
(1973) 10 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 108 of 1970

Ghena and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 16-10-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 19, 20, 21, 21(2), 21(3)
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 —
Rule 18

Citation : (1973) 2 ILR HP 1123

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B.B. Vaid and Kailash Chand, for Respondents Nos. 2-4, for the Respondent

Final Decision : Allowed

Judgement

D.B. Lal, J.—In this writ petition filed under Article 226 and 227 of the Constitution of India, the Petitioners Ghena and four others have sought for the quashing of the order of the Deputy Commissioner, Bilaspur, dated 23-2-1970, wherein while exercising the powers of the State Government u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act), he has disturbed the re-partition which had otherwise become final. The Petitioners contend, that they are the residents of village Bhera of Tehsil Una (District Kangra) and the Respondents Nos. 2 to 4 are also similarly residents of that village. Their deceased father was one Kala Ram. The State Government of Punjab near about ten years before the date of merger of this area to the State of Himachal Pradesh, decided to consolidate the holdings in the estates of that village. For this a scheme was published under the Act in the manner envisaged by Section 19 and the same was confirmed by the State Government in accordance with Section 20. Before confirmation, all the

objections of the right holders in the estate were duly considered and were taken notice of. Under the scheme thus confirmed, Clause 7 provided for the mode of re-partition that was to be made u/s 21 of the Act. The right holders including the Petitioners and Kalu Ram Predecessor-in-interest of Respondents 2 to 4, were entitled to make reservations so that they could get compact areas for their habitation in the village. In Khasra Nos. 3384/2031, 2022 and 2030, the Petitioners had one-half share while the other half share belonged to Kalu Ram. Since the area of these khasra numbers was contiguous to the residential houses of the Petitioners, they made a reservations of this area so that the same could be allocated to them. This reservation was permitted by the Consolidation Officer. The predecessor-in-title of Respondents 2 to 4 did not raise any objection. After such a repartition the record of rights was prepared and the entry of possession was made in favour of the Petitioners. Sometimes in the year 1962, in this manner, the Plaintiffs were put in possession of the disputed area. Afterwards on 28-10-1968, when couple of years elapsed, Kalu Ram filed a revision petition before the Deputy Commissioner, Bilaspur (Respondent No. 1) u/s 42 of the Act. He contended that he was the sole owner of lands contained in the aforesaid khasra numbers and that the area was wrongly allocated to the Petitioners. For this revision no notice was given to the Petitioners and behind their back the Deputy Commissioner, while exercising the powers of the State Government, set aside the re-partition and instead, allocated the aforesaid land in favour of the Respondents 2 to 4. The Petitioners were totally unaware of these proceedings right from the beginning. Instead of the aforesaid khasra numbers, the Petitioners were allocated another khasra No. 1566 min. which was certainly not a convenient arrangement for them. The said khasra number exists at about three furlongs from their holdings and a stream let intervenes. The said khasra number is also banjar in character. According to the Petitioners the revision itself was not entertainable because it was filed in contravention of Rule 18 framed under the Act, inasmuch as, a revision petition could only be entertained within six months of the date of the order against which it is filed. The Respondent No. 1, while deciding the revision did not take notice of this fact. Neither the Respondents applied for condonation of delay nor did the Respondent No. 1 himself give any reason why he considered that a sufficient cause was made out to extend the period of limitation. In this manner he exercised a jurisdiction not vested in him under law. The Respondents 2 to 4 did not file any objections as envisaged by Sub-section 2 of Section 21 nor did they avail of the remedies of two appeals provided in Sub-sections 3 and 4 of Section 21. Without taking recourse to the filing of objections or appeals as provided in Section 21, and after waiting for a couple of years, they came in revision before the Respondent No. 1 u/s 42. The Petitioners were in peaceful possession but they were disturbed, as the re-partition was cancelled and modified in the manner stated above. The basis of the finding of the Respondent No. 1 was the ownership of Respondents 2 to 4 for the disputed khasra numbers. This basis itself was wrong because one-half of that area belonged to the Petitioners which is clear from the Jamabandi entries. As such the findings were based on no evidence. There was definitely a

non-compliance of Section 42 inasmuch as the Petitioners being aggrieved parties were not informed of the proceedings. As such an opportunity to be heard was denied and a principle of natural justice was violated. On these grounds the Petitioners want that the order of the Respondent No. 1 be quashed and the Respondents be directed not to disturb their possession over the disputed khasra numbers.

2. The Respondent No. 1 has contested the petition by alleging, that the petition was not maintainable due to laches and that the finding of facts could not be disturbed by invoking extraordinary jurisdiction of the Court. It is also pleaded that the Union of India would be a necessary party. It is, however, admitted by Respondent No. 1 that Clause 7 of the scheme did provide for reservation and the Petitioners being right-holders were entitled to get reservation of the disputed khasra numbers which they got in their favour. However, later on it was found that the reservation was wrongly made inasmuch as the Respondents 2 to 4 were better entitled to this area. Therefore, the mistake committed was subsequently corrected by Respondent No. 1 in the proceedings of revision u/s 42. As to the presence of the Petitioners at the time of hearing of the revision it was contended that the order of the Deputy Commissioner indicates that they were present and hence nothing could be inferred in favour of the Petitioners. Kalu Ram was considered appropriate person to get the reservation in his favour. Accordingly a change was made in the scheme of re-partition which was done in accordance with law and the factual position at the spot. It was denied that khasra No. 1566 was at a distance of three furlongs or could prove inconvenient to the Petitioners in any manner. It was admitted that Respondents 2 to 4 did not file any objections or appeals u/s 21 but that did not prohibit them for the remedy provided by revision u/s 42. The Deputy Commissioner was exercising the powers of the State Government and could entertain the revision at any time and should be presumed to have acted within the powers conferred upon him under law. In this manner it was stated that the Petitioners are not entitled to claim any relief.

3. The Respondents 2 to 4 reiterated the stand taken up by the Respondent No. 1. It was contended by them that Kalu Ram was in exclusive possession of the disputed khasra numbers. As such he alone could be validly allotted these khasra numbers. The Petitioners got the reservation in their favour after concealing the true facts and the mistake was subsequently detected and got corrected in a proceeding u/s 42. The proceedings have become final and u/s 44 of the Act a Civil Court is not entitled to entertain any suit or application and whatever the relief the Petitioners can get, they can only get from the State Government or any officer appointed by the State Government under the Act. A substantial justice has been done and even if the revision petition was beyond limitation, the decision could be interfered with by the State Government. These Respondents, therefore, similarly prayed that no relief need be granted to the Petitioners.

4. Before advertng to the points of dispute between the parties on merit, I need

take notice of certain preliminary objections raised by the Respondents. It is contended that the Union of India would be a necessary party. This plea has been taken because formerly Himachal Pradesh was a Union territory. Since it has become a full fledged State with effect from 25-1-1971, it is no longer necessary to implead the Union of India as a party to the petition. The obligation which could be enforceable against the Union of India would now be enforceable against the State Government. Apart from that, the Deputy Commissioner, Bilaspur, had passed the impugned order and therefore, he has been made a party as Respondent No. 1. Being the author of the impugned order he alone was a necessary party. The other Respondents in whose favour the impugned order is made, are also parties to the petition. As to the delay it is not proved in what manner the petition has been delayed. The impugned order (Annexure E) was passed on 23-2-1970 and the writ petition has been filed in September, 1970. Therefore the delay cannot be considered to be inordinate or in any manner unreasonable in the circumstances.

5. The plea regarding Section 44 of the Act is similarly devoid of any merit. It is true that a Civil Court shall not entertain any suit instituted or application made to obtain a decision in respect of any matter which the State Government or any officer, is by the Act empowered to determine, decide or dispose of. But this would not deprive the High Court of its extraordinary jurisdiction under Article 226 and 227 if appropriate grounds are made out to grant a relief under these Articles. Apart from this no Further remedy has been provided in the Act against the decision of the State Government u/s 42. The decision is made final u/s 43 and that further entitles the Petitioners to resort to a remedy under a writ petition. It is of course manifest that the Petitioners have to satisfy appropriate grounds on which such a relief can be granted to them. Therefore, whatever, preliminary grounds have been taken by the Respondents these are devoid of any merit and should not detain the Court in granting the relief.

6. While dealing with the merits of the case reference need be made to the relevant sections of the Act and also to Rule 18 made under the Act. The re-partition is carried out under the Act u/s 21 and its Clause (2) gives a right to a person aggrieved by the re-partition to file objections within 15 days of the publication of re-partition, before the Consolidation Officer. Under Clause (3) of this section any person aggrieved by the order of the Consolidation Officer may file an appeal within one month of that order, before the Settlement Officer (Consolidation). A second appeal is provided under Clause (4) of this section before the Assistant Director of Consolidation against the order of the Settlement Officer. This appeal has to be filed within 60 days of the date of order passed by the Settlement Officer (Consolidation). After the re-partition is finalised, possession is delivered to respective parties u/s 23. u/s 24 when the persons entitled to possession of holdings have entered into possession respectively of the holdings allotted to them, the scheme shall be deemed to have come into force and the possession of the allottees shall remain undisturbed until a fresh scheme is brought into force. Section 42 of course provides for a revision by the

State Government, which may at any time for the purpose of satisfying itself as to the legality or propriety of any order, call for and examine the record of any case pending or disposed of and may pass such order in reference thereto as it thinks fit. In Section 43 except as provided in the Act no appeal or revision shall lie from any order passed under the Act. Rule 18 may be set down in full because the decision of the petition will turn upon this rule:

Rule 18--Limitation for application u/s 42.--An application u/s 42 shall be made within six months of the date of the order against which it is filed:

Provided that in computing the period of limitation the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under Sub-section (3) or Sub-section (4) of Section 21, required to accompany the application shall be excluded:

Provided further, that an application may be admitted after the period of limitation prescribed therefore if the Applicant satisfied the authority competent to take action u/s 42 that he had sufficient cause for not making the application within such period.

7. It is pleaded with great insistence and learning by the learned Counsel for the Petitioners that the Respondent No. 1 totally disregarded the limitation provided under Rule 18 and without getting satisfaction as to the sufficient cause for not making the application within time, he passed the impugned order. The learned Counsel pointed out that failure to take note of the point of limitation involved in Rule 18 and failure to apply its mind as to whether a sufficient cause existed for not preferring the petition within time, would render the exercise of jurisdiction itself illegal. An interference would be sought under Article 227 and also under Article 226. It is abundantly clear that the Respondent No. 1 could entertain the petition even after the expiry of period of limitation but he was to be satisfied that sufficient cause existed for not making the application within such period. In order to know as to whether he applied his mind as to the sufficiency or insufficiency of cause for delay, some indication must come forth from the order itself. A bare perusal of the impugned order (Annexure E) would show that the Respondent No. 1 never considered the point of limitation what to say of giving a finding that a sufficient cause existed for not making the application within time. In this connection learned Counsel for the Respondents pointed out that the Petitioners themselves could have taken this objection regarding limitation which they obviously never did. For this the reply of the Petitioners is that they were not even made aware of the proceedings. The impugned order was passed behind their back. As such there was no occasion for the Petitioners to have raised the question regarding limitation. Therefore, it should be beyond the pale of controversy that the question regarding limitation was neither brought to the notice of the Respondent No. 1 nor did he apply his mind suo moto on such a question. At any rate no finding was recorded as to whether any cause for delay was shown by the Respondents before him nor he ever found for himself such a cause so that he could do away with the prescribed period of limitation. This

would decidedly be an illegal exercise of jurisdiction by the Respondent No. 1.

8. A single Judge of the Punjab High Court in *Deendar and Anr. v. The State of Punjab and Ors.* 1965 PLR 107, page 56 in a similar case, held that the Court would interfere and set aside the order of the revising authority if sufficient cause was not made out and time barred revision petition was entertained. According to the learned Judge erroneous decision on question of limitation would be a decision without jurisdiction and can be questioned under Article 226. In *Shrimati Prativa Bose v. Kumar Rupendra Deb Raikal and Ors.* 1965 SC 540, their Lordships took notice of a question of limitation incorrectly decided by the Court and held that jurisdiction was wrongfully exercised. It was observed that a question regarding jurisdiction resulting in a decision does involve a question of exercise of jurisdiction and interference could be had under revisional powers of the Court. In my opinion the Court in exercise of its power under Article 226 and 227 would similarly interfere, where a case of want of jurisdiction is noticed and an order is made upon a proceeding which was not enter-trainable on a question of limitation. A Full Bench of Punjab High Court in *Gurdial Singh and Ors. v. The State of Punjab and Ors.* 1967 CLJ 602, approved the single judge decision *Deendar and Anr. v. The State of Punjab and Ors.* (supra) and held that Rule 18 of the Act prescribed a period of limitation and the person filing the revision was required to satisfy the Court if sufficient cause existed for not filing the petition within time. An order passed by the authority u/s 42 of the Act would be set aside when knowing it to be barred by time the authority or official proceeds to its disposal on merits without first extending the period of limitation prescribed by the rules. The order was held to be without jurisdiction. Considering the ratio of these cases it is not difficult to hold that the Respondent No. 1 exercised the jurisdiction not vested in "him under law. He entertained a revision petition which "was prima facie time barred and did not give any finding as to whether sufficient cause existed for entertaining it beyond time. In this manner this Court would interfere under Article 226 and 227 and would set aside the impugned order of Respondent No. 1.

9. The Petitioners further contended that no opportunity of hearing was given to them at the time the revision petition was entertained u/s 42. This appears to be so from the very pleadings of the Respondents. In paras 9 and 11 the Petitioners have set out a specific plea that no notice was issued to them nor they were otherwise aware of the proceedings. As such they did not attend the proceedings. The order of the Respondent No. 1 was passed behind the back of the Petitioners. As against these paragraphs of the petition the Respondents never replied, categorically, that the Petitioners were issued any notice or were otherwise informed of the proceedings or were even present at the time of the hearing. The Respondent No. 1 barely slated in reply-to para 9 of the petition that the Respondents were present before the Deputy Commissioner and they were heard and that the Respondents came to know about the order on the very day it was passed. Nothing is stated about the Petitioners. He has, however, denied sub-para (g) of para No. 11 of the petition in which it was contended that

the order was passed behind the back of the Petitioners. It is nowhere stated in the reply of the Respondent No. 1 that the Petitioners were in fact present and the order was made after opportunity of hearing was granted to them. The Respondents 2 to 4 have replied these paragraphs of the petition in a most guarded language. They have mentioned that the perusal of the order of the Respondent No. 1 would show that the Petitioners were represented through their Mukhtiar-Am and further, that there was an unrebuttable presumption that the proceedings were legal and correct, meaning thereby that the Petitioners must be deemed to be present. It was then stated that substantial justice was done in the case of the Petitioners and that their predecessor-in-interest Kalu Ram filed the revision u/s 42 only after he came to know of the previous re-partition. Therefore, the Respondents also never stated that the Petitioners were present either themselves or through their agent at the time of the hearing that was given in the revision. The order of the Respondent No. 1 itself does not indicate that the Petitioners were present because the learned Deputy Commissioner wrote down, that the Petitioners and the Respondents were represented by one Sadhu Ram Mukhtiar Am. It is impossible to believe that the same Mukhtiar Am represented both the Petitioners and the Respondents. It is, therefore, evident from the order itself that either the Petitioners or the Respondents were present and both could not be present at the same time. It is, therefore, prima facie correct to say, that the Petitioners were not given opportunity of being heard which was; a pre-requisite of law before jurisdiction could be exercised u/s 42. The Petitioners were parties interested and notice to appear and opportunity to be heard were, to be given in their interest. This was not done and therefore, Section 42 was not complied with. In this manner again a material irregularity was committed. The principle of natural justice was violated. That would further afford a ground for interference under Article 226.

10. It was contended by the Petitioners that they were already in possession over the entire area from before. This fact is denied by the Respondents. Similarly the facts regarding the situation of the new khasra number allotted to the Petitioners and the inconvenience that is likely to be caused to them, are also denied by the Respondents. In this petition it would be beyond the competence of the Court to enter into these questions of disputed facts. At the same time it is manifest that the Respondents neither filed objections against the re-partition nor did they go in appeals provided u/s 21. It could not be stated that a substantial justice has been done. In a case where statutory law or rule has not been observed, the whole proceeding is to be set aside as being exercised without jurisdiction and a question regarding substantial justice may not even be pertinent. The very basis of the order as indicated in Annexure "E" was the claim of the Petitioner Kalu Ram that he was the owner of the land contained in the disputed khasra numbers. The learned Deputy Commissioner held him to be so and on that basis granted the relief. The Jamabandi entry (Annexure C) on the other hand indicates that Kalu Ram was a co-sharer with the Petitioners. Therefore, the Petitioners had as much right over these khasra numbers as Kalu

Ram could claim for them. The learned Deputy Commissioner failed to take notice of this fact also. This circumstance further strengthens the case of the Petitioners when obviously the order was made without following the procedure laid down in Section 42 and without jurisdiction because the application was not entertainable and the question regarding limitation was not even noticed what to say decided.

11. In this view of the matter the conclusion is inescapable, that the order of the Respondent No. 1 cannot be sustained and must be quashed. The petition is allowed and the impugned order dated 23-2-1970 (Annexure E) of the Deputy Commissioner, Bilaspur, who exercised the powers of the State Government, is quashed.

12. The Petitioners shall also get their costs from the Respondents. Counsel fee to be assessed at Rs. 100/-.