
(2004) 04 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3328 of 1984

Bachana Ram and Others

APPELLANT

Vs

Additional Director, Consolidation of Holdings

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

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

Citation : (2004) 137 PLR 755 : (2005) 2 RCR(Civil) 214

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : Monika Goel, for the Appellant; Arun Palli, for Respondent Nos. 2 and 3 and Amarjit Markan, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J.—Bachana Ram and 44 other petitioners have approached this court under Article 226 of the Constitution of India for quashing orders dated 28.10.1982 (Annexure P-I), dated 10.8.1983 (Annexure P-2) and dated 10.5.1984 (Annexure P-4) passed by Additional Director, Consolidation of Holdings, Punjab in exercise of his power u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (for short "the Act").

2. The consolidation of holdings in village Mangwal took place somewhere in the year 1956-57, Deva Singh (Respondent No. 2) was the owner in possession of Killa No. 57/13/2/2 measuring 1 bigha 4 biswas and 14 biswansis in the revenue estate of village Mangwal; this land was of "A" grade. During the consolidation proceedings, Deva Singh (Respondent No. 2) was given an alternative land in lieu of the afore-mentioned land but the land thus allotted was less by 6 biswansis, it seems that Deva Singh (Respondent No. 2) sold his share in the land to Sanjiv Kumar and Sangit Kumar, Respondent No. 3 and 4, Deva Singh (Respondent No. 2) also moved a petition u/s 42 of the Act for making good the deficiency to the extent of 6 biswansis of land, the petitioners are owners and

land holders of village Mangwal, the learned Additional Director, Consolidation of Holdings, Punjab vide his order dated 28.10.1985 (Annexure P-1) after having obtained a report dated 22.2.1982 from the Field Kanungo, concluded that there was deficiency of 6 biswansis in the land allotted to Deva Singh (Respondent No. 2). He decided to make this deficiency good out of bachat land available in the village, therefore, issued a notice to the Jumla Malkan through Sarpanch of the Gram Panchayat who contested the afore-mentioned petition, an objection was raised by the Sarpanch that the petition u/s 42 of the Act was in fact filed by Sanjiv Kumar and Sangit Kumar who had purchased Killa No. 57/13/2/2 from Deva Singh (Respondent No. 2) after the consolidation and thus, had no locus standi to file the petition. The Additional Director, Consolidation of Holdings, Punjab, however, did not agree to this contention and held that the mistake could be corrected at any time and since Deva Singh (Respondent No. 2) was allotted less land to the extent of 6 biswansis, he directed to make good the same by allotting land from the Jumla Malkan (bachat) in Killa No. 33/18/10, some proprietors of the village, namely, Surjit Singh and others also approached the Additional Director, Consolidation of Holdings Punjab through a petition u/s 42 of the Act challenging the allotment of additional land to Deva Singh (Respondent No. 2) through Sanjiv Kumar and Sangit Kumar vide order Annexure P/1 as, according to these petitioners, the land allotted was in excess of their share, the learned Additional Director, Consolidation of Holdings Punjab vide an order dated 10.8.1983 (Annexure P-2), however, dismissed the aforementioned petition of Surjit Singh and others holding that there was no legal infirmity in the order dated 28.10.1982 (Annexure P-1) except that the correction was required to be made in respect of the name of the allottee in as much as, the name of Deva Singh (Respondent No. 2) through Sanjiv Kumar etc. was to be entered in place of Sanjiv Kumar and Sangit Kumar.

3. It seems that after passing of the order dated 10.8.1983 (Annexure P-2) the proprietors of the village applied to Tehsildar, Sangrur for re-demarcation of the land and pursuant to their application, Tehsildar, Sangrur gave a report on 12.3.1984 (Annexure P-3) in which he found that deficiency in the alternative land allotted to Deva Singh (Respondent No. 2) was of 2 kanals and the said deficiency had occurred due to erroneous widening of the Rasta which should have been of 50 karams instead of 52 karams. Armed with this report by Tehsildar, Sangrur, Kartar Singh etc. proprietors of the village again moved a petition u/s 42 of the Act before the Additional Director, Consolidation of Holdings Punjab for recalling the order dated 28.10.1982 (Annexure P-1) as, according to them, the same was not properly passed because there was no shortage in khata of Deva Singh (Respondent No. 2) as was apparent from the report of measurement carried out by the Tehsildar. This petition, however, was dismissed by the Additional Director, Consolidation of Holdings Punjab vide an order dated 10.5.1984 (Annexure P-4). The operative part of which reads as under:-

"I have heard the parties and examined the record. I find that the order dated 28.10.1982 was questioned and the matter was gone into by me and order dated

10.8.1983 was passed after hearing the parties. The order dated 28.10.1982 was upheld. No second petition u/s 42 of the C.H. Act lies and hence the present petition is without jurisdiction and stands dismissed. No other point or argument has been raised or pressed. File be consigned to the record room. Announced, 10.5.1984."

4. Aggrieved by the orders dated 28.10.1982 (Annexure P-1), 10.8.1983 (Annexure P-2) and 10.5.1984 (Annexure P-4), some of the proprietors of the village have now approached this Court through the present writ petition.

5. Some more facts which need mention here are that before filing the present Writ Petition, Deva Singh (Respondent No. 2) sold the land in question allotted to him vide orders dated 28.10.1982 (Annexure P-1) and dated 10.8.1983 (Annexure P-2) in favour of Mohinder Singh (Respondent No. 5) and his son Balbir Singh (Respondent No. 6) vide registered sale deed dated 1.6.1994 and handed over possession thereof to them. Immediately after admission of the Writ Petition by the Motion Bench on July 31, 1984, the Petitioners moved C.M.No. 1960 of 1984 with a prayer to stay the operation of the impugned orders passed by the Additional Director, Consolidation of Holdings Punjab. Upon notice to the private Respondents, the afore-mentioned Civil Misc. Application was dismissed by this Court vide an order dated September 18, 1984.

6. I have heard Ms. Monika Goal, learned counsels for the Petitioners, Shri Arun Palli, for Respondent No. 3 and 4 and Shri Amarjit Markan, for Respondents No. 5 and 6 and have perused the record.

7. The sole argument raised on behalf of the Petitioners is that in the demarcation report dated 12.3.1984 (Annexure P-3), Tehsildar, Sangrur has found, as a matter of fact, that there was no deficiency in the allotment of alternative land to Deva Singh (Respondent No. 2) but at the spot the physical possession of two karams of less than, was actually handed over to him because of the wrong measurement of the Rasta which was actually to be of 50 karams but at the spot was found to be of 52 karams, hence the so-called deficiency of land could be made good only by carrying out re-measurement of the Rasta instead of allotting additional land to Deva Singh (Respondent No. 2) out of the Jumla Mushtarka of the village.

8. Learned counsel for the Respondents, however, have contested the afore-mentioned submission, inter-alia, on the ground that the alleged demarcation report (Annexure P-3) given by Tehsildar, Sangrur was privately procured by some of the petitioners as there were no directions from the consolidation authorities to carry out any such measurements and that the original order of allotment in favour of Deva Singh (Respondent No. 2) dated 28.10.1982 (Annexure P-1) was passed by the Additional Director, Consolidation of Holdings Punjab after obtaining report dated 2.2.1982 from the Field Kanungo, therefore, the subsequent report given by the Tehsildar, Sangrur was nothing but an attempt by some of the proprietors to create a self-serving evidence in their

favour. The learned Additional Director, Consolidation of Holdings Punjab rightly dismissed the review application moved on the basis of aforementioned demarcation report as no second petition u/s 42 of the Act was maintainable. According to the learned counsel for the Respondents, in the absence of express power of review under the Act, the Additional Director, Consolidation of Holdings Punjab was legally correct in declining to entertain the review petition submitted on behalf of some of the petitioners. It has also been contended by Shri Amarjit Markan that respondent No. 5 and 6 were given possession of the land in question 20 years ago and the quasi-judicial authority having returned a finding of fact that there was a deficiency in the allotment of land to Deva Singh (Respondent No. 2), this Court in exercise of writ jurisdiction may not interfere with the same.

9. After hearing learned counsel for the parties, I find no merit in this Writ Petition. On the basis of evidence on record, including the report obtained from the Field Kanungo and after hearing the affected parties, the Additional Director, Consolidation of Holdings Punjab came to the factual conclusion that there was deficiency in the allotment of alternative land to Deva Singh (Respondent No. 2) in the consolidation proceedings. The authorities, therefore, decided to make good the deficiency by allotting a piece of additional land to Deva Singh (Respondent No. 2) out of Jumla Mushtarka of the village. The fact that there was deficiency in the allotment of land to Deva Singh (Respondent No. 2) has been admitted by the petitioners themselves in Paragraphs 14 and 16(d) of the Writ Petition which read as under:-

"14. That if at all Deva Singh is entitled to make good the deficiency to him in the allotment of land in Khasra No. 57/13/2 which is to the extent of 6 biswansis, then the petitioners are prepared to give land out of their khasra No. 47/8/1.

16(d) - That the petitioners are owners in Khasara No. 47/8/1 which is of "A" grade land and is adjacent to the land of Deva Singh in Killa No. 47/7/2 and the petitioners have no objection if even entitled to the deficiency of Deva Singh may be made good from Khasra No. 47/8/1."

10. It seems that the only grievance of the petitioners was that the alternative land should have been allotted other than out of Khasra No. 33/18/10. In my considered view, the opinion formed by the learned Additional Director, Consolidation of Holdings Punjab in deciding to make the deficiency good in the allotment of land to Deva Singh (Respondent No. 2) is fair and just and there is nothing on record to suggest the same either perverse or actuated with extraneous considerations. The additional land allotted to Deva Singh (Respondent No. 2) is a small piece of land which he had further sold for consideration to Respondent No. 5 and 6, who are in possession thereof for the last about 20 years. In the facts and circumstances of the case, I do not find any ground, whatsoever, warranting interference in the well reasoned order passed by the Competent Authority. The Writ Petition is accordingly dismissed. No order as to costs.