
(1981) 07 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3609 of 1970

Chhaju Ram

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-07-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 20, 21, 21(1), 21(2), 21(3)

Citation : AIR 1982 P&H 148

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Judgement

1. Chhaju Ram petitioner is a right-holder in village Mittha Thal, tehsil Bhiwani, which was previously in district Hissar but now in district Bhiwani. Consolidation operations were taken in that village and the scheme of partition was confirmed on 5th of May, 1962 and after completion of repartition, the records were consigned. In repartition, besides other numbers, the petitioner was allowed Khasra Nos. 264, 265 and 270 of which possession was given to him. In the year 1969, the irrigation authorities unauthorisedly started digging through the aforesaid three Khasra numbers allotted to the petitioner and, therefore, he filed Civil Writ No. 2303 of 1969 in this Court to challenge the same. After notice was issued to the State, an affidavit was put in, to the effect that no digging operations had yet been undertaken by the Department and that they had no intention of digging the same till the land was acquired. After the aforesaid affidavit was put in, the counsel for the petitioner pointed out that in fact some part of the land of the petitioner had been dug up and the Department may not interfere when he may try to fill the same and that the Department should pay compensation to the petitioner for digging his land. Keeping the entire matter in view, the following operative order was passed by this Court on 22nd Sept., 1969:--

"In view of the statement of the learned A. G., Haryana, the petitioner is fully,

competent to restore the land to its original position, if any digging has taken place therein, and to seek his remedy for damages against the Department or the individuals who have interfered with his property."

The petitioner again brought the disputed portion under cultivation. A month after the order of this Court, somewhere in Oct., 1969, the Gram Panchayat of village Mittha Thal filed a petition under S. 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act), before the State Government for modification of the consolidation proceedings. In that application, it was pleaded that the extension of Gujrani canal minor should have been provided for in the consolidation scheme which had inadvertently been omitted and prayed that the same be provided now by passing a fresh order. The power of the State Government under S. 42 of the Act was delegated to an Assistant Director who considered the matter and by order dated 11th June, 1970, (annexure "B") came to the conclusion that the canal minor was already in existence through the three disputed Khasra numbers which had been allotted to the petitioner besides other Khasra numbers and ordered many changes in the allotment of Khasra numbers. As regards the petitioner, Khasra Nos, 264, 265 and 270 were withdrawn from him and he was allotted Khasra No. 260 of an equal area. the petitioner again came to this Court in the present writ petition under Arts. 226 and 227 of the Constitution of India to impugn order annexure "B".

2. The grounds of attack pleaded by the petitioner are as follows:--

1. That the repartition was completed in the year 1962 and the records had been consigned and the petition under S. 42, which could be filed within six months, was filed after lapse of seven years and hence was not competent.

2. That it was categorically stated before this Court in the earlier writ petition that no digging operations were being carried out through the three Khasra numbers belonging to the petitioner and if the same would be required by the Canal Department it would be duly acquired. At that stage, it was never the case of the canal authorities that the minor was already in existence. Rather, a reading of the affidavit filed on behalf of the Irrigation Department in the earlier writ petition shows that there was some proposal for extension of the canal minor through the Khasra numbers which ultimately were allotted to the petitioner and, therefore, the very basis of the order annexure "B" that the canal minor was already in existence and water was running through it is erroneous and as such the same cannot be sustained.

3. The second contention deserves to be declined first. The very basis of the order annexure "B" is that the watercourse was running at site and the same should have been kept intact during consolidation. The learned counsel for the petitioner has strenuously urged that the aforesaid basis of the order annexure "B" was wrongly assumed and was against facts and he has invited my attention to the file of C. W. P. 2303 of 1969 and particularly the affidavit by Divisional

Canal Officer, Western Jamuna Canal. A reading of affidavit on the record of the aforesaid writ petition shows that a scheme had been prepared for the extension of the minor and the work of extension had not been started and it was categorically stated in Para 11 as follows:--

"No digging was done by the Department in the land of the petitioner. The work will be started only along the approved alignment after acquiring the land of the petitioner."

If the water-course was also in existence and water was running through it there was no question of carrying out any digging work after acquiring the land of the petitioner. The aforesaid quotation when read long with the other paragraphs of the affidavit of the Divisional Canal Officer, Western Jamuna Canal filed in the earlier writ petition, shows that there was a proposal for the extension of the minor through the land of the petitioner but the canal minor did not pass through the land of the petitioner nor water was running through it. Even before the Division Bench the stand taken by the learned Advocate General which is clear from the copy of the order ultimately passed (Annexure "A") was that neither there was any canal in existence through the land of the petitioner nor any water was running through it. After the petitioner succeeded in earlier petition, it seems that some reports were obtained from the Consolidation Officer that the water was running through the land of the petitioner which fact is clearly contrary to the affidavit of the Divisional Canal Officer filed in the earlier writ petition as also the stand taken before this court in that case. Since no canal minor existed in the three disputed numbers when they were allotted to the petitioner, the question of re-opening the case after seven years did not arise on the ground that the canal minor already existed and water was running through it. Accordingly, I hold that the order of Assistant Director who passed order under S. 42 is clearly erroneous being against facts which were placed before this Court in the earlier writ petition. If the Canal Department wanted to extend the Canal Minor through the land of the petitioner as proposed the only course open was to acquire the land and after paying compensation to him to dig the canal minor. Hence the impugned order annexure "B" deserves to be quashed on this ground.

4. Coming to the first argument of limitation, the learned counsel for respondent No. 3 has invited my attention to a Division Bench decision of this Court in *Haqiqat Singh Vs. The Additional Director, Consolidation of Holdings, Punjab, Chandigarh and Others*, and has urged that whenever a petition u/s 42 is filled against repartition the provision of limitation contained in R. 18 of the Rules framed under the Act is not applicable. A reading of the facts of *Haqiqat Singh's* case (*supra*) shows that a right-holder had not been provided with a path to his qurrah during the preparation of the Scheme or in repartition and later a petition under S. 42 was filed long afterwards and on those facts it was held that the provision of limitation contained in R. 18 would not be applicable. The cases relied upon by the Division Bench also show that the applicant under S. 42 wanted a path to his qurrah which was not provided for either in the scheme or

during the repartition. On facts, the present case is entirely different. Here, in repartition, the petitioner was provided the three disputed khasra numbers and, therefore, whosoever was aggrieved therefrom was entitled to challenge the same either by filing objections or under any of the Section 21(3) or 21(4) as also u/s 42 of the Act. this would bring me to the consolidation of Secs. 20 and 21 of the Act. A reading of S. 20 shows that after a Draft scheme is confirmed, a process of repartition starts under S. 21. Under S. 21(1) the Consolidation officer is to carry out the repartition after obtaining the advice of the land-owners of the estates which has to be published in the prescribed manner in the estate concerned. Within 15 days of the publication of the proposed repartition any aggrieved person can file objections under sub-section (2) before the Consolidation Officer who is to hear the same and pass such orders as he considers proper either by confirming or modifying the repartition. It would be very important to notice here that he will have to pass an order while confirming or modifying repartition whether objections were filed or not. Therefore, the proposed repartition made under S. 21(1) is finally to merge in an order to be passed by Consolidation officer under sub-section (2) which becomes final subject to further appeals under sub-section (3) and sub-section (4) by Settlement Officer or Assistant Director as the case may be who again have to pass orders confirming or modifying the repartition. This again would be subject to a petition under S. 42 to the State government. Therefore, if any change is to be got made in the final repartition made under S. 21(2) it can be in any of the ways, i. e., by filing further appeals under sub-secs. (3) & (4) or directly filing objection under S. 42, as held by this Court in *Rattan v. State of Punjab* (1965) 67 P&H LR 276. Therefore, I am of the confirmed view that an order of repartition finalized under S. 21(2) would be clearly an order within the meaning of R. 18 and if against such an order instead of filing appeal under sub-section (3) and a further appeal under sub-section (4) if directly a petition is filed under S. 42, it can be done only within 6 months of the date of the order passed under S. 21(2) and any petition filed beyond that period would clearly be barred by time.

5. The matter of repartition of holdings or right-holdings of right-holders in the estate is of prime importance so far as Consolidation Act is concerned. That is why S. 21(1) provides that repartition should be proposed after obtaining the advice of the right-holders of the estate. After repartition is proposed, it is published in the estate in the prescribed manner vide which 15 days' time is allowed to the right-holders to file objections to the proposed repartition. In case objections are not received, the Consolidation Officer shall pass an order confirming the repartition. And even in this eventuality it would be an order of the Consolidation Officer within the meaning of R. 18. If objections are filed then the same would be heard and after considering the matter either repartition would be confirmed as it is or would be modified as may be deemed just by the Consolidation officer. If an order passed under S. 21(2) is not to be considered an order but simply the repartition, then it would be open to any right-holder

even after 10/20 years to file a petition under S. 42 to get the repartition changed and if such a cycle is to be allowed then after any number of years any right-holder would be entitled to file a petition under S. 42 and if the State Government under S. 42 would be entitled to entertain the same without limit of time then the repartition made under S. 21(2) would never become final because an order under S. 42 would be maintainable at the instance of the other persons without respect to any times limit. Such a course was never intended under S. 42.

6. It is then urged by counsel for respondent No. 3 that on a reading of *Haqiqat Singh Vs. The Additional Director, Consolidation of Holdings, Punjab, Chandigarh and Others*, Ss. 21(3) and 21(4) against repartition, such orders would be challenged under S. 42 within a period of six months provided in R. 18. But if matter of repartition rests under S. 21(2) only and no appeals are filed under sub-section (3) and (4) then in that case petition under S. 42 can be filed without any limit of time. For that matter, he has invited my attention to the following portion of the judgment of the Division Bench (at p. 208):--

"Further R. 17 of the Rules which deals with the form of the application to be filed under S. 42 of the Act makes it abundantly clear that the bar of limitation has been created only in the context where a party impugns a specific order passed by any of the authorities under S. 21, sub-sections (3) and (4) of the Act. It is for this reason alone that in computing the period of six months, the time spent in obtaining the certified copies of the order passed under S. 21 is to be excluded. This is what has been provided for by the proviso to R. 18 itself."

The first proviso to R. 18 does show that if appeals are filed under sub-section (3) or sub-section (4) of S. 21 then in petition under S. 42 the time spent in obtaining the certified copies of the orders and grounds of appeal shall be excluded. Similarly if against an order confirming or modifying repartition under S. 21(2) a petition is directly filed under S. 42, to my mind, even then under the second proviso to R. 18, the appellant would be entitled to exclude the time spent by him in obtaining certified copy of order of Consolidation officer passed under S. 21(2) confirming or modifying the repartition. so first proviso to R. 18 does not in any way suggest to the contrary and so the decision of the Division Bench to my mind is not correct. Since the petitioner is succeeding in this case on the other point. I do not consider it proper to refer the case to a larger Bench and would content by saying what I have said above. Of course of facts the decision of the Division Bench is correct because in that case no order was sought to be set aside. There the appellant who was entitled to a path had not been provided one either in the Scheme or in repartition. So path could be provided under S. 42.

7. Even if it is assumed that R. 18 would not bar a petition before the State Government under S. 42 of the Act against an order passed under S. 21(2) beyond a period of six months, yet I would be of considered view that if a petition to have repartition re-opened or changed is made after seven years, I

would certainly hold that the State Government would have no power to exercise its jurisdiction under S. 42 unless grave facts or circumstances are brought before it. As noticed on the other point in the earlier part of the judgment, the stand of Consolidation Department before this court in the earlier writ petition was that there was no water-course running through the fields of the petitioner nor it was intended to be dug through till the same was acquired. It would be clearly an abuse of its power now to upset the repartition by recording an erroneous finding that the water-course was already in existence and the water was running and that in repartition the same should have been protect. Therefore, on these facts as have been found before me, I am of the clear opinion that petition under S. 42 after the lapse of seven years would not be competent and the impugned order would clearly be without jurisdiction.

8. For the reasons recorded above, this petition is allowed with costs and the impugned order annexure "B" is quashed, counsel fee being Rs.100/-.

9. Petition allowed.