
(2005) 02 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4986 of 1986

Baldev Singh and Others

APPELLANT

Vs

Additional Director, Consolidation of Holdings and Another

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

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

Citation : (2005) 140 PLR 206 : (2005) 2 RCR(Civil) 351

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : Manjeet Kaur, for A.S. Cheema, for the Appellant; Ashok Aggarwal, A.A.G., B.S. Chahal, Assistant A.G. and Gurdial Singh Jaswal, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—In this writ petition, petitioners have laid challenge to the order (Annexure P-2) dated 14.5.1986, vide which, on an application filed by respondent No. 2 u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (in short, "The Act"), directions were issued by respondent No. 1 to the consolidation officer to examine allegation of deficiency in allotment of land to respondent No. 2. It was further directed vide order under challenge that in case any deficiency is found, as alleged, same be good within the frame work of the provisions of Consolidation Scheme and also after hearing all the interested persons.

2. Counsel for the petitioners have vehemently contended that consolidation proceedings were concluded in the village in the year 1956. After about 10 years of the consolidation proceedings, respondent No. 2 filed an application u/s 42 of the Act with a prayer that deficiency caused to him, in allotment of land, be made good. That application u/s 42 of the Act, was allowed by the then Director, Consolidation of Holdings vide order dated 17.5.1967 and respondent No. 2 was

allotted one standard Kanal and 11 standard Marlas of land out of shamilat deh land of the village. Feeling dissatisfied and claiming more land, review application was filed by respondent No. 2, which was dismissed by the then Additional Director, Consolidation of Holdings on 9.1.1969.

3. In the year 1974, respondent No. 2 filed another application u/s 42 of the Act, wherein, he again agitated allotment of less land, during consolidation proceedings. That application was dismissed by the competent authority vide order dated 11.11.1975 (Annexure P-1), by holding that the allotment of land to respondent No. 2 was proper and justified. Respondent No. 2 then by concealing factum of filing earlier three applications, filed another application u/s 42 of the Act, alleging deficiency in allotment of land at the time of consolidation proceedings. In that application, it was claimed that deficiency be made good by allotting land as per his entitlement. That application was allowed and the matter was remanded to the Consolidation Officer to look into the grievance of respondent No. 2 and allot land to him, in case any deficiency is found. Order dated 14.5.1986 (Annexure P-2), is under challenge in this writ petition.

4. Counsel for the petitioners contended that by passing order, Annexure P-2, respondent No. 1 has virtually reviewed earlier orders passed, thrice by the competent authorities, especially, order Annexure P-1, vide which it was specifically held that there is no deficiency in allotment of land to respondent No. 2. Counsel further stated that respondent No. 2 had got passed order under challenge, by concealing factum of filing earlier applications. It was prayed that since there was no deficiency with respondent No. 2 and he has concealed material facts, order, Annexure P-2, being without jurisdiction, be quashed.

5. Prayer made has vehemently been opposed by counsel, appearing for respondent No. 2, by raising preliminary objection that since one of the co-sharers has not been impleaded in the writ petition, the same is liable to be dismissed. He also tried to impress upon this Court that earlier orders, passed by the competent authorities, were not relevant and the order, Annexure P-2 had rightly been passed. He also tried to show that there existed deficiency of land allotted to respondent No. 2 at the time of consolidation proceedings, as such, he was entitled to file an application u/s 42 of the Act.

6. After hearing counsel for the parties, this Court is of the opinion that present writ petition deserves to be allowed.

7. It is admitted fact that prior to the filing of present application, Annexure R-2, u/s 42 of the Act, on the basis of which, order under challenge was passed, petitioner had already moved three similar applications. On the basis of one such application, which was decided on 17.5.1967, land to the tune of one standard Karnal and 11 standard Marlas was allotted to the petitioners. Feeling dissatisfied, he had filed review application, claiming more land, which was also dismissed. Again in the year 1974, respondent No. 2 moved another application u/s 42 of the Act, which was dismissed vide order, Annexure P-1, on 11.11.1975,

stating therein that land allotted to the petitioners was perfectly justified.

8. By filing the present application, Annexure R-2, petitioner initiated 4th bout of litigation and got passed a favourable order. This Court is of the opinion that by passing order, Annexure P-2, the then Additional Director, had virtually reviewed earlier order passed (Annexure P-1), vide which, no shortage was found regrading area allotted to the petitioners. Order under Challenge is also review of order passed in the year 1987, vide which shortage to the tune of one standard Kanal 11 standard Marlas, in allotment of land to respondent No. 2 was ordered to be made good.

9. As per law, authorities exercising powers u/s 42 of the Act, are quasi judicial in nature and have no power to review, it has been so held by a Full Bench of this Court in Deep Chand and Anr. v. Additional Director, Consolidation of Holdings, Punjab, Jullundur and Anr. (1964)66 P.L.R. 318. In that case, it was observed that an Additional Director of Consolidations, exercising powers of the Government u/s 42 of the Act, is not empowered to review his earlier orders passed, on merits, even though the orders may be erroneous or unjust.

10. In Harbhajan Singh Vs. Karam Singh and Others, , their Lordships of Supreme Court, while dealing with a similar situation, after taking note of the provisions of Section 42 of the Act, had opined as under:-

"6. There is no provision in the Act granting express power of review to the State Government with regard to an order made u/s 42 of the Act. In the absence of any such express power, it is manifest that the Director, Consolidation of Holdings, cannot review his previous order of 3rd April, 1958 dismissing the application of Harbhajan Singh u/s 42 of the Act. It follows therefore that the order of the Director dated 29th August, 1958 is ultra vires and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Article 226 of the Constitution."

11. This Court is also of the considered opinion that a co-sharer is not entitled to file successive application u/s 42 of the Act. Respondent No. 2, in this case, filed first application u/s 42 of the Act, vide order dated 17.5.1967, his grievance was redressed, thereafter, it was not open to him to move applications time and again, as had been done by him in the present case. A co-sharer is not entitled to claim relief in a piecemeal manner. Furthermore, at the time of filing second application u/s 42 of the Act, Applicant was supposed to disclose factum of filing of earlier application. In the present case, factum of filing earlier three applications, were concealed by the respondent No. 2.

12. In paragraph (g) Clause (i) of the application, Annexure R-2, it had wrongly been stated by respondent No. 2 that he had not filed any application previously u/s 42 of the Act. This clearly amounts to concealment of a material fact.

13. In Jot Ram and Anr. v. State of Haryana and Ors. 1983 R L R 360, a Single Bench of this Court while dealing with a similar situation, had opined as under:-

"The petitioner has challenged the aforesaid order on the ground that second application u/s 42 of the Act amounts to review and the Additional Director had no authority in law for review. It is settled law that under the Act, the second application u/s 42 of the Act cannot be entertained by the Additional Director. Moreover, respondent No. 4 concealed the fact of his filing the previous application u/s 42 of the Act. In his second application against column No. 9 which pertained to whether any earlier application u/s 42 was filed by the petitioner, he did not disclose the factum of his earlier application which he should have disclosed in all fairness. He should have taken all the grounds in his earlier application regarding all categories of land and the piece-meal applications cannot be permitted between the same parties."

14. Contention of Counsel for respondent No. 2 that since the petitioner has not impleaded other co-sharers, his writ petition deserves to be dismissed, is of no help to him. It has been brought to the notice of the Court that interest of respondent No. 2 was different than those co-sharers who were impleaded as party/respondents in this writ petition, by the petitioners. If interest is the same, service upon one of the co-sharers is sufficient in the eyes of law.

15. In *Biru and Anr. v. Suraj Bhan and Ors.* (1983) 85 P.L.R. 568, A Full Bench of this Court has specifically opined that, in the matter of consolidation, it is not necessary to implead all the co-sharers and then serve them individually, it is sufficient to give hearing to one or some of them in case their interest is common and there is no fraud or collusion or failure of fair or real trial of issues.

16. In the present case, counsel for respondent No. 2 has failed to show as to how the case of the respondent is covered under any of the exceptions laid down by the Full Bench in *Biru's* case (*supra*). He also, failed to show as to what other defence, than the one which has been put by the respondent before this Court, would have been agitated by those co-sharers, who were not impleaded in this writ petition.

17. In view of reasoning given above, this writ petition is allowed and the order, Annexure P-1, under challenge is quashed. No order as to costs.