

(1965) 10 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ. No. 1370 of 1964

Bhagwana and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 21-10-1965

Acts Referred:

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

Citation : (1965) 10 P&H CK 0049

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Suraj Mal, for the Appellant; R.K. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—The facts necessary to decide this writ petition lie in a very narrow compass. After the consolidation proceedings had come to an end and repartition had been, published, Partap Singh, respondent No. 2 filed a petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Act, 1948 Notice, of the petition. was issued to several persons including Bhagwana petitioner No. 1. Bhagwana did not however, attend before the State Authority deciding the, petition but his brother petitioner No. 2 was admittedly present at the time of the hearing and decision the case u/s 42 off the Act. Admittedly the petition u/s 42 was barred by time. In the impugned order passed by; Shri Jaspal Singh, Actional.Director of Consolidation of Holdings Punjab, Chandigarh, on 15th April 1964 he held in the operative part of the order as follows:

The following changes are ordered u/s 42 after waiving the time limit.

He had no doubt observed in order that the petition before him was barred by time..On the merits his order is contained in the following lines.

The only objection of the petitioner, is that in D. 8 grade block-a path has been

given which runs through his kurrah. This path is A to B as shown in the sketch Exhibit P.A, The path has been made Wrongly.

2. On 3rd July, 1964 this writ petition was, filed by Bhagwana and his four brothers, his sister and mother to quash the above said order of the Additional Director u/s 42 of, the Act. Partap Singh respondent No, 2 has not appeared to contest this petition inspire of service. The petition, has, however, been contested on behalf of the State of Punjab. In its written statement dated nil supported by an affidavit dated the 6th February,. 1965 it is stated that the persons who were present at the hearing of the petition being co-sharers had the same interest as the petitioners and therefore there had been an affective representation on their behalf. It is further averred, therein that the Additional Director was competent to interfere under section, 42 of the Act by relaxing limitation.

3. Chaudhri Suraj Mal, the learned counsel for the petitioners has urged three points at the hearing of this case. It is contended by him that the impugned order is vitiated on the ground of non-compliance with the mandatory requirements of proviso to section 42 of the Act in- as much as no notice of the petition u/s 42 of the Act was given to or served on petitioners Nos. 3 to 7. Inasmuch, as this is not-alleged to be a case where the original scheme had been vitiated by any unlawful consideration, it is argued that the order must be set aside simply because 5 of the petitioners had no notice of the proceedings in which the order was passed.

4. In Rattan and another v. The State of Punjab (1995) 67 P. L. R. 276 it was held by this Court (Pandit J.).that where one of the several joint landowners had been served with a notice of a petition u/s 42 of the Act and one of the joint landowners is present at the hearing of the petition it amounts to an effective. representation even on behalf of the other joint holders. This judgment of the learned Single Judge was based on various previous judgments referred to therein. In paragraph 6 of the written statement it has been specifically averred that all the petitioners have joint holdings and have no separate interest in so far as the matter is covered by the instant litigation. In that view of the matter I do not think that any injustice has been done to anyone of the petitioners by each one of them not being served with a notice. I hold that in the circumstances of the case notice of the petition u/s 42 of the Act to petitioner No. 1 and the presence of petitioner No. 2 at the hearing would amount; to providing an opportunity to make sufficient effective representation against the application to all the petitioners. There is, therefore, no force in the first contention of the learned counsel for the petitioner.

5. The second argument advanced before me by the learned Counsel for the petitioners is that admittedly no orders u/s 21(3) & (4) of the Act having been passed, it was not open to Partap Singh respondent No. 2 to move the State authorities u/s 42 of the Act. In support of this proposition Ch. Suraj Mall has relied on the judgment of Mehar Singh J. dated 22nd April, 1960 in Subedar

Sohan Lal v. The State of Punjab and another C. W. No. 856 of 1959 and also on certain observations in the judgment of P.C. Pandit J. dated the 7th September, 1965, in Hans Raj v. Additional Director of Consolidation etc. C. W. No. 7 of 1964 Observations to the contrary have been made by Pandit J. in Rattan and another v. The State of Punjab in the following words:

"The language of this section (section 42), however, does not show that the party concerned must, in the first place, file objections or appeals u/s 21(2), 21(3) and 21(4) of the Act before moving the State Government.

6. It seems to me that wherever it was observed that no petition u/s 42 can be submitted without first exercising the remedies available under various sub-sections of section 21 of the Act, the orders passed u/s 42 had been made before July 1960. Before July 9, 1960, the relevant words u/s 42 were "any order passed by any officer under this Act". By the amending Punjab Act 27 of 1960 passed in July 1960, the following words have been substituted for the above mentioned portion of the section "any order passed, scheme prepared or confirmed or repartition made by any officer under this Act".

The argument which could be advanced on the basis of the pre-amendment Act is no more available after the above said amendment of 1960. The impugned order in the instant case was passed in April 1964 and it appears to me that after the amendment of section 42 by Act 27 of 1960 in the above respect it is wholly unnecessary for a party aggrieved either by any order or by any part of the consolidation scheme or the repartition to first move the authority u/s 21 of the Act before approaching the State Government u/s 42 thereof.

7. I am informed by the learned counsel for the petitioners that this point awaits decision in a Division Bench case (C. W. 1623 of 1985) which is on the daily list of Dua and Pandit JJ. My above-mentioned opinion on this point is, therefore, tentative subject to the authoritative pronouncement which may be made in this connection by the Division Bench. But for the view I am taking on the third contention raised by the learned counsel for the petitioners I would have awaited the decision of the Division Bench on this point.

8. The third point raised by the learned counsel for the petitioners is that the application u/s 42 of the Act having admittedly been barred by time the State Authorities had no jurisdiction to entertain or allow the same, after the expiry of the period of 6 months fixed by rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 unless there is something on the record to show that the Authority competent to take action u/s 42 was satisfied that the party approaching him after the expiry of period of limitation had sufficient cause for not making the application within the prescribed period of six months. These rules were published on the 8th December, 1949 and came into force thereafter. Rule 18 reads as follows:

13, Limitation for application u/s 42:

An application u/s 42 shall be made within six months of the date of the order against which it is filed:

Provided that in computing the period of limitation the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of section 21, required to accompany the application shall be excluded : Provided further, that an application may be admitted after the period of limitation prescribed therefore if the applicant satisfies the authority competent to take action u/s 42 that he had client cause for not making the application within such period.

9. Once the competent authority, u/s 42 of the Act states that he is satisfied that there was sufficient cause, which prevented the petitioner from filing the petition earlier than the date on which it was actually filed, it would not be open to this Court to go into the question of limitation on merits howsoever wrong the order in this connection on merits may be. But it must appear that the competent authority was aware of the provisions of rule 18 and knew the scope of this quasi-judicial functions in that respect. From the impugned order it appears that the State Authority thought that he could just "waive" or "ignore" the requirement of rule 18. In fact the wordings of the last proviso to rule 18 are very similar to those of section 5 of the Limitation Act and the State Authority has no jurisdiction to merely waive or ignore the period of limitation or to extend the period in any case Without being satisfied about the existence of sufficient cause for filing the petition late. On the analogy of the requirement of section 5 of the Limitation Act this delay would have to be explained by the party concerned to the satisfaction of the State Authority; Of course, it would be for the authority concerned to be satisfied or not to be satisfied on the material placed before it. The impugned order does not show that Shri Jaspal. Singh brought his mind to bear at all on this aspect of the matter. He seems to have merely, decided to ignore the period of limitation. It may certainly not be necessary for the authority to State the reasons for its satisfaction or to discuss the entire material on the basis of which it is- satisfied but this order must show that he was alive to the requirement of proviso in question when he applied his mind to the matter and that he had in fact felt satisfied about the existence of a sufficient cause for the delay. The instant order does not show any such thing.

10. Mr. Raj Kumar, the learned counsel for the first respondent, has referred me to a Division Bench judgment of this Court in *The State of Punjab and another v. Makhan Lal etc.* 1964 Curr. L.J. 417 wherein it has been held that the State has unlimited power to pass any order u/s 42 of the Act subject to the only limitation of giving notice to the parties concerned. This judgment related to an order u/s 42 of the Act passed on the 15th September 1958 when rule 18 quoted above had not yet come into existence. Rule 18 the vires of which has not been questioned by the learned counsel for the State, now puts an additional fetter on the exercise of the otherwise plenary Jurisdiction of the State Government u/s 42 of the Act. I hold that it is not open to the authority concerned to waive or ignore

the rules and that his jurisdiction is circumscribed by the provisions of rule 18 within the scope of which the authority concerned must act. The learned" counsel for the State also referred me to the judgment of Shamsheer Bahadur J. in Bhup Singh and others v. State of Punjab (1965) 87 P. L. R. 176. wherein it was held that though the reasons for entertaining the petition u/s 42 of the Act beyond time had not been stated in detail it was enough that the Director had considered the grievance of the respondent to be just and in addition to that it had also been stated that the time limit had been waived. Each case depends on its own facts. On the facts of this case it does not appear that the Additional Director at all considered the scope of the last proviso to Rule 18 On which his jurisdiction to decide the case depended.

11. It has been lastly contended by Shri Raj Kumar that rule 18 merely affects the period during which a party can approach the State authority for relief and that, independently of the requirement of an application, the State Government can suo motu pass any order it thinks fit under that provision of the Act (S. 42). But this is not a case of exercise of suo motu jurisdiction. The authority under the Act has clearly acted on the petition of the second respondent and has in so many words expressly ignored the period of limitation, which he was not competent to ignore.

12. In this view of the matter this petition must be allowed on the list contention referred to above. I accordingly grant this petition and set aside the impugned order but leave the parties to bear their own costs.