

(2011) 02 P&H CK 0341
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8479 of 1991

Gurmail Singh and Others	Vs	APPELLANT
Additional Director, Consolidation of Holdings and Others		RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21, 21(1), 21(2), 21(3), 21(4)

Citation : (2011) 2 RCR(Civil) 698

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—The contour of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that during the course of consolidation proceedings, in view of the provisions of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred as "the Act"), it revealed that Narain Singh, father of the Petitioners, had 2/7th share in the land bearing Khasra No. 1136/961, but this area was wrongly allotted to other persons, namely Rakesh Devi and Shiv Dutt etc. Sequelly, certain other vital discrepancies, with regard to the allotment of land to Narain Singh, as per his entitlement/category of valuation of land, were also noticed as the area was not correctly attested at the spot, with the result that his major portion was wrongly worked out. Immediately, he raised this objection before the Consolidation Officer (for brevity "C.O."), who observed that he is not competent to attest the area at the spot, after passing the stage of scheme u/s 21(1) and now it can only be corrected u/s 42 of the Act.

2. Thereafter, father of the Petitioners immediately filed a petition u/s 42 of the Act, which was accepted and matter was remitted back to CO for its fresh decision to correct the error by the Additional Director, Consolidation of Holdings

(Respondent No. 1) (for short "ADCH"), by virtue of order dated 28.7.1988 (Annexure P1).

3. In the wake of order (Annexure P1), the CO summoned the parties, inspected the spot in their presence and after hearing them, corrected/amended the scheme and allotted the land to Narain Singh as per his entitlement, by means of order dated 11.8.1989 (Annexure P2), after following the due contemplated procedure in this direction.

4. Aggrieved by the order (Annexure P2), Shiv Dutt son of Sarua Nand filed the appeal u/s 21 of the Act, which was dismissed as well, by the Settlement Officer (for brevity "S.O."), by way of order dated 16.2.1990 (Annexure P3).

5. This is not the end of the matter. Again, Dalip Singh, Dalbir Singh and Prem Singh (Respondent Nos. 2 to 4) and Shiv Dutt (Respondent No. 5) filed two petitions u/s 42 of the Act, which were accepted by the ADCH and the matter was remanded back, mainly on the ground that the C.O. has not conducted the spot investigation rightly, vide impugned order dated 16.1.1991 (Annexure P4).

6. The Petitioners did not feel satisfied and preferred the instant writ petition, challenging the impugned order (Annexure P4), invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia pleading that the ADCH did not have the jurisdiction to pass the impugned order and to set aside the valid orders (Annexures P2 and P3) in exercise of his limited jurisdiction u/s 42 of the Act. The impugned order (Annexure P4) was stated to be cryptic, arbitrary and non-speaking order. According to the Petitioners that ADCH did not have the jurisdiction to directly entertain the petition u/s 42 against the orders (Annexures P2 and P3) passed by the C.O. and S.O. u/s 21 (1) and (2), because the appeal against these orders was maintainable u/s 21(3) of the Act.

7. Levelling a variety of allegations and narrating the sequence of events, in all, the Petitioners claimed that the impugned order is cryptic, non-reasoned, illegal, arbitrary, without jurisdiction and against the statutory provisions of the Act. On the basis of aforesaid allegations, the Petitioners sought the quashment of impugned order (Annexure P4), in the manner depicted hereinabove.

8. The Respondents contested the claim of the Petitioners. The contesting Respondent Nos. 2 to 5 filed their joint written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petition, locus standi and cause of action of the Petitioners. It was pleaded that since the impugned order (Annexure P4) has already been implemented by CO and the appeal u/s 21(3) of the Act against the order dated 13.6.1991 of CO, is pending with the S.O., so, the writ petition is not maintainable. According to the contesting Respondents that the ADCH has rightly examined the matter and legally passed the impugned order. It will not be out of place to mention here that the contesting Respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

9. Controverting the allegations contained in the written statement and reiterating the pleadings of the writ petition, the Petitioners filed the replication. It was further explained that after the remand of the case, the order dated 13.6.1991 passed by the CO was void, ab initio as the same was passed in complete violation of the stay of operation of the impugned order granted in the present writ petition by this Court on 7.6.1991. The Petitioners filed a contempt petition, which was disposed of by this Court on 22.8.1991, vide order (Annexure P5). In pursuance thereof, the CO has already withdrawn the order dated 13.6.1991 passed by him. Thus, no order of C.O. is now in existence after passing the impugned order (Annexure P4). Thus, the Petitioners again prayed for acceptance of the writ petition. That is how, I am seized of the matter.

10. As no body appeared on behalf of contesting Respondents No. 2 to 5 to argue the matter, therefore, having heard the learned Counsel for the Petitioners, learned State counsel, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted for the reasons mentioned hereinbelow.

11. As is evident from the record that during the consolidation proceedings as per the Act, it revealed that father of the Petitioners had 2/7th share in the land bearing Khasra No. 1136/961. This area was wrongly allotted to other persons, namely Rakesh Devi and Shiv Dutt etc. Likewise, certain other vital discrepancies, with regard to the allotment of land to Narain Singh, in view of his entitlement/category of valuation of land, were also noticed. Moreover, the area was not correctly attested at the spot, with the result that major portion of his land was wrongly worked out. He raised this objection before the C.O., who observed that he was not competent to attest the area at the spot after the stage of scheme of allotment u/s 21(1) and it can only be corrected u/s 42 of the Act. In this manner, father of the Petitioners immediately filed a petition u/s 42 of the Act was accepted by the ADCH, by way of order (Annexure P1), which, in substance, is as under:

I have heard the learned Counsel for the Petitioner and examined the record. From the perusal of the order of the C.O. dated 8.6.88 it is apparent that the area cultivated by the Petitioner has not been correctly attested at the spot with the result that his major portion has been wrongly worked out at 5 K -1 M instead of 7 K -8 M. It is quite clear that the Petitioner has been wrongly given area at his A-II major portion instead of A-I major portion. The C.O. has mentioned in the order that he is not competent to attest the area at the spot after 21(1) and this can only be done u/s 42 of the C/H Act. So the petition on this account is accepted and the case is remanded to the C.O. with the direction that he should attest the cultivation of Khasra No. 1136/961 at the spot and if on attestation the contention is found correct, his major portion may be correctly worked out and he may be given area as per provisions of the Scheme. He should also hear the other objections of the Petitioner raised in this petition and decide the case after hearing the parties and examining the record.

12. Sequelly, in pursuance of this remand order, the CO summoned the parties, inspected the spot in their presence and after hearing them, corrected/amended the scheme and allotted the land to Narain Singh as per his entitlement, by way of order (Annexure P2). Dis-satisfied with this order, Shiv Dutt son of Sarua Nand filed the appeal u/s 21 of the Act, which was dismissed as well, by the S.O., vide order (Annexure P3).

13. Aggrieved by the orders (Annexures P2 and P3), the private Respondents No. 2 to 5 filed two petitions u/s 42 of the Act, which were accepted by the ADCH, by virtue of impugned order (Annexure P4), the operative part of which is as under:

After perusing the record on the file, I have come to the conclusion that the Consolidation Officer has not conducted spot investigation rightly and the same should be conducted again. Therefore, in the circumstances, the case is again remanded to the Consolidation Officer in order to investigate the spot again and order taken in the presence of the parties and the order dated 11.8.1989 of the Consolidation Officer and order dated 16.2.1990 of the Settlement Officer are set aside.

14. Thus, it is apparent on the face of the record that the main ground, which appears to have been weighed with the ADCH, while passing the impugned order, was that the CO has not conducted the spot investigation rightly and the same should be conducted again. Here, to me, the ADCH has slipped into deep legal error in this relevant connection and illegally set aside the well reasoned orders (Annexures P2 and P3), without any basis by a single vague line that the CO has not conducted the spot investigation rightly, which is contrary to the record.

15. What is not disputed here is that the CO has categorically mentioned in order (Annexure P2) that he inspected the spot on 8.2.1989 in the presence of the parties and after hearing them, correctly verified the major portion of father of the Petitioners and then accordingly amended the scheme of allotment, in pursuance of order (Annexure P1). The order (Annexure P2) is well reasoned order based on the material on record.

16. Not only that, the matter was re-examined by the SO, who dismissed the appeal of Respondent No. 5 as well, vide order (Annexure P3). Meaning thereby the ADCH has remanded the case in a very casual manner without assigning any cogent ground or material on record, while exercising the limited jurisdiction u/s 42 of the Act. Moreover, the private Respondents No. 2 to 5 could have challenged the orders (Annexures P2 and P3) in appeal u/s 21(4) instead of straightway rushing to ADCH u/s 42 of the Act.

17. There is another aspect of the matter, which can be viewed from a different angle. The argument of learned Counsel for the Petitioners that the impugned order (Annexure P4) is cryptic, non-speaking and against the principles of natural justice, has considerable force. The ADCH ought to have discussed the entire material on record and was legally required to record valid reasons for arriving at a right conclusion, in order to decide the real controversy between the parties in

the right perspective. Every action of such statutory authority must be informed by reasons. The order must be fair, clear, reasonable and in the interest of fair play. Every order must be confined and structured by rational and relevant material on record because the valuable rights of the parties are involved. The reasons, how and in what manner, the orders (Annexures P2 and P3) are not correct, are totally lacking in this case. The impugned order (Annexure P4) is not only speculative, but against the statutory provisions of the Act as well, as discussed hereinabove. Thus, seen from any angle, to me, the impugned order cannot legally be maintained in the obtaining circumstances of the case.

18. In the light of the aforesaid reasons, the instant writ petition is accepted. Consequently, the impugned order (Annexure P4) is hereby quashed in this context.