaur would be watched by her son Rajwant Singh as Shrimati Sham Kaur was an elderly lady and could not attend to the routine formalities of Consolidation. Rajwant Singh thus acted as guardian ad litem of his mother Shrimati Sham Kaur and had full authority to enter into a compromise on her behalf with Atma Singh petitioner. On behalf of the respondents, it is submitted that Shrimati Sham Kaur never asked the Consolidation Officer to appoint any person as her guardian ad litem and the statement in the resolution that her interests would be watched by Rajwant Singh did not confer the right on Rajwant Singh to make a compromise with Atma Singh petitioner on her behalf without consulting her. It is further submitted that the very fact that Shrimati Sham Kaur repudiated the compromise immediately after it was entered into by Rajwant Singh and she filed an appeal against the order of the Consolidation Officer shows that she was not a consenting party to the compromise and her interests had not been properly watched by her son. It is therefore, submitted that the decision of the learned Additional Director on the point is absolutely correct and no exception can be taken thereto.

10. The record produced before me does not show that the Consolidation Officer made any order that it was necessary to appoint a guardian ad litem of Shrimati Sham Kaur because of her old age which is a condition precedent to the appointment of a guardian ad litem for a person who is unable to watch his or her interests, according to rule 16 supra. The learned counsel for the petitioner who had undertaken to file a copy of any such order has failed to do so. Merely because a resolution embodied in the draft Scheme to the effect that Rajwant Singh would watch the interests of Shrimati Sham Kaur does not show that the

Consolidation Officer had applied his mind to the provisions of rule 15 and had really felt the necessity of appointing a guardian for her. Rajwant Singh was not holding a joint Khata with her and, therefore, her consent was absolutely necessary for Rajwant Singh to be appointed as her guardian. It was also the duty of the Consolidation Officer to scrutinize the terms of the compromise alleged to have been entered into by Rajwant Singh on behalf of his mother with Atma Singh and to see whether the guardian had bona fide entered into compromise in the interest of his mother. As has been found by the learned Additional Director, the alleged compromise was definitely against the interests of Shrimati Sham Kaur and should not have been sanctioned or agreed to by the Consolidation Officer if he had applied his mind. The Settlement Officer also did not apply his mind to the merits of the compromise and he simply dismissed the appeal of Shrimati Sham Kaur as incompetent for the reason that the order of the Consolidation Officer under appeal had been passed on the basis of a compromise. She had repudiated that compromise and had filed an appeal which made it incumbent on the Settlement Officer to go into the merits of the compromise. In my opinion, the learned Additional Director acted rightly in scrutinising the compromise in the interests of Shrimati Sham Kaur and I agree with him that Rajwant Singh had not watched her interests properly and had entered into a compromise which was not to her advantage but was positively against her interests. The learned Additional Director, therefore, rightly rejected that compromise and directed that Shrimati Sham Kaur should get the land adjoining to her major portion from Atma Singh. This order was passed on 19th May, 1965 and no petition under Article 226 of the Constitution was filed by the petitioners against that order which affected their right and finally decided against the compromise. The learned Additional Director directed the Settlement Officer to re-examine the case and after hearing the parties to send a proposal for being considered u/s 42 of the Act. The report of the Consolidation Officer (Exhibit P.A.) shows that the parties were present before him and he formulated his proposal in their presence. That proposal was discussed with the parties by the learned Additional Director on October 12, 1966 before passing the impugned order. The petitioners cannot be allowed to agitate that matter which had been decided on May 19, 1965 in the present with petition. Moreover, I am of the opinion that even if it be considered that Rajwant Singh had been rightly appointed as guardian ad litem of Shrimati Sham Kaur, he was not given any power to enter into a compromise on her behalf without consulting her. He was expected to act honestly in her interest and not against her interest and he should have taken the consent of Shrimati Sham Kaur before entering into the compromise. The Consolidation Officer and the Settlement Officer in appeal should also have scrutinized the terms of the compromise in order to find out whether Rajwant Singh had acted bona fide in the interest of Shrimati Sham Kaur. They should have given their opinion that the compromise was in the interest of Shrimati Sham Kaur. Under the CPC if a guardian ad litem is appointed and he wishes to enter into a compromise on behalf of his ward, he can do so only after obtaining the permission of the Court which has appointed him. This is

a safeguard in the interest of the person for whom the guardian is appointed and if the Consolidation Officer had appointed the guardian for Shrimati Sham Kaur, he should have performed this duty of seeing whether the compromise was in the interest of Shrimati Sham Kaur. For these reasons I find no infirmity in the impugned order of the Additional Director dated 12th October, 1966.

11. Before parting with this case I wish to point out that Smt. Sham Kaur herself filed the appeal before the Settlement Officer and when its decision went against her she filed the application u/s 42 of the Act and was personally present before the Additional Director, Consolidation of Holdings, on October 12, 1966, with her attorney, Gurcharan Singh. These facts clearly show that she was capable of looking after her interests in the consolidation proceedings and did not stand in need of a guardian. Her age even has not been stated anywhere and in its absence it is not possible to hold that the Consolidation Officer acted correctly in her interest by appointing Rajwant Singh as her guardian. The resolution embodied in the scheme to the effect that Rajwant Singh would watch her interests has, therefore, no significance and Smt. Sham Kaur cannot be held bound by it or by the compromise entered into by Rajwant Singh on her behalf with Atma Singh.

12. For the reasons given above this petition is dismissed with costs. Counsel's fee Rs. 200/-, to be shared equally by the A.G. for respondents 1 and 2 and the counsel for respondent 3.