

(2012) 09 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : C.O.C.P. No. 1122 of 2012 (O and M)

Chain Pal @ Chain Singh and Others

APPELLANT

Vs

H.S. Malik

RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

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

Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468

Citation : (2013) 1 RCR(Criminal) 585

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Jarnail Singh Saneta, for the Appellant; Roopak Bansal, Additional Advocate General, Haryana, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioners in the present case had approached this court by filing CWP No. 23258 of 2010 Chain Pal and others v. State of Haryana and others seeking a direction to the respondent not to continue with the consolidation proceedings in pursuance to the notification dated 5.3.1990 issued by the State of Haryana regarding consolidation of 856 acres of Shamlat Deh land till the revenue record pertaining to the said land is prepared in accordance with law and further keeping in view the reports submitted by the Deputy Commissioner, Panipat vide letters dated 31.1.2003, 11.7.2007, 26.11.2007 and 13.3.2008. From the very beginning, the Deputy Commissioner, Panipat, had been apprising the Financial Commissioner and Principal Secretary, Department of Revenue and Disaster Management, Haryana, that from various mutations entered in the revenue records, it is evident that some influential persons and the Land Mafia, in order to grab the land in collusion with the staff of the Consolidation Department, had got mutations entered wrongly. In the first letter dated 31.1.2003, a request was made by the Deputy Commissioner to the Financial Commissioner that the investigation is required to be got done through State Vigilance Bureau, Haryana. In the subsequent communication, on the basis

of an enquiry conducted by Sub Divisional Officer, Smalkha, Raj Kumar Bhoria, Tehsildar-cum-Consolidation Officer, Samalkha and Kitab Singh, Assistant Consolidation Officer, Karnal, were prima facie found to be guilty. The departmental action against them was suggested.

2. This court had disposed of the aforesaid writ petition vide order dated 17.8.2011, while recording the statement made by learned Deputy Advocate General appearing for the State and directed that the decision be taken on the communications, Annexures P-2, and P-6 to P-8 by the Deputy Commissioner within a period of 90 days from the date certified copy of the order is placed before respondent No. 2, namely, the Director Consolidation, Haryana. The relevant part of the order is extracted below:-

Mr. Gaurav Dhir, learned Deputy Advocate General, Punjab, has fairly stated that without relevant revenue record, consolidation proceedings should not be initiated. He further states that Director, Consolidation, shall take into consideration opinion of the Deputy Commissioner within 90 days.

Without expressing any opinion on the merit of the case, respondent No. 2 is directed to take decision on Annexures P/2, P/6 to P/8, submitted by Deputy Commissioner, Panipat, within 90 days from the date certified copy of this order is placed before him. Meanwhile, further consolidation proceedings in the village shall remain in abeyance.

3. The present contempt petition was filed with the grievance that despite the aforesaid directions issued by this court, no action has been taken by the authorities.

4. After notice was issued in the present contempt petition, in reply an, affidavit of H.S. Malik, Director General, Consolidation of Holdings, Haryana, dated 17.5.2012, was filed. In the reply, the details of correspondence between the various departments on the issue was referred to as if the matter was being thrown from one end to other like a shuttle cock with no responsive decision taken. Considering the tone and tanner and the manner in which the reply was filed, which was a vague, evasive and unsatisfactory, this court on 28.5.2012 passed the following order:-

The respondent has filed reply/affidavit which refers to Chief Secretary's letter dated 8.12.2011 to the State Vigilance Bureau to hold a regular enquiry in the matter.

Reply/affidavit filed by the respondent is totally vague and evasive and is far from satisfactory.

It is apparent from the petitioners' allegations that a Land Mafia duly protected by influential persons, has grabbed 100s of acres of Gram Panchayat land through fabricated documents. The respondent has washed off his hands by referring to a vigilance enquiry on the basis of which some revenue official(s) has/have been charge-sheeted.

Let the Chief Secretary, Haryana, show cause as to why a direction to register an FIR and investigation by some independent agency, be not issued especially when no transparent and fair enquiry/investigation is likely to be held by the State authorities?

5. In response to the aforesaid order, today affidavit of P.K. Chaudhery, Chief Secretary to Government of Haryana, dated 21.9.2012, has been filed in Court, which has been taken on record.

6. In response to the specific issue raised by this court in the order dated 28.5.2012, the Chief Secretary in his affidavit stated that fair and transparent investigation will be conducted by the State authorities as per law at the earliest.

7. As the facts stand today, the issue was brought to the notice of the higher authorities by the Deputy Commissioner, Panipat, while writing letter dated 31.1.2003 stating that certain influential persons and the Land Mafia, in order to grab the Shamlat Deh land of village Nanhera, District Panipat, in collusion with the staff of the Consolidation Department, had got mutations entered wrongly, but for the reasons best known to the authorities, no action was taken. The Deputy Commissioner also sent reminders but with no effective result.

8. In para No. 2 of the affidavit filed today in court, it is mentioned that FIR No. 67 dated 22.8.2008 was registered on same allegations under Sections 419, 420, 467, 468, 471, 120-B IPC at Police Station Bapoli, District Panipat, which is still under investigation, though a period of four years has elapsed.

9. Learned counsel for the State had pointed out that the investigation in the FIR was entrusted to the Chief Minister's Flying Squad, Haryana, by the Director General of Police (CID) vide letter dated 4.8.2010.

10. The manner in which the case is being dealt with and the officers are not being briefed about the status of the case is apparent from the communications, as has been referred to, in the affidavit. It is evident that the office of the Chief Secretary vide communication dated 8.12.2011 had asked the Director, State Vigilance Department, Haryana, to conduct regular enquiry in the matter in view of order passed by this court in CWP No. 23258 of 2010, but no action; was taken when earlier the matter was reported by the Deputy Commissioner. The non-compliance of the order passed in the aforesaid writ petition is the subject matter of dispute in the present contempt petition.

11. The fact that one FIR had already been registered dealing with the same issue and the investigation had been entrusted to the Chief Minister's Flying Squad on 4.8.2010 was not even brought to the notice of the office of the Chief Secretary. The Director, State Vigilance Bureau, in communication dated 8.8.2012, to the Chief Secretary apprised that the investigation in the FIR No. 67 dated 22.8.2008 registered at Police Station Bapoli, with the same allegations, has been entrusted to the Chief Minister's Flying Squad, hence, the enquiry was closed and all the documents were trusted to the Chief Minister's Flying Squad.

12. In the last more than four years, since the FIR was registered originally, till date challan has not been presented. Apparently, no investigation was conducted by the police during the period of two years when the matter remained under investigation with it. Even for more than two years when the matter is with the Chief Minister's Flying Squad, the investigation has not been completed and no challan has been presented. All what is stated in the affidavit filed today is that two accused namely Wakil alias Killu son of Yusuf and Sumdin son of Nias, both residents of Nagla Rai (Uttar Pradesh) have been arrested on 4.7.2012. The non-conclusion of the investigation in the FIR by the Chief Minister's Flying squad is stated to be for the reason that the Consolidation Department is not handing over the record claiming the same to be lost. This cannot be accepted as a good ground to conduct investigation at snail's speed especially when it had already been entrusted to the Chief Minister's Flying Squad more than two years ago. It seems even the Chief Minister's Flying Squad is also feeling helpless in conducting investigation. It is strange to note that even Chief Minister's Flying Squad could not get records from a department of the Government or fix responsibility of the persons who allegedly lost the record, for the reasons best known to it or the effort was to give the issue a decent burial by delaying the matter. The investigation in the FIR which was registered more than four years has not been concluded. Apparently, the reason can be the involvement of some high-ups. Under the circumstances, this court cannot take the statement made by the Chief Secretary in his affidavit on its face value.

13. This is not a case in isolation. Earlier also a similar issue came for consideration before this court in Khushi Ram and Others Vs. State of Haryana and Others, of 2010 Khushi Ram and others v. State of Haryana and others. It was a case in which a PIL was filed in this court seeking quashing of number of orders passed by the Director Consolidation and Consolidation officers vide which prime land in various villages in District Gurgaon was exchanged with the land belonging to various companies and individuals in exercise of powers u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The opening remarks of the Division Bench of this court in the aforesaid case is evident of the working of the office of the Director Consolidation. The same is extracted below:-

The facts of this case, to be narrated and discussed hereinafter, open the pandora box and put a question mark on the act and conduct, efficiency and integrity of the office of Director Consolidation of the State of Haryana exercising powers u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 [for short "the Act"]

14. While setting aside the orders impugned in the aforesaid writ petition, this Court finally observed that the case in hand appears to be a tip of an iceberg as there may be numerous such instances. The Divisional Commissioners were directed to prepare list of all such cases decided in past. The concluding para of the judgment is extracted below:-

Hence, the present writ petition is found to be meritorious and the same is hereby allowed and the impugned orders (Annexure P-7 to P-26) are hereby quashed.

Since we are dealing with a public interest litigation and have found that the Director Consolidation, who happens to be senior officers of the State of Haryana, had passed the impugned orders without jurisdiction about whom an observation has also been made by a learned Single Judge of this Court in CWP No. 15130 of 2009 that "before parting with the order, I have to observe that the land falling in Shamilat Deh that is under the management and control of Gram Panchayat which is required to be used for common purposes is being dealt with by the authorities casually, de hors the statutory provisions and de hors, the interest of the Gram Sabha: One such example has been set up by Mr. Anil Kumar, IAS, Director, Consolidation, Haryana, Panchkula, who, in total abuse of powers and authority vested by law has allowed exchange of land that belongs to the Gram Panchayat", we feel that facts of the present case appears to be a tip of an iceberg as numerous orders might have been passed by the Director Consolidation with regard to the exchange of Gram Panchayat land with the colonizers/builders or even individual persons. We, thus, deem it appropriate to direct all the Divisional Commissioners in the State of Haryana to prepare list of all such cases decided in the past, u/s 42 of the Act, wherein Panchayat land has been ordered to be exchanged with the land of the private parties, while exercising powers u/s 42 of the Act and without specific prior approval of the Government of Haryana much-less the department of Development and Panchayats.

15. Considering the aforesaid factual situation, in my opinion, it is a fit case in which investigation of the FIR and any other allied issue is required to be entrusted to an independent agency namely the Central Bureau of Investigation, Chandigarh Unit. It is expected that a fair investigation shall be conducted in the matter without being influenced of the fact, who is involved. The premier investigating agency would make an effort to wash of the observations made by this court about its functioning in the famous Teachers Recruitment Scam in Chandigarh where this court had to transfer the investigation of the case to Delhi Unit of the CBI and the case pertaining to development of Amusement Park in Chandigarh where the cancellation report submitted by the CBI was not accepted by the Court.

16. Ordered accordingly. A copy of the order be sent to the concerned authority. The record pertaining to the case under investigation with the State authorities be remitted to the Central Bureau of Investigation immediately.

The contempt petition is disposed of.