

(1965) 10 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 941 of 1965

Beant Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 28-10-1965

Acts Referred:

Citation : (1965) 10 P&H CK 0054

Hon'ble Judges : Dua, J;Capoor, J

Bench : Division Bench

Advocate : L.S. Wasu, for the Appellant; J.N. Kaushal, Advocate General, for Respondents 1 and 2 and Mr. A.S. Bains, for Respondents 3 to 6, for the Respondent

Final Decision : Allowed

Judgement

Dua, J.—This petition under Articles 226 and 227 of the Constitution is to be allowed on the short ground that the learned Additional Director, Consolidation of Holdings, has, while exercising power u/s 42 of the Consolidation Act, made deductions from the holdings of the objectors who have not been given compensation for the diminution in their Holdings, and have merely been directed to seek relief from the Rehabilitation Department. On the view that we have taken, it is unnecessary to express any considered opinion on the vexed question relating to the construction to be placed on the expression "at any time", as used in section 42 of the Act. It may be pointed out that the Admitting Bench in the present case on 7th April, 1965 directed this writ petition to be heard along with C.W. No. 2200 of 1963 which had been referred to a Division Bench by Shamsheer Bahadur, J., in which the question of construction of section 42 had arisen. The arguments in both these cases have been heard together by us, but as just observed, it is not necessary for disposing of the present writ petition to express any opinion on the construction of section 42.

2. Adverting to the facts giving rise to the present controversy, petitioners Nos. 1 to 4, having been displaced from West Pakistan, were allotted evacuee lands on

quasi-permanent basis sometime in 1950 in lieu of the land left by them in what is now known as West Pakistan. It unnecessary to refer to the precise area allotted. Balwant Singh, now represented by his son Sawaran Singh, petitioner No. 5, was similarly allotted some land, a part of which was shown in the revenue papers to be mortgaged with some local inhabitants. One Hazara Singh, son of Khushal Singh was allotted some land out of which also apart was shown in revenue papers as mortgaged with some local inhabitants. Hazara Singh exchanged 15 kannals and 16 1/2 marlas out of his allotment with an equivalent area belonging to Vir Singh, petitioner No. 6, as per registered exchange-deed. Later, Hazara Singh sold about 46 kanals out of his allotted land to Pritam Singh, son of Vir Singh, petitioner No. 7. The mutation was duly sanctioned by the revenue authorities. Petitioner No. 6 had also been allotted some area in the same village, namely, Sarai Talwandi, Tehsil Tarn Taran. Proprietary Sanads in respect of the respective areas were duly granted to the allottees by the Managing Officer concerned on behalf of the President of India. After due redemption u/s 9 of the Evacuee Interest (Separation) Act, the allottees, according to the averments in the writ petition, became entitled to their respective areas as full owners without any encumbrance. After the extinguishment of the mortgage debts, the Rehabilitation Department appears to have allotted some area in the name of Ajit Singh, respondent No. 4 and some in the name of Kapur Singh, respondent No. 5. An area of about 18 kanals was sold by public auction by the Rehabilitation Department in the name of Fauja Singh, respondent No. 6. This has been described to be invalid in the writ petition because the petitioners' allotment or the conferment of proprietary rights in respect thereof was never cancelled or modified by any authority. Consolidation of Holdings started in the village sometime in 1950-51 and the petitioners' takes, were actually carved out on the basis of the area allotted to them. In view of the allotment to the petitioners of the mortgaged area and of the waqf area belonging to mosque, it was provided in the scheme that 65 kanals of graveyard area was available as unallotted and that the same would be included in the common pool in lieu of the area mortgaged with local persons, or the area which belonged to the mosque. The scheme was later amended to the extent that the area belonging to the graveyard was to be left out of consolidation, but in order to make up this deficiency, an area of 84 kanals was to be given to the petitioners out of the common pool of evacuee lands. After this amendment in the scheme, repartition was effected and kurrahs of the petitioners were carved out according to the modified scheme. The whole work of the consolidation was completed and finalised somewhere in 1954-55 when the records were consigned to the record-room and charge thereof handed over to the Revenue Department. No objections were ever raised u/s 21(1) or (2) of the Consolidation Act. Naturally, therefore, there was no occasion for preferring any appeal under the Consolidation Act. After a lapse of about five or six years, Bhan Singh, respondent No. 3, is stated to have filed an application u/s 42 of the Consolidation Act and the Additional Director, Consolidation of Holdings, decided to amend the scheme by his order dated 28th October, 1964 holding that the

provisions in the scheme regarding taking away 84 kanals of unallotted area from the common pool with a view to make up adjustment for the mortgaged allotted area and the area belonging to the mosque be rectified. The petitioners' deficiency, as a result of this modification, was required to be made good by writing to the Rehabilitation authorities for allotting to them some other area. It is in these circumstances that the present writ petition has been preferred and apart from the jurisdictional infirmity in the impugned order, it has also been pleaded that the petitioners have considerably improved their existing holdings by incurring heavy expenses and have also planted valuable trees and wells on the land given to them nearly ten years ago.

3. We have not had the advantage of any return from the State department. This indeed is unfortunate, but cannot be helped because in our view, the State should have been vigilant enough to submit its return with due promptitude. The admitting note dated 7th April 1965, it may be recalled, directed this petition to be heard along with C.W. No, 2200 of 1963 which was expressly stated in the present writ petition to have been referred to a larger Bench by Shamsheer Bahadur, J. That the case in hand demanded, relatively speaking more immediate and urgent attention than has been devoted to it, is quite obvious. It would, in my, opinion, have served the cause of justice better and would perhaps have been more in consonance with the degree of vigilance required in the present case, if the State had filed the requisite return well in advance of the date of hearing. For one thing, that course would certainly have reflected a democratic sense of responsibility on the part of the State department in giving to this Court the required and expected assistance in administering justice.

4. We have, however, before us a written statement by respondents Nos. 3 to 6. In this written statement, it is admitted that the answering respondents had not filed any appeal or raised any objection during the consolidation proceedings with the exception of the application u/s 42 of the Consolidation Act, which has resulted in the impugned order. According to the respondents, there is no amendment in the scheme, but in case the variation is to be deemed to amount to, an amendment, then the Additional Director, according to their plea, has full jurisdiction to do so u/s 42. In reply to the plea in paragraph 11 (viii) of the writ petition, that the Consolidation authorities had no power to sit in judgment on the order of allotment to, or conferment of proprietary rights on, the petitioners made by the Rehabilitation authorities, the bald denial in the written statement "merely says that the contents of this subparagraph are incorrect.

5. In the arguments before us, nothing has been urged on behalf of the respondents in order to explain as to how it was within the jurisdiction of the Consolidation authorities to go into the merits of the allotment of land by the Rehabilitation authorities and under what provision of law they could diminish the petitioners' holdings without giving any compensation. The respondents learned counsel has not drawn our attention to any provision of law under which reduction in the petitioners' holding can be justified, by merely referring them

back to the Rehabilitation authorities for relief.

6. Shri Lakhbir Singh Wasu, counsel for the petitioners, has made a reference to section 15 of the Consolidation Act which in express terms lays down that the scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding by the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. The learned counsel submits that without payment of compensation no land-holder can be deprived of his original holding or any part of it.

7. Section 15 does contemplate payment of compensation when the scheme provides for the allotment of a new holding of lesser market value than the original holding. I am ignoring for the present case reservation for common purposes which calls for different considerations. But even ignoring for a moment section 15, our attention has not been drawn to any provision of law which would authorise or empower the authorities acting under the Consolidation Act to enquire into or adjudicate upon the questions of title of the holdings of the various land-holders. It is axiomatic that questions of title are ordinarily to be determined only by the established civil Courts. A statute may, however, expressly or by necessary intendment validly confer such power on some other Tribunal or authority. No such statutory provision has been brought to our notice conferring such power on the authorities constituted under the Consolidation Act. The State Government exercising power u/s 42, it is unnecessary to point out, cannot claim to possess any power outside the statute. The object of the Consolidation Act, it may be remembered, is to provide for the compulsory consolidation of agricultural holdings, for preventing the fragmentation of such holdings, and for the assignment or reservation of land for common purposes of the village. Obviously, therefore, without a specific power, whether conferred by express language or necessary intendment, it is difficult to read by implication in section 42 any power to determine the question of title of a holder of land in his original holding. There are no express words in this section and the object and purpose of the Act does not warrant any such intendment by implication. A statutory instrument should, so far as reasonably possible on its language, be interpreted and construed in such a way as to avoid the effect of conferring on executive officers jurisdiction of determining questions of title which, according to our jurisprudence, is ordinarily left to the civil Courts. In accordance with our traditions, whenever Legislature intends to confer power of determining question of title on officers or Tribunals other than civil Courts, it does so in express words or in words which indisputably carry the necessary intendment. Section 42 of the Act read in the background of the entire statute quite clearly does not satisfy this criterion.

8. As a result of the foregoing discussion, I am constrained to allow this petition and quash the impugned order with costs.

Capoor, J.

I agree.