

(1991) 11 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8 of 1989

Gajjan Singh

APPELLANT

Vs

Additional Director, Consolidation of Holdings, Punjab,
Chandigarh

RESPONDENT

Date of Decision : 01-11-1991

Acts Referred:

Citation : (1993) PLJ 76 : (1992) 1 RRR 480

Hon'ble Judges : Jawahar Lal Gupta, J

Advocate : Shri P.K. Palli, Sr. Advocate., Advocates for appearing Parties

Judgement

Jawahar Lal Gupta, J.

1. A petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter preferred to as "the Act") filed by the petitioner Gajjan Singh was accepted by the Additional Director, Consolidation of Holdings vide orders dated May 12, 1981. A copy of this order is on record at Annexure P.5. Santokh Singh etc., respondent Nos. 33 to 40 in the present petition moved a petition under section 42 of the Act contending that the order dated May 12, 1981 had been passed in their absence and without giving them any notice. Finding that the Pattidars of the Patti were not given any opportunity of being heard, the Additional Director accepted the petition and set aside the order dated May 12, 1981. He ordered the rehearing of the case. It was also directed that "all interested persons be informed by way of Mushtari Munadi in the village." This order was passed on December 14, 1988, which is at Annexure P.6 with the writ petition. Aggrieved by this order, the petitioners have approached this Court through the present writ petition. A few facts may be noticed.

2. The petitioners are the residents and right holders in the revenue estate of Dhanaula Kalan. Consolidation operations in this village were completed in the year 1960. The rightholders were settled on their respective holdings. It is averred that a Khata consisting of the Bachat area that belonged to the

rightholders of the village was not brought under the repartition and was left as such under the proprietorship of Jamla Malkan. It is averred that a petition under Section 42 of the Act was moved by certain righthold. The Bachat area was partitioned amongst the rightholders in proportion to their entitlement in pursuance to the directions given by the Consolidation Officer on April 25, 1972. As a result the petitioners in the said petition under Section 42 of the Act received Certain area of land. It has been further averred that a small area was still left out and was not allotted to anyone as its "Kaymi had not been fixed and it had no Khasra number." The petitioners on coming to know of this position filed a petition before the Additional Director praying that "the Kaymi of the aforesaid khasra number be fixed which would further involve changes effecting several right holders." The petitioners aver that this petition was accepted and the case was remanded to the Consolidation Office by respondent No. 1 with the direction to "correct the Kaymi" after visiting the spot and hearing the concerned parties. A copy of the order passed on September 21, 1978 has been attached as Annexure P.1 with the writ petition. Vide order dated December 8, 1980, the Consolidation Officer fixed and Kaymi and Khasra No. 799/14 measuring 3 Kanals 3 Marlas was carved out and entered as Jumal Mushtarka Malkan in the revenue record. A copy of this order has been produced as Annexure P.2 Thereafter, the petitioners filed a petition under Section 42 of the Act contending that they had been given an area of 2 Kanals 17 Marlas out of the Bachat area at a far off place from their holdings and that they should be allotted the area from the land adjoining their holdings. It was also prayed that a deficiency of 08 Standard Marlas in their holdings may also be made good. It was further pointed out and prayed that the Bachat area measuring 3 Kanals 3 Marlas adjoining the fields of the petitioners and that they may be adjusted in this area. In this petition Zora Singh, a former President of the Municipal Committee and certain other former Municipal Commissioners etc. were impleaded as respondents. A copy of the petition has been produced as Annexure P.3 with the writ petition. On May 12, 1981, only Sant Singh appeared to contest petition. The learned Additional Director who heard the matter, accepted the petition and, as observed above, allowed the claim of The petitioners. It is averred that no one was adversely affected by this order and a such no objection was raised thereto by anyone till November 11, 1988, when respondent Nos. 3 to 40 filed the petition under Section 42 of the Act. This petition having been accepted by the Additional Director vide his order of December 14, 1988 (Annexure P.6), the petitioner have filed this petition to challenge the order. This order has been challenged on various grounds.

3. A written statement has been filed on behalf of some of the private respondents. By way of preliminary objections it has been inter alia averred that by the impugned order (Annexure p.6) only an ex parte order had been set aside and no injustice whatsoever has been caused to the petitioners. It has been further averred that land of the petitioners does not adjoin the land in dispute and that the petition has been filed by suppressing material facts. On merits, it

has been averred that the petitioners were satisfied with the allotment of land made to them and had never challenged the order of Consolidation Officer. It has also been pointed out that the area in dispute is on the road and was "kept separate for the construction of toilets in future". It has been admitted that Khasra No. 799/14 measuring 3 Kanals 3 marlas was carved out and was shown as Jumla Musktarka Malkan. No rightholder of the village even though affected by the order had agitated against it as the area had been left out for the common purpose of construction of toilets. It has been averred that the petition under Section 42 "was hopelessly time barred and the petitioners also failed to put any proof regarding and deficiency as alleged by them. Prior to this petition, Gajjan Singh had made a petition on the basis of which the orders, Annexures P.1 and P.2 were passed but in that petition the petitioners never agitated that any wrong "allotment was made to them." It has been further averred that "the petitioners arrayed respondents only those persons who were their favourites. No rightholder of the Patti was arrayed as a respondent or impleaded as a party. Even the Administrator of the Municipal Committee was not impleaded as a party and deliberately the ExPresident and ExMunicipal Commissioner were made party and who deliberately failed to appear before respondent No. 1 "It has been specifically averred that the persons who had been impleaded as parties were not the rightholders in the land of Patti Bagher Jattan village Dhanaula. It has been further averred that the present respondents who are the real affected persons "were not intimated regarding the pendency of the proceedings." It has also been averred that when the case was taken up, on May 12, 1981, Shri Sant Singh had appeared but he had no authority to appear on behalf of the Mushtarka Malkan of the Patti. He was not even a rightholder of the Patti to which the land in dispute belongs. It has been averred that the petitioners have done everything in the clandestine manner. In pursuance to the order dated May 12, 1981, they had taken the possession on October 10, 1988 and it is only then that the respondents came to know of the order passed by the Additional Director, a copy of which is at Annexure P.5. The petitioners have averred that on immediately coming to know of the order, they had filed a petition under Section 42 of the Act on November 11, 1988. It has been averred that the order at Annexure P.6 is absolutely legal and valid and the various grounds raised by the petitioners have been specifically controverted.

4. A replication has been filed on behalf of the petitioners. It has been averred that the land of the petitioners adjoins khasra No. 799/14 from which an area of 3 kanals 3 marlas has been allotted to them. A copy of the plan has been produced as Annexure P.7 in support of this submission. It has been further averred that the Municipal Committee had nothing to do with the land in dispute and consequently was not required to be impleaded. It has been further pointed out that khasra No. 799/14 had been demarcated for the first time in the year 1980 and soon thereafter the petition under Section 42 of the Act had been filed by the petitioners. Jamabandi for the year 1978/79 has been produced as Annexure P.10 to show that Santa Singh is a rightholder in the revenue estate of

village Dhanaula. It has also been averred that the petitioners had taken over the possession immediately after the order and only the revenue entry was made later on. The averment regarding the reservation of land for the construction of toilets has also been disputed.

5. I have heard Mr. P.K. Palli, learned counsel for the petitioners and M/s Jasbir Singh and Nav Kiran Singh, Advocates for the respondents. Mr. Palli has contended that the order at Annexure P.5 was absolutely legal and fair. It had been set aside on a totally wrong assumption that interested persons had not been impleaded. Some cosharers having been impleaded, the requirement of Jaw was fully satisfied. It was not an ex parte order. It has been further argued that the petition had been filed after an inordinate long delay of six years on November 11, 1988 and the order at Annexure P. 6 was vitiated on that ground alone. Mr. Palli has also contended that in view of the Full Bench judgment in Deep Chandi v. State 1964 PLR 318; the Additional Director had jurisdiction to review his earlier order. On the other hand, Mr. Jasbir Singh, learned counsel, for the respondents, has contended that the affected persons had not been impleaded by the petitioner in the petitions under Section 42 of the Act. Santa Singh or the other persons who had been impleaded as respondents did not own land in the Patti in which the land in dispute is situated. The shareholders of the Patti viz. respondent Nos. 3 to 40 were the interested parties and no order under Section 42 could be passed without hearing them. It has also been averred that the petition under Section 42 had been filed by the petitioners after a long delay and was actually barred by limitation. It has been contended that the application filed by the respondents was in fact not barred by limitation as the petitioners have taken possession of the land in dispute only in the year 1988. A copy of plaint in the suit filed by the present petitioner Gajjan Singh has been produced by him to show that the possession had been taken by him only on October 29, 1988. It has also been pointed out that out of the persons impleaded as parties, some persons were shareholders in Patti Jawanda while the land in dispute is in a different Patti.

67. After hearing the learned counsel for the parties and perusal of the record, I find that the consolidation operations had been completed in the village in the year 1960. The petitioners had filed the petition under Section 42 of the Act in the year 1981. While filing this petition, the rightholders of the Patti in which the land in dispute is situated had not been impleaded as parties. In fact, none of the persons owned any land in the Patti in which the land in dispute is situated. Even Santa Singh, who appeared at the hearing of the petition, did not hold any land in the said Patti. Further, a perusal of the plaint in the suit filed by the present petitioner, Gajjan Singh, shows that the petitioners had taken possession of the land only on October 29, 1988. As such, it is evident that none of the persons, whose interests were likely to be affected had been impleaded as parties in the petition under Section 42 filed by the petitioners. In other words, the order dated May 12, 1981 passed by the Additional Director under Section 42 of the Act was virtually an ex parte order, vizaviz respondent Nos. 3 to 40. In this situation,

respondent Nos. 3 to 40 were entitled to move the Director for the setting aside of an ex parte order. They actually moved the petition under Section 42 on November 11, 1988. If the petitioners had actually taken possession of the land on October 29, 1988, as is evident from a perusal of the plaint, the petition under Section 42 cannot be said to be barred by limitation. In fact, it was moved within about two weeks of the date on which the petitioners had taken possession. Consequently, I am of the opinion that the Additional Director had merely set aside an ex parte order and the petition filed by respondent Nos. 3 to 40 cannot be said to have been filed more than six years after the decision. The two contentions raised by Mr. Palli are consequently rejected.

89. Equally lacking in merit is the contention that the order at Annexure P.6 is violative of the rules laid down in Deep Chand's case (supra). The order at Annexure P. 5 had been passed by the Additional Director without hearing respondent Nos. 3 to 40. In fact, no rightholder from the Patti in which the land in dispute is situate had even been impleaded as a party. The petitioners had, in fact, impleaded such persons, who had no interest in the land in dispute. No evidence has been adduced before me to show that they had an actual existing right in the land. It is, thus, no wonder that none of them, except Santa Singh, had appeared at the hearing. Even Santa Singh had raised no objection. Ostensibly, this was on account of the fact that even he had no interest in the land. In such a situation, the interests of the actual owners of land viz. respondent Nos. 3 to 40 cannot be said to have been represented by Santa Singh. None of the persons, who were likely to be affected having been impleaded, the order, as already observed, was in fact an ex parte order. When a Court or a quasi judicial Authority sets aside an ex parte order, it cannot be said to be reviewing its own order. It is merely setting aside an order which has been passed without hearing a necessary party and was thus vitiated. This is precisely what has been done by the learned Additional Director while passing the impugned order. I am of the view that his action did not amount to a review of the earlier order. In any case, I am of the opinion that the action was just and fair. The case has been merely ordered to be reheard. I am not inclined to exercise my discretion so as to debar respondent Nos. 3 to 40 from being even heard before the land in dispute is taken by the petitioners.

10. I thus find no merit in this petition. It is consequently dismissed. In the circumstances of the case, the parties are left to bear their own costs.