
(1990) 09 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2789 of 1979

Chanan Singh

APPELLANT

Vs

Additional Director C/H Pb.and anr.

RESPONDENT

Date of Decision : 18-09-1990

Acts Referred:

Citation : (1991) PLJ 70 : (1991) 1 RRR 594

Hon'ble Judges : J.S.Sekhon, J

Advocate : Y.K. Sharma, Advocate., Advocates for appearing Parties

Judgement

J.S. Sekhon, J.

1. Though this writ petition, Chanan Singh petitioner seeks quashment of order dated 24.3.1979 Annexure P5 of the Additional Director Consolidation of Holdings, Punjab, inter alia, on the grounds that the petitioner was proceeded exparte without any rhyme and reason although he had sent a telegram besides medical certificate showing his inability to attend the proceedings before the Additional Director, Consolidation of Holdings on 24.3.1979 due to serious ailment as well as on the ground of latter's competency to review the order of his predecessor that he had no power to exercise the delegated powers of the State again and also on the ground of petition being barred by time.

2. The brief resume of facts relevant for disposal of this writ petition is that during consolidation of holdings operation in village Gardhiwala in the year 195657, the Additional Director, Consolidation of Holdings exercising the powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1949 (hereinafter called the Consolidation Act) made certain changes in the area allotted to different right holders as per order dated 6.7.1964. As a result of this order some area including Killa Nos. 27/25/2 and 38/5 and 6, which were initially allotted to Lal Singh and Bahadure Singh respondent Nos. 3 and 4 during consolidation proceedings was given to Chanan Singh petitioner in lieu of his land comprised in Killa No. 63/35. The aforesaid Lal Singh and Bahadur Singh had not challenged the correctness of this order in Civil

Writ Petition No. 2419 of 1961. This writ petition was however, withdrawn by Chanan Singh on an objection that a joint writ petition on behalf of Chanan Singh and Brahm Muni Dass was not maintainable. Thus the petitioner avers that the above referred order of the Additional Director became final and conclusive. In pursuance of that order the official of Consolidation Department changed the possession of the concerned rightholders. Chanan Singh petitioner obtained possession of the entire area including Killa Nos. 27/25/2 and 38/5 and 6. The petitioner further avers that he remained in cultivating possession of the area till date. In the meanwhile vide sale deed dated 7.1.1965, aforesaid Lal Singh and Bahadur Singh sold their land including the land comprised in Killa Nos. 27/25/2 and 38/5 and 6 along with some other area to Pritam Singh. Aforesaid Pritam Singh as per the petitioner got his name recorded in the cultivation column in the girdawari of some crops in collusion with Patwari although the petitioner remained in cultivating possession of the same. The petitioner further avers that no entry was made in the record of the Consolidation of Holdings regarding delivery of possession due to the stay order of the High Court in Civil Writ Petition No. 2554 of 1964 filed by Bachint Singh and others challenging the abovereferred order dated 6.7.1964 of the Additional Director. Pritam Singh the alleged vendee of this land moved an application dated 13.12.1977 under Section 23 of the Consolidation Act, (Annexure P1) before the Consolidation Officer, Jalandhar for delivery of possession of the land in dispute. The Consolidation Officer issued notice to the petitioner on 18.1.1978. Thereafter, on an objection of the petitioner the said application of Pritam Singh was dismissed. Thereafter, on 5.3.1979 the alleged vendee moved an application under Sections 42 and 43 of the Consolidation Act contending that he was aware of the order dated 6.7.1964 passed by the Additional Director and that he came to know of this order for the first time when he made an application to the Consolidation Officer, Jalandhar for delivery of possession. Notice given by the Additional Director on this application for appearance on 24.3.1979 at Hoshiarpur was served upon the petitioner 21.3.1979 in the evening when the petitioner had gone to the Clinic of Hakim Krishan Mittar in order to procure medicine because he was suffering from high fever and acute stomach pain. However, Hakim's treatment did not give any relief and on the following day the petitioner was taken to Government Hospital of Garhdiwala for treatment and on 24.3.1979, the petitioner was totally unable to move about due to seriousness of his illness and as such he was not able to attend the hearing of the case before the Additional Director. The petitioner then sent a telegram to the Additional Director requesting for adjournment in the case. In addition to this, the petitioner also obtained a medical certificate of a doctor from Government Hospital Garhdiwala and the sent the same to the Additional Director Consolidation through Master Harbans Singh who had also to appear before the said officer in connection with his own case on that very day. The petitioner also instructed the aforesaid Harbans Singh to hand over the certificate to O.L. Bahl, Advocate of Hoshiarpur with the request that Shri Bahl may appear before the Additional Director on behalf of the petitioner. The aforesaid Harbans Singh handed over the certificate to the Clerk

of Shri Bahl as the latter had also undergone surgical operation and was unable to appear in the court. The clerk of Shri Bahl produced the Medical certificate before the Additional Director, but the latter did not pay any heed to the medical certificate and refused to adjourn the case the passed order Annexure P5 on the same day. The above referred petition of Pritam Singh was accepted on that very day. In present petition, the petitioner has appended duly attested affidavits of Master Harbans Singh and the Clerk of Shri Bahl, Advocate, Annexures P3 and P4 respectively.

3. In the return filed by Pritam Singh respondent No. 2, it is maintained that Civil Writ Petition No. 1127 of 1979 (Hari Kishan etc. v. State of Punjab) challenging a similar order of Additional Director Consolidation, had already been dismissed by P.C. Jain, J. as he then was holding that no injustice had been caused to the petitioners of that writ petition. It was further averred that in the case in hand, no manifest injustice had been done to the writ petitioner because allotment of Killa No. 63/35 had been originally made as per option of the petitioner himself during the formulation of the consolidation scheme and that vide impugned order, the Additional Director had restored the possession of that very area to the petitioner. It is also stated that the petitioner had made a misrepresentation regarding he having remained in possession of the land in dispute. But on the other hand, it was maintained that the aforesaid Lal Singh and Bahadur Singh the original owners of the land, remained in its possession since the repartition in the village from 195758 till January, 1965 when the answering respondents purchased this land and thereafter it remained in peaceful and continuous possession of the answering respondents till Rabi, 1977 when its possession was disturbed by Chanan Singh petitioner and he filed an application for restoration of possession which has accordingly been ordered by the Additional Director and this land is again in possession of the answering respondents. It was also averred that the land was uncultivable in January, 1965 when the answering respondents purchased it from respondents No. 3 and 4 for consideration and without notice and lot of improvements were made therein by converting from barani banjar kadim to chahi agricultural land. It was further averred that the aforesaid Lal Singh and Bahadur Singh were never served or heard by the Additional Director Consolidation while passing order dated 6.7.1964 and this order was not implemented visavis the writ petitioner and respondents No. 3 and 4. It was also stated that mutation No. 6263 dated 6.7.1967 was sanctioned on the basis of the above referred sale deed in presence of Chanan Singh petitioner who had identified the parties and he did not raise a little finger about the delivery of possession of this land. It was also averred that the petitioner remained in possession of his own land comprised in Killa No. 63/35 right from the year 195758 till today and this fact is reflected in Khasra girdawari Annexure R3. It was further stated that in Civil Writ petition No. 255 of 964 filed by Bachint Singh etc. and decided on 29.9.1967, the abovereferred order of the Additional Director dated 6.7.1964 was set aside as the Additional Director had made changes regarding allotment of land against the provisions of village scheme.

4. I have heard the counsel for the parties besides perusing the record.

5. A Division Bench of this Court in Mohinder Singh and another v. State of Haryana and others, 1970 PLJ 712, in para 7 of the judgment observed as under :

"Moreover, learned counsel could not point out any injustice that had been done to the appellants by passing of the impugned order. They were being given the land which they originally owned. There is no doubt that they wanted to get some other land in lieu thereof, because it was of a very inferior quality. They could not succeed in doing so. No manifest injustice has occurred to them by the order in question and this Court on the writ side does not ordinarily interfere, even if the impugned order is wrong, if it has not resulted in injustice."

In the case in hand also, it is not disputed that Chanan Singh petitioner was allotted land comprised in Killa No. 63/35 on his own option. His conduct in challenging order dt. 6.7.1964 of the Additional Director Consolidation in Civil Writ Petition No. 24 9 of 1964 also shows that at one stage he was feeling agitated as to why the Additional Director had allotted him the land comprised in Killa Nos. 27/25/2 and 38/5 and 6 in lieu of land comprised in Killa No. 3/35. As per his own averments in the petition, he had withdrawn the said writ petition on the objection of the other side regarding maintainability of that writ petition jointly along with Brahm Muni Das. Thus, it is not even the case of Chanan Singh petitioner that he had withdrawn that writ petition being satisfied with the order of the Additional Director dated 6.7.1964. The matter does not rest here as Chanan Singh petitioner is not objecting to sanctioning of mutation on the basis of sale concerning the land in dispute in favour of Pritam Singh vendee on 4.8.1967 as is apparent from the copy of the mutation Annexure R1 because he had identified the parties before the Assistant Collector II Grade and in case he was in actual possession of this very land, he would not have agreed to sanctioning of mutation of the same in favour of Pritam Singh etc. On the other hand, he would have stated before the authorities that the disputed land being in his possession on the basis of order dated 6.7.1964 of the Additional Director, its mutation should not have been sanctioned in favour of Pritam Singh. This conduct of the petitioner supports the contention of the respondents that the order of the Additional Director, Consolidation dated 6.7.1964 was never acted upon. Strangely enough, the petitioner had not placed on record a copy of order of the Additional Director dated 6.7.1964. Thus, the contention of counsel for the petitioner that aforesaid Lal Singh and Bahadur Singh the original owners of the disputed land were duly served in that petition before the Additional Director passed the abovereferred order, is in the air.

6. On the other hand, the perusal of order, Annexure P5 dated 14.3.1979 of the Additional Director reveals that there is a specific finding that order dated 6.7.1964 was passed at the back of Lal Singh etc. The conduct of Lal Singh and Bahadur Singh in selling this land in favour of Pritam Singh vide the sale deed dated 7.1.1965 was also used by the Additional Director in concluding that the abovereferred vendor would not have sold this very land of Pritam Singh vendor

if they had been aware of its allotment to Chanan Singh (present writ petitioner). Thus, under these circumstances, order dated 6.7.1964 of the Additional Director without affording any opportunity to the otherside being violative of rules of natural justice as a matter of fact is nonest in the eye of law and the Additional Director had full powers under Section 42 of the Consolidation Act to review such order and pass a fresh one as it cannot be said that while passing order dated 6.7.1964, the then Additional Director had exercised the powers of the State Government under Section 42 of the Consolidation Act.

7. In view of the abovereferred findings, that order dated 6.7.1964 of the Additional Director was a nullity in the eye of law, there is no question of limitation involved in challenging such order especially when Pritam Singh respondent remained in possession of the disputed land and only felt the necessity when he was ousted by Chanan Singh petitioner therefrom and had to file application Annexure P2 before the Consolidation authorities for restoring possession thereof. When this application was dismissed by the Consolidation Officer only then he felt the necessity of challenging order dated 6.7.1964 of the Additional Director, Consolidation of Holdings.

8. For the foregoing reasons, there being no merit in this writ petition, it is ordered to be dismissed. The parties are, however left to bear their own costs in view of the peculiar circumstances of the case.