
(2004) 01 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1606 of 1984

Bachittar Singh and Others	Vs	APPELLANT
Additional Director, Consolidation of Holdings		RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

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

Citation : (2004) 137 PLR 673 : (2004) 2 RCR(Civil) 695

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : K.K. Garg, for the Appellant; Reeta Kohli, D.A.G. for Respondent No. 1 and D.S. Chahal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is a petition for quashing order dated 16.12.1983 (Annexure P-2) vide which Additional Director, Consolidation of Holdings, Punjab allowed the petition filed by respondent No. 2 u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act").

2. The main ground on which the petitioners have challenged the impugned order is that they were not served with the notice of the petition filed by respondent No. 2. In paragraphs 3 to 6 of the writ petition, the petitioners have averred as under:

"3. That no notice for the hearing of the petition by respondent No. 1 was served on the petitioners Perchance Mukhtiar Singh petitioner happened to visit the office of respondent No. 1 on 16.12.1983 and learnt about the impugned order upon which he made enquiry from respondent No. 1. Respondent No. 1 told him to obtain the copy of the order. Petitioner Mukhtiar Singh thereafter made an application for obtaining the copy of the order and was supplied the same on 17.12.1984. On perusing the copy of the order, petitioner Mukhtiar Singh was surprised to know that he was shown to be present at the time of hearing.

4. That because of the presence of Mukhtiar Singh petitioner having been shown in the impugned order wrongly, the petitioners did not file any application before the respondent No. 1 for setting aside the impugned order passed in their absence.

5. That the impugned order Annexure P-2 has been passed at the back of the petitioners without affording them any opportunity of being heard. It may also be added that no notice regarding the hearing of the case was served on the petitioners.

6. That a bare reading of the impugned order shows that the same has been passed ex parte and that the presence of Mukhtiar Singh petitioner has been shown wrongly. Nothing has been mentioned in the impugned order about the stand of the petitioners. The order as under:

This is a petition by Jarnail Singh, son of Arjan Singh against Bachittar Singh, son of Sobha Singh etc. of Village Bhuchon Kalan, Tehsil and Distt. Bhatinda u/s 42 of the Ch. Act. The petitioner says that he has his killa No. 294/14 which is not served by any path and that path already exists on the southern side of Killa No. 294/1/1, 294/13/2 and that this path needs to be extended by 18x2 karam. I have heard the parties and examined the record. I find that the plea of the petitioner is correct. The path which already exists on the southern side of Killa No. 294/12/2, 13/1, 13/2 is extended by 17x2 to serve the Kurra of the petitioner which at present has no service path to this Kurra. Accordingly, the following changes are ordered:

Area withdrawn Area given 1. Bachittar Singh, 294/13/1 -- s/o Sobha Singh 0-4 18x2 2. Jumia Mushtarka Nil Shown as area Malkan withdrawn at Sr.No. 1

File be consigned to the record room. Announced." Sd/- Addl. Director, Consolidation of Holdings, Pb. Chandigarh."

7. In the written statement filed on behalf of respondent No. 2, it has been averred that the petitioners were duly served and one Mukhtiar Singh was present at the time of hearing and was heard by the Additional Director before passing of the impugned order. Paragraphs 3 to 6 of the written statement filed by respondent No. 2, are as under:

"3 to 5. Paras 3 to 5 of the petitioner are denied as wrong. The petitioners were impleaded as parties to the petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act") and were duly served and Mukhtiar Singh petitioner was present at the time of hearing and was heard by the Additional Director before the passing of the impugned order dated 16.12.1983.

6. In reply to para 6 of the petition, it is submitted that the impugned order definitely mentions the presence of Mukhtiar Singh petitioner and also the fact that the parties were heard and the record was examined."

8. I have heard learned counsel for the parties and perused the record. In my opinion, the order under challenge is liable to be set aside on the ground of violation of the rule of audi alteram partem. In their petition, the petitioners have Categorically averred that notice of the petition filed by respondent No. 2 u/s 2 of the Act had not been served upon them. Respondent No. 2 has tried to controvert the same by asserting that notice had been served upon the petitioners and at the time of hearing, one Mukhtiar Singh was present on their behalf. However, the record showing service of notice upon the petitioners has not been produced before the Court. During the course of hearing, I asked learned counsel for the respondents whether any evidence is available with them to show that notice of the petition filed by respondent No. 2 had been served upon the petitioners but they could not draw my attention to any such evidence. Thus, there is no escape from the conclusion that order Annexure P.2 was passed without giving opportunity of hearing to the petitioners and the same is liable to be quashed only on that ground.

For the reason mentioned above, the writ petition is allowed and order Annexure P2 is quashed with the direction to Additional Director, Consolidation of Holdings, Punjab to decide the application of respondent No. 2 afresh. The parties are directed to appear before the Additional Director concerned on 16.2.2004.