(1967) 09 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2554 of 1964

Bachint Singh and others — APPELLANT

Vs

The Additional Director, Consolidation of Holdings Punjab, Jullundur — RESPONDENT

Date of Decision : 26-09-1967

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 20(3)

Citation : (1967) 09 P&H CK 0001

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : G.S. Grewal, for the Appellant; Gopal Singh, Advocate-General Punjab and G.R. Majithia, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—Consolidation operations in village Garhdiwala were started vide Punjab Government notification, dated January 29, 1957, The scheme was published on November 29 1959, in consultation with the rightholders of the village and confirmed under sub-section (3) of section 20 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (hereinafter called the Act) on June 30, 1960, and on July 1, 1960, after deciding on merits all the objections received against the scheme. Repartition u/s 21(1) of the Act was published on November 21, 1960, and confirmed under sub section (2) of section 21 on March 28, 1963. The record of the rights was consigned to the record room in the year 1963. On the receipt of a complaint alleging malpractices committed by the consolidation staff in allotment of urban evacuee land in the village in question, reference was made to the Consolidation Officer, Flying Squad, reported that loss to the extent of rupees one lakh had been caused to the Custodian as a result of the undue favour done by the Consolidation Staff to the right-holders of the village. The Consolidation Officer. Flying Squad, suggested that some amendments in the allotments be made to undo the loss. In order to give effect to the recommendation of the Consolidation Officer, Flying Squad, the impugned order, dated July 6. 1964 (Annexure A'') was passed by Shri Pritam Singh, Additional Director, Consolidation of Holdings, Punjab, Jullundur. In paragraph 2 of the order it is stated that the main objection to the proposal of the Consolidation Officer, Flying Squad, was that the plots given to the right holders out of the evacuee area be not withdrawn from them, because they had been given those plots in accordance with the provisions of the scheme and land of 11/2 times the value had been deducted from their holdings in lieu of those plots and included in the evacuee area. The case of the petitioners was dealt with in paragraph 8 of the impugned order. The only complaint against the impugned order which has been pressed into service by Mr. G.S. Grewal Learned Counsel for the petitioner, at the hearing of the writ petition is contained in clause (v) of paragraph 10 of the writ petition in the following words :

That the consolidation scheme clearly provides that each right-holder will be given land of ''A'' grade in one block but in the case of right holders who own ''A'' grade land more than 4 standard acres and who also own land in urban area, they can be given two blocks of ''A'' grade area which means that at the most a right holder can be given two blocks of ''A'' grade land. But in the case of the petitioners the respondent No. 1 by his order, dated 6th July 1964, has given to the petitioners three ''A'' grade blocks which is contradictory to the provisions of the consolidation scheme. The relevant portion of the scheme is attached herewith as annexure ''B''.

In the corresponding paragraph of the written statement, the following reply has been given by the State to the above quoted allegation :

The provision of the scheme with regard to the allotment of the land of ''A'' grade as mentioned in this sub-paragraph, is admitted. The petitioners'' ''A'' grade land has been allotted at three places viz; first major portion, second major portion and seventh major portion vide the impugned order July 6, 1964, of the Additional Director, Consolidation of Holdings. The Kurrah of ''A'' grade land of the petitioners was allotted to them at their second major portion in order to make good the undue loss caused to the Custodian. Moreover, the Additional Director, Consolidation of Holdings, delegated with powers, u/s 42 of the Act is competent to make at any time any alteration in the scheme in order to promote the ends of justice in the case pending with him for decision. It was so held by this Hon''ble Court in Civil Writ No. 1978 of 1962, Ujagar Singh etc v. State of Punjab etc C.W. No. 1978 of 1962.

During the pendency of the writ petition, Civil Miscellaneous 4411 of 1966, dated November 22, 1966, was filed by the petitioners, wherein it was alleged that the land which was to be allotted to the petitioners in accordance with the impugned order, had during the pendency of these proceedings been allotted by the Custodian to some other persons who had in turn sold out the same to another person, and if the impugned order held the field, the petitioners would further surfer in not getting even that land which was proposed to be given to them. I am not really concerned with this subsequent development. The above quoted allegation of the petitioners (paragraph 10(v) of the petition) has clearly been admitted in the written statement. It has been admitted in the return of the respondent No. 1 that according to the relevant provisions in the scheme of consolidation of the village in question, each right holder was to be given his ''A'' grade land in one block It has also been admitted that by the impugned order, the ''A'' grade land of the petitioners was directed to be given in three blocks. This was clearly contrary to the scheme. - The order u/s 42 contrary to the scheme has been justified on the basis of the judgment of this Court in Ujagar Singh etc. v. State of Punjab etc. It is now settled law that the State can in exercise of its power u/s 42 of the Act modify the scheme of consolidation without having resort to the procedure prescribed by section 36 of the Act. It must, however, appear that the authority who passed the order u/s 42 of the Act was aware of the fact that the order proposed to be passed by it would be contrary to the scheme and a voluntary departure from the scheme was made after due compliance with the requirements of the proviso to section 42 of the Act in order to do justice between the parties. The impugned order does not show that the Additional Director was at all aware of the fact that what he was proposing to do was contrary to the scheme. Nor does any opportunity appear to have been given to the petitioners to show cause against the proposed amendment of the scheme to their prejudice.

2. In Mange v. Additional Director Consolidation of Holdings, Punjab, Rohtak (1967) 69 P.L.R. 835, it was observed by Grover, J. as follows:

With the utmost difference to the views expressed in the majority judgment of the Full Bench (in the Director, Consolidation of Holdings, Jullundur, and another v. Johri Mall (1961) 63 P,L.R. 93, I find it difficult to accept that whenever the State Government or the Additional Director who exercises its powers, orders readjustments or changes in repartition between various individual right holders in petitions u/s 42 of the Act without either giving any notice in writing or even oral at the time of hearing to the parties that it is intended or proposed to amend the scheme qua an individual right holder the Courts are bound and indeed should imply a variation or amendment of the scheme. Indisputably the provisions of the Act provide first for the framing of a scheme leading to its confirmation u/s 20. Then the stage of repartition commences. The scheme of consolidation and repartition are two entirely distinct matters. When a right holder approaches the State Government u/s 42 either challenging the repartition or making a grievance with regard to the lands allotted to him, and while giving him relief the authority concerned allots to him or changes allotment of others in a manner contrary to the scheme its order would be open to challenge on the ground that repartition has not been made in accordance with the scheme. If, however, the authority is convinced that without amending the scheme proper relief cannot be given to the petitioner or to any other aggrieved person I venture to think that the proper course to follow under the proviso to section 42 would be to inform the parties concerned that the scheme is proposed to be amended to the extent it is necessary to give the required relief. The parties would then have notice as to what is proposed to be done and make their submissions supporting or opposing the amendment. Only then, if an amendment is ordered can it be said that it has been made after giving the parties interested a proper hearing and opportunity to explain their case and in such a situation no express order may be necessary that the scheme is being amended. This does not mean that any specified or set procedure is required for amendment of the scheme u/s 42 but. there must be something to indicate firstly that the authority concerned applied its mind to the question of amendment and secondly, that it followed a procedure which conformed to the requirements of the proviso to section 42. To my mind the parties interested will have no notice in the matter of amendment if all that they have been informed is that relief is being sought on the merits in regard to repartition. In order to sustain an order which contains no mention of amendment of the scheme as such, the least that should be shown is that the mind of the authority concerned was brought to bear on the question of amendment of the scheme. It may be mentioned that this point was neither canvassed nor decided in the judgment of the Supreme Court in Johrimal''s case.

While agreeing with the learned Judge who dismissed Manee''s writ petition on the ground that no injustice appeared to have been done to him, I observed in the said judgment as below :

After the pronouncement of the Supreme Court in Johri Mall v. The Director, Consolidation of Holdings, etc., there is no doubt that State Government has the power u/s 42 of the Act to vary even a confirmed scheme without resorting to the procedure prescribed by section 36 subject to the statutory safeguard of giving a notice and affording a real opportunity of being heard to the parties interested contained in the proviso to section 42. The question, however, still remains as to what should broadly be the contents of a notice required to be served on interested parties in a case in which variation of a confirmed scheme is either specifically prayed for or otherwise intended to be effected; and also about the nature of opportunity required to be afforded to the interested parties in a case of that kind. I do not think that it would ever be argued on behalf of the State that it can vary a scheme u/s 42 (except in cases where the scheme is vitiated by unlawful considerations) at any time and to any extent in an arbitrary and unguided manner at the time of writing the orders even though the interested parties had no notice of the particular variation proposed. To allow such a course to be adopted would in my opinion relegate the statutory safeguard contained in the proviso to section 42 to a mere illusion. I am in full agreement with the opinion expressed by my learned brother Grover, J. in the penultimate paragraph of his judgment. Adopting any other view may make it impossible to distinguish by looking at an order passed u/s 42 of the Act as to whether the Director unwittingly and possibly oblivious of the relevant provision in the scheme passed an order in contravention thereof, or whether the officer really intended to vary the scheme in the given case. I am also substantially inclined to agree with the view taken by various Single Benches of this Court (noted by my Lord Grover, J.), while applying and interpreting the dictum of the Full Bench judgment of this Court in Johri Mall''s case to individual cases which came up for hearing after the pronouncement of the Full Bench.

3. The question of giving notice required to be given u/s 42 of the Act in a case where the scheme was proposed to be amended under that provision, was not, however, finally pronounced upon in Mange''s case (supra). In this particular case, the Additional Director does not appear to have brought his mind to bear at all on the question of the desirability or necessity of amending the scheme and the impugned order does not appear to me to be an order directing the amendment of the scheme but an order passed contrary to the scheme. The order of the Additional Director cannot, therefore, be sustained and must be set aside on that short ground so far as it effects the petitioners. This order will not, however, stand in the way of the State to make any amendment in the scheme in appropriate proceedings, if and to the extent permitted by law, after meticulous compliance with the requirements of the proviso to section 42, i.e. having due notice of the proposed amendment to every person likely to be affected by the same.

4. This writ petition is accordingly allowed to the above extent and the impugned order in so far as it affects the petitioners is set aside subject to the observations made above. In the circumstances of the case, there is no order as to costs.