
(1999) 09 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7263 of 1994 and C.M. No. 4219 of 1999

Balkar Singh and Others

APPELLANT

Vs

Director, Land Records and Others

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

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

Citation : (2000) 125 PLR 111 : (2000) 1 RCR(Civil) 750

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : D.R. Mahajan, P.K. Dutt and Dhirender Chopra, for the Appellant;
S.C. Sibal, A.A.G., S.K. Bhanot, D.A.G. and Satinder Khanna, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—Having regard to the cause shown, order dated September 7, 1996 whereby C.W.P. No.7263 of 1994 ordered to be dismissed as withdrawn, is recalled and restored to its original number.

2. At the request of counsel for the parties, the writ petition is taken on board for final disposal.

3. In this writ petition, challenge is to order dated 24.6.1992, Annexure P-3 vide which Director, Land Records, Punjab, Jalandhar (for short the Director) in exercise of powers u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act), has amended the Scheme and ordered partition of land measuring 227 Kanals 5 Marlas situated in village Patti Multani, Tehsil Jagraon, District Ludhiana among the right-holders as per their shares.

4. It is the case of the petitioners that the Consolidation of Holdings in the village Patti Multani were held in the year 1953-54 under the provisions of the Act. Further according to the petitioners, a Scheme was prepared in accordance with

the provisions of the Act and the Rules framed thereunder. Objections to the Scheme were invited and after considering and deciding the objections, the Scheme was duly published and confirmed. The Scheme provide that the area which was to be left for common purpose, was to vest in Shamilat Deh and was not liable to be partitioned. The Scheme provided that in this regard separate Khewat will be prepared/According to the petitioners, despite provision in the Scheme that the land kept for common purposes shall vest in Panchayat and will not be partitioned, respondent No.2 to 5 filed an application u/s 42 of the Act in February 1992 stating therein mat excessive cut has been imposed on their land holdings during consolidation proceedings and the unutilised land was required to be partitioned amongst them. The Director allowed the application and ordered partition of land among the right holders. Challenge by the petitioners to the order is that the land did not belong to the right-holders of the village as it was not the land carved out as a result of prorata cut on their holdings. It is averred by the petitioners that the land being Shamilat Deh, the Director had no jurisdiction u/s 42 of the Act to order partition of the land vesting in Panchayat.

5. I have heard the learned counsel for the parties and gone through the record.

6. On reading of order dated 24.6.1992, Annexure P-3, passed by the Director u/s 43 of the Act, I find that the partition was ordered simply on the allegations made in the application u/s 42, filed by the right-holders. No enquiry whatsoever with regard to the nature of the land was made or records in this regard examined. In fact, the contention of the right-holders that the land in question during consolidation was wrongly entered as vesting in Gram Panchayat as Shamilat Deh, could not have been gone into by the Director u/s 42 of the Act. Entries in the revenue record showed the land as Shamilat Deh and, therefore, question regarding title in respect of "Shamilat" land has to be considered under the Punjab Village Common Lands (Regulation) Act, 1961. In this regard, reference may be made to the judgments in Gram Panchayat, Nurpur Vs. State of Punjab and Others, and Gram Panchayat Village Sidh v. Additional Director, Consolidatioin of Holdings and Ors., 1997 (1) P.L.J. 313.

7. There is also contention of learned counsel for the petitioners in that the Director was not competent, to entertain the application u/s 12 of the Act after 38 years of the finalisation of the consolidation proceedings. In Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another, , their Lordships of the Supreme Court have held that an application made u/s 42 of the Act after gross delay without satisfactory explanation, therefore, cannot be entertained.

8. Consequently, this writ petition is allowed and the impugned order dated 24.6.1992, annexure P-3 passed by the Director being without jurisdiction is quashed.