
(2014) 04 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4178 of 1985 (O&M)

Gram Panchayat

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (2014) 175 PLR 479

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Harmeet Singh Grewal, Advocate for the Appellant; J.S. Toor,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.

C.M. No. 4164 of 2014 The application is to permit applicant to be impleaded him as legal representative of Kartar Singh-respondent No. 2 and to defend the writ petition on his behalf.

In view of the averments made in the application, the same is allowed. The applicant is permitted to be impleaded as legal heir of deceased Kartar Singh. Amended memo of parties is taken on record.

C.W.P. No. 4178 of 1985

1. The challenge in the present writ petition is to an order passed by the Additional Director, Consolidation of Holdings, Jalandhar in exercise of the powers conferred u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act"). Respondent No. 2 filed a petition u/s 42 of the Act pointing that there are only 500 acres of land in the revenue estate and 20 acres of land has been reserved for Gram Panchayat by levying a pro rata cut on the right, holders. Such cut is more than the cut permitted as per

the Government instructions. So, therefore, this land should be restored and partitioned amongst the right holders as no compensation has been paid for the same. Such application was allowed by the Additional Director vide the order impugned in the present writ petition.

2. The jurisdiction of the Consolidation Officer in respect of a question, as to whether the land reserved for common purposes during consolidation proceedings by applying pro rata cut, can be dealt with in exercise of the powers u/s 42 of the Act, has been adjudicated upon by a recent Full Bench of this Court in CWP No. 2318 of 2002 titled "Parkash Singh and others v. Joint Development Commissioner, Punjab and others, decided on 08.11.2013. It has been held that the Additional Director Consolidation has no right to decide that pro rata cut has been wrongly applied or that the land is to be partitioned amongst the proprietors. It has been held to the following effect: "We, therefore, hold that:- (a) Consolidation authorities, are tribunals of limited jurisdiction; (b) Consolidation authorities exercise powers of revenue officers, under the 1887 Act, a power to record and update fiscal entries and prepare record of rights; (c) but are not empowered to decide a question of title or vest/divest a party of its title; (d) the only authority empowered to determine a question, whether the land is "Shamilat Deh", between a Gram Panchayat and a private individual was the Civil Court but after enactment of Sections 11, 13 and 13-A of the 1961 Act, the Collector and; (e) if the land is "Jumla Mushtarka Malkan", an appropriate forum.

As a necessary consequence an order passed by the Director Consolidation, u/s 42 of the Consolidation Act holding that the land in dispute vests or does not vest in a Gram Panchayat is an order passed on an illegal assumption or appropriation of jurisdiction rendering the exercise of powers by the Director Consolidation null and void in its inception and in its operation and at best an order passed by a tribunal of limited jurisdiction that is not binding on the proprietary or possessory rights of the Gram Panchayat or a private individual before a Court or a Tribunal statutorily empowered to decide such a dispute."

In view of the aforesaid judgment, the order passed by the Additional Director, Consolidation of Holdings, resorting the land to the proprietors for partition amongst the right-holders is beyond its jurisdiction. Thus, the order dated 30.05.1985 passed by the Additional Director is set aside. The application u/s 42 of the Act is dismissed while allowing the present writ petition. The parties are at liberty to avail such other remedy as may be available to them for redressal of their grievances in accordance with law.