

(2004) 01 P&H CK 0092
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 675 of 1984

Bachan Singh (Died) through LRs. and Others	APPELLANT
Vs	
Santokh Singh, P.C.S. and Others	RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (2004) 136 PLR 735 : (2004) 2 RCR(Civil) 178

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : I.K. Mehta and Ranjit Mehta, for the Appellant; I.S. Saggu, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This petition under Article 226 of the Constitution of India seeks issuance of writ in the nature of certiorari, mandamus or any other writ, order or direction quashing the order passed by respondent No. 1 dated 30.8.1982, Annexure P6.

2. The petitioner is a land-owner of village Chohla Sahib, Tehsil Tarn Taran, District Amritsar. The respondents are also land-owners and the parties have a joint khe-wat. Besides respondents No.2 to II, there are numerous other co-sharers. They have, however, never agitated the matter in any proceedings. The consolidation proceedings in the village started in 1953-54 under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called "the Act"). Repartition u/s 21(1) of the Act was carried out on 30.3.1954. According to the provisions of the scheme, it was provided that the land of the right holders on the circular road shall be allotted to them and it shall not be disturbed during the consolidation proceedings. The land was originally in possession of the father of the petitioner. After the death of the petitioner's

father, the land continued to be in possession of the petitioner. In 1974, the petitioner came to know that the land had been allotted to the respondents and other co-sharers against the provisions of the scheme. He, therefore, filed a petition u/s 42 of the Act before the Additional Director, Consolidation of Holdings on 29.3.1974, Notice of the petition was issued to the respondents and after hearing the parties, order dated 27.11.1974 was passed. During the proceedings, Hari Singh one of the respondents had made a statement, which was duly recorded. The matter was in fact decided by way of compromise. In the petition u/s 42 of the Act, it was the claim of the petitioner that he should be restored his previous old khasra Nos. 2265 and 2266, which were situated within the Circular Road and had been allotted to Hari Singh and others, who have been impleaded as respondents. It was Hari Singh, who made the statement that he had no objection if the request of the petitioner is accepted. In fact, both the parties had given a statement in writing, which had been placed on the file. On 24.9.1976, some of the respondents moved an application for setting aside the aforesaid order on the ground that the same had been passed ex parte and without affording an opportunity of hearing to them. By order dated 7.2.1978, the Additional Director, Consolidation allowed the application and set aside the order dated 27.11.1974 and directed the petitioner to amend the petition to include all the necessary persons as party so that the case can be decided on merits after hearing both the parties. The hearing of the case was fixed for 8.3.1978. In accordance with the aforesaid order, the petitioner impleaded all the affected persons. Thereafter, the Additional Director, Consolidation passed order on 5.11.1980. The aforesaid order was again challenged by some other villagers on the ground that they were not heard. Even the order dated 5.11.1980 has been set aside by the Additional Director, Consolidation by order dated 30.8.1982.

3. The respondents although represented throughout by the counsel have not cared to controvert the factual averments made in the writ petition. No written statement has been filed by any of the respondents.

4. Mr. Mehta submits that no written statement having been filed, the respondents cannot be permitted to orally controvert the pleadings in the petition. Therefore, the petition has to be decided on the basis of the facts as pleaded by the petitioners. I find merit in the submission made by the counsel for the petitioners. A perusal of the record shows that in this case, notice of motion was issued on 6.2.1984. Further proceedings before the revenue authorities had been stayed. On 13.3.1984, no one appeared on behalf of respondents No.9 and 11 inspite of service. Fresh notices were issued to the unserved respondents. On 17.4.1984, again fresh notices were issued. On 29.5.1984, it was noticed that no representation was entered on behalf of respondents No. 1 to 5 and 8 to 11 inspite of service. In the meantime, respondent No.7 seems to have expired as time was sought for filing an application to bring on record the LRs of respondent No.7. Ultimately, the petition was adjourned to 27.8.1984. Interim order was directed to be continued. Inspite of service, none of the respondents have cared to file written statement

controverting the factual pleas, which have been raised in the written petition. Therefore, the pleadings have to be accepted as correct. That being so, the irresistible conclusion would be that the orders dated 27.11.1974 and 5.11.1980 have not been passed ex-parte. Therefore, the impugned order deserves to be quashed and set aside on the sole ground that it has been passed on a non-existing ground. Mr. Mehta has then argued that in any way, the impugned order is wholly without jurisdiction as the Additional Director, Consolidation had no jurisdiction to review his earlier order. In support of the aforesaid proposition, the learned counsel for the petitioner has relied on a Full Bench decision of this court in the case of Deep Chand and Anr. v. Additional Director, Consolidation of Holdings, Punjab Jullundur and Anr. (1964) 66 P.L.R. 318. He has also relied on another decision of the Full Bench in the case of Bint and Anr. v. Suraj Bhan and Ors. 1983 P.L.J. 216 in support of the submission that sufficient number of co-sharers had been impleaded and, therefore, the applications filed by the respondents for setting aside the order dated 5.11.1980 were not maintainable.

5. Mr. I.S. Saggu, Advocate appearing for the respondents has vehemently argued that the present is not a case of review. The respondents had merely made applications for setting aside the exparte order as inspite of the specific directions having been given in the order dated 27.11.1974 the affected persons were not impleaded as parties. He has also argued that although the order dated 8.10.1980 states that the respondents were present, the factual position is otherwise. He submits that some other persons had impersonated the respondents. He, therefore, submits that the applications filed by the respondents would not be in the nature of review application.

6. I have considered the submissions made by the counsel for the parties. In Deep Chand's case (supra), it has been categorically held that the Additional Director, Consolidation is not empowered to recall or review his earlier erroneous and unjust order whenever it is discovered that the error was due to his own mistaken view on the merits of the controversy. In my view, the aforesaid observations are folly applicable in the facts and circumstances of this case and it has to be held that the impugned order passed by the Additional Director, Consolidation of Holdings, Punjab, Jalandhar is without jurisdiction.

7. I also find merit in the submission made by the counsel, for the petitioners that sufficient number of co-sharers having been heard, the order passed by the consolidation authorities cannot be said to be exparte in nature. In Biru 's case (supra), this Court considered a similar question i.e., whether the proceedings under Sections 21 and 42 of the Act envisage that each one of the co-sharers who have joint and indivisible rights must be impleaded as a party. Answering the aforesaid question, it has been held that a plain reading of Section 21 of the Act shows that the provisions do not prescribe any formal mode of pleadings for filing objections as also the appeals provided thereby. Therefore, to import any overly technical formality of pleadings into this sphere would indeed be pedantic. It has also been held that the position u/s 42 of the Act is also some what

similar. It has also been held that one or more co-shares may adequately represent or be represented by the rest of them in the absence of any fraud or collusion. As noticed earlier in the present case, the respondents have not cared to file any written statement to controvert the factual pleas raised in the writ petition. Mr. I.S. Saggu has, however, submitted that it was not necessary to file written statement as the Court is to consider only the legality or otherwise of a quasi judicial order. I am unable to accept the aforesaid submission of the counsel for the respondents. A perusal of the petition clearly shows that it has been pleaded as a fact that the respondents were heard on 8.10.1980. It has also been pleaded as a fact that the order was passed in the presence of the respondents on 4.11.1980 when it was adjourned to 5.11.1980. It has also been pleaded as a fact that the respondents were not only served but attended the proceedings on various dates. In my view, it was necessary for the respondents to controvert the factual statements made in the petition. It is the settled proposition of law that party raising a plea of fraud would have to prove it with cogent and reliable evidence. Whenever allegations of fraud of misrepresentation or impersonation are made, the Courts would have to weigh with care and caution the evidence led by the parties before coming to a conclusion that the plea has been proved. In this case, the Court has only the advantage of the oral submissions of the learned counsel for the respondents. There is no other material on the record to hold that the respondents have been impersonated by some third party.

8. Keeping in view the aforesaid reasoning, I am of the view that the writ petition has to be allowed and it is, accordingly, allowed. The impugned order dated 30.8.1982 Annexure P6 is quashed and set aside. No costs.