
(1997) 05 P&H CK 0223
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 499 of 1994

Gram Panchayat	Vs	APPELLANT
Director Consolidation of Holdings and Another		RESPONDENT

Date of Decision : 06-05-1997

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 42
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13

Citation : (1997) 116 PLR 719 : (1997) 4 RCR(Civil) 24

Hon'ble Judges : S.C. Malte, J

Bench : Single Bench

Advocate : J.R. Mittal and K.S. Chehal, for the Appellant; M.S. Joshi, for the Respondent

Judgement

S.C. Malte, J.—Petitioner Gram Panchayat has filed this writ petition for relief of quashing the order dated 27.4.1992 passed by the Director, Consolidation, Punjab, Chandigarh.

2. In the course of proceedings for consolidation of holdings under the Punjab Consolidation Act, 1948, land admeasuring 628 standard Killa and 6 standard Maria had been reserved for common purposes. The scheme was thus finalised in 1959. It appears that out of this land, land admeasuring 105 standard kanal and 12 standard marla was earmarked for the income of the Gram Panchayat. About 250 standard kanal area was to be used for the passage. Some portion out of this land was earmarked for school and hospital. It is also appears that an area of 370 standard kanal was considered as "Bachat" land (land remaining after earmarking of utilization). This portion was to be entered in the revenue record in the account of "Khewat" of Zumla Mustarka Malkan". The observations in the impugned order indicate that sometimes in 1984-85 this land was mutated in the name of Gram Panchayat instead of in the account of "Zumla Mustarka Malkan" such an entry was found to have been made without any order to that effect. This is one of the factors that was considered by the Director of Consolidation

while ordering the re-opening of the consolidation scheme which was finalised long back in 1959. Besides that, the consolidation scheme was re-opened on finding that the land earmarked for the school and the hospital had not been used for the said purpose; on the other hand, the school and the hospital had already been constructed on some other land. The Director of Consolidation, therefore, was of the view that the land thus not utilised for the purpose for which it was meant, is available as "Bachat" land and deserves to be appropriated by way of partition among the persons from whom that area was obtained during the consolidation scheme.

3. Initially, the Division Bench of this Court while dealing this matter at the motion stage, dismissed the writ petition by assigning brief reasons. The matter was taken up to the Supreme Court by way of SLP (C) 5989 of 1995. The Supreme Court by order dated 8.12.1995 remanded the case for decision afresh in accordance with law after hearing both the sides and on all the points raised in the writ petition. One of the important points for consideration was whether the petition before the Director of Consolidation, filed by the present respondents was tenable in the light of the provisions of Section 42 of the Punjab Consolidation Act, 1948.

4. The counsel for the petitioner submitted that the respondents have moved the Director of Consolidation of Holdings after about 32 years since the consolidation scheme was confirmed and implemented. It was submitted that such an inordinate delay in filing the petition by itself is enough to deny the relief. It was further submitted that the Director of Consolidation had no jurisdiction to correct an entry in the revenue record, which is the job to be performed by the revenue officers functioning under the Punjab Village Common Lands (Regulation) Act, 1961.

5. On behalf of the respondents, it was submitted that u/s 42 of the Punjab Consolidation Act, 1948, there is no period of limitation for reconsidering the scheme. Further it was submitted that a wrong entry in the revenue record by itself will not be enough to take away the rights of the parties, and the Director of Consolidation was justified in ignoring the wrong mutation entry in the name of the Gram Panchayat. As regards the land earmarked for the construction of school and hospital. It was submitted that these lands have not been used though enough period was allowed for utilization of the land. Moreover, the school and the hospital had been constructed on some other pieces of land. It was submitted that in view of the non-utilization of the land, it was necessary that such land should be made available for partition along the persons from whom that pieces of land was acquired for such purposes.

6. There is no dispute that consolidation scheme under the Act was introduced in the year 1959. The respondent thereafter preferred an application before the Director of Consolidation on 30.9.1991 (Annexure P-2). A period of about 32 years elapsed since the introduction of consolidation scheme. The question obviously would arise whether the consolidation scheme, once concluded, can be

re-opened and reconsidered after such a long span of period. Both the parties have brought my attention to Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948. It would be convenient to reproduce that section for ready reference; which is as follows:-

"42. Power of (State) Government to call for proceedings :- The (State) Government may at any time for the purpose of satisfying itself as to the legality or propriety of (any order passed, scheme prepared or confirmed or repartition made by any officer under this Act), call for and examine the record of any case pending before or disposed of by such officer as it thinks fit:

Provided that (no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard (except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration).

The said provision along with Rule 18 framed under the said Act came to be considered by the Supreme Court in case of The Gram Panchayat Village Kanonda v. Director, Consolidation of Holdings 1990 P.L.J. 213. Rule 18 referred to and considered in that case, is as follows:-

"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) of 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 appellant satisfies the authority competent to take action u/s 42 that he had sufficient cause for not making the application within such period."

7. While considering both these provisions, referred above, their Lordships of the Supreme Court in the above referred ruling observed that the limitation prescribed under the Rule 18 is limited to passing of certain orders, whereas the scope of Section 42 is wider to consider the scheme which was already concluded. Their Lordships concluded by observing as follows:-

"It is undoubted that when there is no limitation prescribed for exercise of the revisional power u/s 42 against the Scheme prepared or confirmed or repartition made, it would be exercised within a reasonable time. What is a reasonable time is always a question of fact depending upon the facts and circumstances in each case. When legislature choose not to fix a particular period of limitation by judicial dicta, it is not permissible to limit to a particular period. The long lapse of time may be a fact for the revisional authority to take into account in the light of the fact and circumstances obtainable in an appropriate case. No absolute or precise period of limitation could be predicted or laid."

8. It may be mentioned that the Supreme Court while remanding the present case has also taken into consideration these observations, and observed that the propriety of exercise of powers u/s 42 in this case should be considered in the light of these observations. The matter, therefore, depend on the existence of the facts that would justify the exercise of such powers. In the context of that, it may be noted that in so far as it pertains to the land reserved for construction of a school and a hospital, undisputed position is that land had not been used for that purpose, but, on the other hand, the school and the hospital has been constructed on other land. The averments made by the respondents in that respect did not seem to have been disputed before the Director of Consolidation. In the impugned order, the Director of Consolidation has observed that the Gram Panchayat had not objected in its written statement regarding the prayer in respect of "Bachat" land not used for common purposes. In my opinion, it would not be unreasonable for these respondents to wait for reasonable time in order to see whether the school and the hospital could be built on the reserved land. Construction of the buildings for the school and the hospital for the villagers would obviously consume some time spent for raising funds, and thereafter for employing agency to construct and the time required for its construction. The only factor that is not clarified in the order and the written statement before the Director of Consolidation pertains to the year in which the hospital and the school were constructed on the land other than reserved land. The time gap between the construction of these buildings and the date of filing the petition before the Director of Consolidation certainly assumes importance in order to ascertain whether the respondents can be blamed for laches in not preferring the application even after considerable time gap between these two events. The Director of Consolidation has not taken into consideration that aspects. Therefore, it is necessary for him to apply his mind to such an aspect and further consider whether the construction of the school and the hospital in some land was enough the requirements of the village, and that there was no need to construct additional buildings in the land reserved for these purposes.

9. In so far as it pertains to the land preferred to by the Director of Consolidation in the impugned order as "Zumla Mustarka Malkart", I find that a wrong revenue entry in the name of Gram Panchayat had been first time made in 1984-85. The counsel for the petitioner was not in a position to state that the observations to that effect by the Director in the impugned order were contrary to the record. He however, brought my attention to certain averments in the writ petition in which he has claimed that land was in the name of Gram Panchayat in the record of rights since 1951-52. Such was a vague statement in the writ petition. It is in clear words stated that the land mentioned as "Zumla Mustarka Malkan" was entered in the name of the Gram Panchayat since prior to 1984-85, and the observations by the Director of Consolidation in that respect were contrary to the record. It, therefore, clearly appears that the Director of Consolidation verified as to whether there was some order passed for affecting such mutation entry. On finding that no such order was forthcoming, he rightly decided to ignore the

same. In my opinion mere wrong entry in the revenue record by itself would not result into taking away the character of the land as Zumla Mustarka Malkan as recorded in the course of consolidation of holdings. The counsel for the petitioner brought my attention to a ruling of Gram Panchayat, Nurpur Vs. State of Punjab and Others, , wherein their Lordships of the Supreme Court observed that the Additional Director of Consolidation had no authority to go into the question whether the land in dispute was "Shamlat Deh" or not. Their Lordships further observed that it is the Director functioning under the Punjab Village Common Lands (Regulation) Act, 1961, who is entitled to consider such an issue. The counsel for the petitioner, therefore, submitted that the Director of Consolidation had no jurisdiction to consider whether the land belonged to the Gram Panchayat, or was a Zumla Mustarka Malkan. That submission did not appeal to me. In the reported case (Gram Panchayat v. State of Punjab) (supra), the dispute was raised by a private person as to whether the land was a "Shamlat Deh". In the present case all that was done was to verify the record to find out that in the course of consolidation, the land was earmarked as "Zumla Mustarka Malkan" but in the course of mutation in the revenue record, first time in 1984-85, that land was shown in the name of the Gram Panchayat. So the exercise was simply to ascertain the mistake. The Director of Consolidation had earmarked upon the exercise whether the land that was earmarked as Zumla Mustarka Malkan in the course of consolidation proceedings could be now considered as a "Bachat" land to some extent, and whether that can be made available for partition among the rightful owners. While performing that exercise, however, he has not made it quite clear as to how he calculated the area of "Bachat" land. The counsel from both the sides were unable to enlighten how the figure of "Bachat" land arrived at by the Director of Consolidation could be verified.

10. In the set of circumstances, I am left with no other alternative but to allow this writ petition by setting aside the order dated 27.4.1992 (Annexure P-1) passed by the Director of Consolidation, Punjab, Chandigarh, and to remand this case to him for reconsideration in the light of the observations made above. Order accordingly. The parties to bear their own costs.