
(2010) 08 P&H CK 0372
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3073 of 1986

Balbir Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 —
Rule 18

Citation : (2011) 2 ILR (P&H) 9

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Petitioners No. 1 to 6 are the successors-in-interest of Gulzar Singh, whereas petitioners No. 7 to 12 are the successors-in-interest of Kartar Singh. All the petitioners have filed the instant petition challenging the order dated 28th February, 1985 (Annexure P-3), passed by the Additional Director, Consolidation of Holdings, Punjab, Jalandhar, in exercise of the powers u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act"). Vide the impugned order, on a petition filed by Malkiat Singh (respondent No. 2), an irrigation channel has been provided from the southern side of plots Nos. 131, 132, 133 and 134 and from the eastern side of plot No. 131, for irrigating his land, comprised in Killa Nos. 19/ 11 and 20//16/6, which he had got in exchange from one Phuman Singh, a resident of the village. The petitioners have further challenged the order dated 27th January, 1986 (Annexure P-4), whereby on the review application filed by respondent No. 2, the Additional Director has ordered for substitution of Khasra No. 40 as 44 regarding the irrigation well.

2. It is the case of the petitioners that in the year 1962-63. the Scheme of

Consolidation for village Khera, Tehsil Phagwara, District Kapurthala, was prepared (the extract of the scheme has been annexed as Annexure P-1) and according to the said scheme, the right-holders, who had constructed their houses on the area inside the Phirni and outside the Lal Lakir were to be provided the residential plots adjoining to their existing plots, where they had constructed their houses for extension of the Abadi outside the Phirni. It was specifically provided in the scheme that those right-holders, who were to be allotted adjoining plots, will not be given any new Gali or path. It is further the case of the petitioners that prior to the consolidation, Gulzar Singh and Kartar Singh were originally owning plot No. 47 and they were allotted plot No. 133 as an extension of Abadi, which adjoin each other. Likewise, plot No. 49 was owned by Harkishan Singh (respondent No. 3) and during re-partition, he was allotted Abadi-extension plot No. 131. Similarly, the other plots were allotted in extension of the Abadi to other right-holders. It is further the case of the petitioners that between the old plots and the new plots, neither any path nor any irrigation water channel was provided. Rather, a water channel bearing No. 135 starting from well bearing No. 44 was provided to the Kura of agricultural land, owned and possessed by Satnam Singh. It is further the case of the petitioners that after the consolidation was over, none of the right-holders, whether he was owning original Abadi plot or the extended Abadi plot or having nearby agricultural land, including Satnam Singh and Phuman Singh, made any challenge either to the allotment of the Kuras or alignment of the irrigation channel. In the year 1978, respondent No. 2, who also owned land in the nearby village Sadarpur, made exchange of land, comprised in aforesaid two killa numbers, with Phuman Singh. Six years thereafter, he moved a petition u/s 42 of the Act for providing him an irrigation channel from well bearing No. 44, in which his predecessor Phuman Singh has also a share, on the ground that no water channel was provided for irrigating the land of Phuman Singh, which he had got in exchange. The said application has been allowed,--vide the impugned order.

3. In the written statement, filed on behalf of respondent No. 2, the framing of the village scheme, as indicated above, has not been disputed. It has also not been disputed that the owners of Abadi Plots No. 46, 47, 48 and 49 were allotted the extension-abadi plots No. 134, 133, 132 and 131, respectively. It has also not been disputed that a water channel was provided from well bearing No. 44, for irrigating the agricultural land, owned by Satnam Singh and Phuman Singh, as has been depicted in the site plan (Annexure P-2). The facts shown in this site plan have also not been disputed.

4. Learned Counsel for the petitioners argued that respondent No. 2, who had exchanged the land with Phuman Singh much after the consolidation, has no locus standi to file a petition u/s 42 of the Act, particularly when in the re-partition, a separate water channel was provided to Satnam Singh and Phuman Singh. Secondly, he argued that the Additional Director, Consolidation of Holdings, should not have entertained the petition filed by respondent No. 2 after more than 20 years of the repartition. Thirdly, Learned Counsel argued that the

impugned order is totally contrary to the village scheme, prepared during the consolidation and no irrigation water channel could be provided in between the old plots and the extended plots of Abadi. Therefore, the impugned order is liable to be set aside. In support of his contention, Learned Counsel has relied upon the judgment of the Hon''ble Supreme Court in Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another, and a judgment of this Court in Dalbara Singh and others v. The Additional Director, Consolidation of Holdings, Punjab, Jullundur and another, 2004 (2) P.L.R. 603.

5. On the other hand, Learned Counsel for respondent No. 2 could not controvert the aforesaid factual position. However, he argued that the impugned order, whereby an irrigation water channel has been provided to irrigate the land of the petitioners, which they got in exchange from one Phuman Singh, should not be interfered by this Court in exercise of the power under Article 226 of the Constitution of India. However, he could not give an explanation for filing the petition u/s 42 of the Act at a belated stage.

6. After considering the various submission made by Learned Counsel for the parties and going through the impugned order, I am of the opinion that the impugned order passed by the Director, Consolidation of Holdings, is not sustainable. It is to be made clear that at the time of the issuance of notice of motion, dispossession of the petitioners was stayed and while admitting this writ petition, this interim relief was ordered to continue. In Gram Panchayat, Kakran's case (supra), the Hon''ble Supreme Court has held that even though under Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, no limitation has been prescribed to file an application u/s 42 of the Act, even then the competent authority cannot entertain an application or a petition filed under this provision after lapse of a long time. The said decision has been consistently followed by this Court in various cases. In this regard, reference can be made to a Division Bench decision of this Court in Jaswinder Kaur v. Additional Director, Consolidation, 2003 (2) P.L.R. 160 and Dalbara Singh's case (supra), wherein an application/petition filed after a long period for providing path has been held to be not maintainable and the order passed by the Additional Director, Consolidation of Holdings, granting such relief after a long time, without any reasonable explanation, was set aside and it was held that the application was not maintainable being time barred. In the instant case also, respondent No. 2 filed the application for providing irrigation channel after a lapse of more than 20 years, without any explanation for the delay.

7. Secondly, I am of the opinion that the order passed by the Additional Director, Consolidation of Holdings, is also contrary to the scheme of consolidation. In the scheme, it has been clearly provided that neither any path nor any irrigation channel would be provided between the old plots and the adjoining plots allotted to the parties. As far as the irrigation channel is concerned, the same had been provided from well bearing No. 44 for the agricultural land, which has been allotted number 135 in the re-partition. This is admitted fact that the said water

channel was provided for the land of Satnam Singh. After the re-partition order, which was carried out in accordance with the village scheme, the said water channel was never challenged by Satnam Singh and Phuman Singh. It is only after respondent No. 2 had exchanged land with Phuman Singh, when he (respondent No. 2) filed petition u/s 42 of the Act at a belated stage. In my opinion, respondent No. 2, who had exchanged the land, had no locus standi to file a petition u/s 42 of the Act for having grouse that no water channel was provided, because his predecessor-in-interest never moved such an application within limitation. In my opinion, the Additional Director, Consolidation of Holdings has illegally and arbitrarily allowed the said application, without discussing the village scheme, according to which the re-partition was ordered. He has just observed that if a water channel is provided from the Berm of the adjoining Killas, then the same is not going to disturb the usage of the allotted plots. He has completely overlooked that since the right-holders have constructed their houses outside the Abadi Deh, therefore, in the scheme, they have been given adjoining plots, where they have already constructed their house. Learned Counsel for the petitioners has rightly pointed out that if the irrigation channel is provided in between their plot, then it will be effecting their building which has already been constructed.

8. In view of the above, in my opinion, the impugned order dated 28th February, 1985 (Annexure P-3) and the subsequent order dated 27th January, 1986 (Annexure P-4) reviewing the order dated 28th February, 1985, passed by the Additional Director, Consolidation of Holdings, are not sustainable from any angle and the same are hereby quashed.

9. Consequently, the writ petition is allowed.

10. No order as to costs.