

(1983) 08 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21 of 1977

Gurmej Singh alias Iqbal Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 08-08-1983

Acts Referred:

Citation : (1984) ILR (P&H) 77 : (1983) PLJ 436 : (1984) RRR 540

Hon'ble Judges : J.M.Tandon, J

Advocate : A.S. Cheema, Advocate, B.S. Khoji, Advocate., Advocates for appearing Parties

Judgement

J.M. Tandon, J.—Gurmej Singh alias Iqbal Singh petitioner is a resident of village Khurshidpur, Tehsil Nakodar, District Jullundur, where proceedings for the consolidation of holdings took place in 195960. The repartition took place in 1960. On December 22, 1975, the Gram Panchayat, Khurshidpur, filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereafter the Act) alleging that before consolidation field No. 1444 was Ghair Mumkin Chhappar and the rain water of the village used to fall in it. During consolidation field No. 1444 was wrongly allotted to the petitioner against the provisions of the scheme which has caused inconvenience to the villagers. The case of the petitioner before the Additional Director was that he has been allotted plot No. 164 which does not contain the old Chhappar comprising field No. 1444. The Additional Director held vide order dated September 8, 1976 (P.2) that field No. 1444 was a part of plot No. 164 and that the same had been wrongly allotted to the petitioner against the provisions of the scheme. The Additional Director consequently ordered that the area of field No. 1444 be kept as Ghair Mumkin Chhappar and the petitioner and his cosharers were given alternative land. The petitioner has assailed the order P.2 in the present writ.

2. The contention of the learned counsel for the petitioner is that the repartition in partition proceedings in village Khurshidpur took place in 1960 and the petition

under section 42 of the Act filed by the Panchayat in 1975 was time barred. The Additional Director did not condone the delay in filing the petition under section 42 of the Act before passing the impugned order. The impugned order is liable to be set aside on this ground. The learned counsel for the Gram Panchayat has contended that the petitioner did not raise objection before the Additional Director that the petition filed under section 42 of the Act was time barred and as such this plea cannot be raised in writ proceedings. Reliance has been placed on *Bhagat Singh v. Additional Director, Consolidation of Holdings, Punjab, Jullundur and others*, 1966 P.L.R. 496.

3. In *Bhagat Singh's* case (*supra*), one of the points urged before the High Court was that the petition under section 42 of the Act had been filed after limitation and the Additional Director had erred in law in entertaining the same. It was observed :

"It is clear from the impugned order that no such point was raised before respondent No. 1. In the absence of that, the petitioner cannot be allowed to raise the same for the first time in these proceedings, especially when it involves questions of fact. Moreover, even if the petition had been filed after the period of limitation prescribed in rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereafter called the Rules), this period could be extended by respondent No. 1, if sufficient cause had been shown for the delay. Since this point was not raised, therefore, this aspect of the matter was considered by him. Under these circumstances, the petitioner cannot be permitted to urge this point now in these proceedings."

4. In *Gurdial Singh and others v. The State of Punjab and others*, 1967 C.L.J. 602 (Full Bench), it was held that the order of the Additional Director, who did not give a finding on the material placed before him that there was good cause for the delay in filing the petition under section 42 of the Act would be without jurisdiction.

5. According to the petitioner the repartition in consolidation proceedings took place in 1960. The Gram Panchayat has averred in the written statement that it is not within their knowledge if the scheme of consolidation was published in October, 1959, and further the repartition in the village was made in 1960. The Gram Panchayat has not categorically denied the repartition having taken place in 1960. The date or order of repartition has also not been indicated. The averment made by the Gram Panchayat is rather evasive and convenient. The fact remains that the averment made by the petitioner in his petition that repartition in consolidation proceedings had taken place in 1960 remains uncontroverted.

6. The repartition in consolidation proceedings having taken place in 1960, the petition filed by the Gram Panchayat under Section 42 of the Act in 1975 was time barred. The Additional Director could assume jurisdiction in deciding this petition by condoning the delay in filing the petition for a good cause. The

Additional Director did not consider the point of limitation at all. In view of the Full Bench decision in Gurdial Singh's case (supra) that unless the Additional Director gave a finding that he was satisfied that there was good cause for the delay the order passed by him in a petition under section 42 of the Act would be without jurisdiction. The impugned order of the Additional Director without condoning the delay cannot be treated *intra vires*.

7. The learned counsel for the petitioner has argued that the point of limitation was raised on behalf of the petitioner by his counsel who appeared before the Additional Director but the later has not taken notice thereof in the order. The contention of the learned counsel for the Gram Panchayat is that no such objection was raised on behalf of the petitioner before the Additional Director. Mr. Ravinder Singh, Advocate, Nakodar had appeared as a counsel for the petitioner before the Additional Director. In the affidavit of Mr. Ravinder Singh placed on the file it has been averred that he did raise an objection before the Additional Director that the petition under section 42 of the Act filed by the Gram Panchayat was time barred and was liable to be dismissed on that ground.

8. The learned counsel for the Gram Panchayat has argued that since the Additional Director has not dealt with the point of limitation in the impugned order it should be presumed that no objection regarding the petition under section 42 of the Act being time barred was raised on behalf of the petitioner. Reliance has been placed on *Highway Motors Private Limited v. The State of Punjab*, 1982 S.T.C. 133. The contention is correct to the extent that an initial presumption is liable to be raised against the petitioner that the point of limitation was not raised on behalf of the petitioner. This presumption is rebuttable and is not conclusive. In view of the circumstances of the case as also the affidavit of Mr. Ravinder Singh, Advocate the initial presumption raised on this point against the petitioner stands successfully rebutted. It would, therefore, be proper to hold that an objection that the petition filed under section 42 of the Act by the Gram Panchayat was time barred was raised before the Additional Director, but for the reasons best known to him he did not take notice thereof in the impugned order. In view of this finding, the ratio of *Bhagat Singh's* case (supra) cannot be made applicable in the instant case.

9. The petition filed by the Gram Panchayat under section 42 of the Act was time barred. The Additional Director did not record a finding that the delay in filing the petition by the Gram Panchayat was for good cause in spite of the fact that an objection has been raised that it was time barred. The impugned order is, therefore, liable to be set aside being without jurisdiction.

10. In the result, the writ petition succeeds and the impugned order of the Additional Director dated September 8, 1976, (P.2) is set aside. No order as to costs.