
(1971) 12 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3303 of 1970

Chanan Singh and others	Vs	APPELLANT
State of Punjab and others		RESPONDENT

Date of Decision : 01-12-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1971) 12 P&H CK 0019

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

Bench : Single Bench

Advocate : Harbhagwan Singh, for the Appellant; Baldev Singh Khoji, for Respondent Nos. 2 to 6 and Nemo, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—This petition under Articles 226 and 227 of the Constitution for quashing the order of the Additional Director Consolidation of Holdings, Punjab, Jullundur, (with powers of the State Government), u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act) must be allowed on the short ground that the impugned order was passed to the prejudice of the petitioners without serving any notice on the petitioners Nos. 1, 4 and 5 and without affording any real opportunity to petitioners Nos. 2 and 3.

2. The five petitioners, who are real brothers, are right-holders in village Thikriwala, tehsil Barnala, district Sangrur. Their khata is stated to be joint. They were satisfied with the repartition scheme framed in the consolidation proceedings of their village. Respondent Nos. 2 to 6 i.e., Gurdial Singh and others, filed objections against the scheme which were dismissed on August 23, 1967. On October 23, 1967, an appeal was filed against Hardial Singh petitioner No. 2, alone. The other petitioners were not impleaded as respondents in that appeal. A copy of that appeal is Annexure "A" to the writ petition. By order dated July 13, 1968 (Annexure "B"), the appeal of Gurdial Singh respondent was

rejected by the Settlement Officer. An application under sub-section (4) of section 21 of the Act was then filed by respondents 2 to 6 against the order of the Settlement Officer. Copy of that application is Annexure "C" to the writ petition. All the petitioners were impleaded as respondents in that application. The Assists it Director, however, rejected that application by his order dated October 8, 1969, (Annexure "D"). Respondents 2 to 6 thereupon filed petition (copy Annexure "E") u/s 42 of the Act before the State Government. The powers of the State Government had been delegated to the Additional Director, Consolidation of Holding, Jullundur. Petitioners have filed as Annexure "F" to the writ petition a copy of the notice which was alleged to have been issued to Mohinder Singh, petitioner, to appear before the Additional Director at 10.15 A.M. at Barnala on July 21, 1970, to pursue the case. According to the averments in the affidavit of Hardial Singh, petitioner, no notice (described as summons in paragraph 11 of the affidavit) of the petition u/s 42 was issued to Gurdev Singh, petitioner No. 5, and notices were ordered to issue only to petitioners Nos. 1 to 4. It has been further deposed in paragraph 13 of Hirdial Singh's affidavit that none of the notices issued to petitioners Nos. 1 to 4 was ever served on any one of them and that none of them was ever informed about the petition u/s 42 having been filed against them. In the same paragraph, Hardial Singh has further sworn that there is no record of service at all on any of the petitioners on the relevant official file and, in fact, they had never been served. It is, however, not disputed that at the hearing of the petition u/s 42, Hardial Singh, petitioner No. 2 was present though it is claimed that he had gone to the Rest House at Barnala for some other purpose and come to know about these proceedings when this case was called. Though the presence of Mohinder Singh, petitioner No. 3, has been recorded in the impugned order, it has been solemnly affirmed by Hardial Singh that, in fact, Mohinder Singh was never present at the hearing of the petition u/s 42. It was in the abovementioned circumstances that this petition was filed by all the five brothers on October 8, 1970, for quashing the order of the Additional Director (Annexure "G") dated July 21, 1970, whereby the Additional Director purported to record an order to which Hardial Singh is claimed to have consented. On the basis of the said alleged consent, the case was remanded to the Consolidation Officer, Bhatinda-II, and it was further observed that "the scheme is amended to the extent if necessary." Since it was urged by the Learned Counsel for the petitioners before the Motion Bench that the impugned order had been passed without any opportunity having been granted to the petitioners (other than Hardial Singh) to be heard, though they were respondents in the proceedings u/s 42, notice of motion of this petition was ordered by the Motion Bench to issue to the respondents on October 15, 1970. On the date for which notice had been issued (November 3, 1970), the Slate did not put in appearance to contest the allegations made by the petitioners. Counsel for respondents 2 to 6, however, appeared and did not deny that all the petitioners had a joint khata during the consolidation. It was orally stated before the Motion Bench that the other petitioners had also been served. Since, however, the State had not filed any return on that point, and the alleged

compromise was also not in writing, the petition was admitted by the Motion Bench (Harbans Singh C.J., and P.C. Jain, J.) on November 3, 1970, after considering the affidavit of Gurdial Singh, respondent, which had been filed in reply to the notice of Motion, in that affidavit also, Gurdial Singh had not categorically stated that the service of notice of the petition u/s 42 had ever been effected on any of the petitioners. He contended himself by stating that the record of the State Government would show that summons had been duly served on the petitioner (not petitioners) and they were given full opportunity to represent their case, Even after the service of notice of the petition on the State, no appearance has been put in on its behalf and no affidavit controverting any of the allegations in the writ petition has been filed. Nor have respondents 2 to 6 filed any further affidavit or return in reply to the rule issued in pursuance of the order of the Motion Bench dated November 3, 1970.

3. The proviso to section 42 of the Act prohibits the State Government from passing any order varying any consolidation scheme or re-partition without (i) giving the parties interested notice to appear and (ii) opportunity to be heard except in specified circumstances, in which this case admittedly does not fall. In the absence of the allegations of the petitioners having been controverted by the State and in view of the vague denial by Gurdial Singh, respondent, I must assume the facts stated in the writ petition to be correct in so far as the service of notice of the section 42 proceedings on the petitioners are concerned. Hardial Singh's presence could not be of any use if he had appeared there by chance without service of any notice on him. According to the law laid down by a Division Bench of this Court (Meher Singh, C.J. as he then was, and Tuli J.) in *Jahaz Khan and another v. The Additional Director, Consolidation of Holdings, Haryana and another* 1970 RLR 574, the issuance of a notice of proceedings u/s 42 of the Act is absolutely necessary. It was further held in that case that if merely a right-holder happens to be present it would not relieve the Director or the Additional Director of the duty to issue notice to him if he is interested in the proceedings before him. It was further held that the opportunity to be heard which is to be afforded to the interested party must be a real opportunity and not an illusory one. In the circumstances of the case before him, I hold that no notice was served on any of the petitioners and that the opportunity afforded to Hardial Singh, and possibly to Mohinder Singh was illusory. It is significant that the alleged compromise was not in writing and even the signatures of Hardial Singh were not obtained on the order wherein the statement of Hardial Singh purports to have been incorporated. The order itself shows that what was originally thought to be a compromise between the parties was not agreed to even by Hardial Singh and he is alleged to have made some of her offer. In any event, even if Hardial Singh had offered to compromise the proceedings, his statement would not bind the other co-sharers as it has not been shown that they had conferred any authority on Hardial Singh to bind them. In similar circumstances, *Grover J. held in Raunak Ram and others v. State of Punjab and others* C.W. No 1393 of 1964, decided on September 17, 1965, that two co-

sharers, who were present before the Additional Director in proceedings u/s 42 of the Act, could not bind the other co-sharers who were not shown to have authorised the two to represent them.

4. Following the Judgment of Grover, J. in Raunak Ram's case and the law laid down by the Division Bench of this Court in Jahaz Khan's case (*supra*), and in view of the mandatory provisions under the proviso to section 42 of the Act, I allow this petition and quash the impugned order of the Additional Director dated July 21, 1970 (Annexure "G"). Respondents 2 to 6 may, if so advised, move the State Government for a re-hearing and re-decision of their petition u/s 42 of the Act, after service of notice of the petition on the petitioners and any other parties interested in the matter and after affording them a reasonable opportunity of opposing the petition. In the circumstances of the case, I make no order as to costs of the proceedings in this Court.