
(1983) 02 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5734 of 1975

Hardarshan Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 09-02-1983

Acts Referred:

Citation : (1983) PLJ 345 : (1984) RRR 446

Hon'ble Judges : S.S.Kang, J

Advocate : S.C. Kapoor, Advocate., Advocates for appearing Parties

Judgement

S.S. Kang, J.(Oral)

1. Hardarshan Singh and 22 other rightholders of village Moga Mehla Singh, Tehsil Moga, District Faridkot, have filed this writ petition under Articles 226/227 of the Constitution of India for issuing a writ of certiorari, for quashing orders dated 5th April 1972 (Annexure p.2) and 22nd March 1974 (annexure p.3), respectively, passed by the Additional Director, Consolidation of Holdings, Punjab, Chandigarh, and dated 10 June 1975 (Annexure p.4), passed by the Director, Consolidation of Holdings, Punjab, Chandigarh .

2. This petition has arisen in the following circumstances : Balbir Singh son of Mohan Singh alias Bagga Singh owned lands in village Bughipur and Moga Mehla Singh. In 1968 he purchased some land in village Moga Mehla Singh, which adjoins village Bughipur. He made an application under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragementation) Act, 1948 (hereinafter referred to as `the Act") and prayed that he should be allotted land in Killa Nos. 85/13/1, 13/2,14,17,18/2,23/2 and 24, which was shamlat land of Patti Rupa, in accordance with the provisions of the scheme. This application was accepted by the Additional Director, Consolidation of Holdings, on 5th April 1972, and the changes, as desired by Balbir Singh, were made. Some of the petitioners filed a Civil Writ Petition No. 288 of 1973 in this Court and a plea was raised that before passing the order dated 5th April 1972 (copy of which is Annexure P.2, appended to the petition), the Additional Director, Consolidation of Holdings, had

neither summoned the petitioners nor heard them. The writ petition was dismissed with the observations that the petitioners should first approach the Additional Director and raise this grievance before him and if the said officer found that the impugned order had been passed without impleading or summoning the petitioners, he had the power to review the same. In pursuance to this order, the petitioners filed a revision petition under section 42 of the Act before the Additional Director. It was urged that the order dated 5th April 1972, be reviewed, because before passing it they were neither impleaded as parties nor were they summoned and afforded opportunity of being heard.

During the hearing of this application (described as revision) an objection was raised by the counsel of Smt. Gurdev Kaur widow of Balbir Singh, respondent, that Balbir Singh, respondent had died on 16th March 1973 and his successors in interest had not been impleaded as respondents by the petitioners within the prescribed period of 90 days and the application filed by the petitioners had abated. This contention found favour with the Additional Director. He held that though, the factum of death of Balbir Singh on 16th March, 1973, had come to the notice of Hardarshan Singh, petitioner, on 12th December 1973, during the hearing of the application, yet no effort was made to implead the legal representatives of Balbir Singh, within a period of 90 days. So, the application was considered to have abated and was dismissed as such, vide order dated 22nd March 1974 (copy of which is annexure P.3, appended to the petition). The petitioners filed an application for review of this order and the same was dismissed vide order dated 10 June 1975 (copy of which is Annexure P.4, appended to the petition). Aggrieved, the petitioners have filed the present writ petition.

3. Mr. S.C.Kpoor, the learned counsel for the petitioners, has argued that order, Annexure P.2, was passed by the Additional Director, Consolidation of Holdings, in violation of the principles of natural justice, because the petitioners, who are owners of the land, in dispute, had not been impleaded as parties and had not been summoned and heard before passing this order.

4. The petitioners filed an application before the Additional Director for setting aside this order and prayed that he should decide the case afresh after hearing the petitioners. This application had been illegally dismissed on the untenable plea that since legal representatives of Balbir Singh had not been impleaded within 90 days of his death, the application stood abated. He has argued that provisions of Order XXII, Civil Procedure Code, were not applicable to an application filed under section 42 of the Act. In fact, such an application should be treated as "revision", because the State Government has been invested with powers to examine the legality and propriety of any order, scheme et cetera and to pass such orders in reference thereto as it thinks fit. The proceedings in exercise of this power would neither be a suit nor an appeal. The provisions of Order 22 are not applicable even to revision petition. When the matter of the death of Balbir Singh came to his notice, the Additional Director should have

given the petitioners an opportunity to implead the legal representatives of Balbir Singh. He had no powers in law to dismiss this application as having abated.

5. Mr. M.L.Sarin, the learned counsel for the private respondents (Nos.3 and 4) argued that order Annexure P.3 was not passed in a revision petition. The Additional Director had disposed of only application or petition under section 42 of the Act and the provisions under Order 22 Civil Procedure Code were applicable. This argument has not commended itself. The order, Annexure P.3, opens with the observation;

"This revision petition under section 42 of the Act has been filed."

No doubt, in the body of the order, the petition filed by the petitioners has been variously described a petition or application. It cannot be said that such an application will not fall within the expression "revision" as is commonly used before the authorities, exercising jurisdiction under the Act. Moreover, whether the application was a revision or was a petition, will not make any difference. The principles of Order 22, Civil Procedure Code, apply only to the suits and appeals. The application under section 42 of the Act surely does not fall in any two categories. It is neither a plaint nor a memorandum of appeal. It is an application for taking action under section 42 of the Act. In fact the technical rules regarding abatement do not apply to the proceedings under the Act. The provisions of Civil Procedure Code have not been made applicable to the proceedings under the Act.

6. Mr. Sarin then argued that even without reference to the provisions of Order XXII, Civil Procedure Code, it is a fundamental principle of law and fairplay that no order should be passed against a dead person and any order passed against a dead person is void. He has sought support this contention from a Division Bench decision in *Jamadar Sheoji Ram v. Smt. Daulati Bai and others*, 1970 P.L.J. 475. This authority indeed supports the contention of Mr.Sarin . In fact there is no quarrel with this legal proposition. However, Mr. Sarin wanted to extend this principle and wanted to argue that since an order against a dead person was a nullity, so no order could be passed against a person, who has died and if the party, who is obliged to implead legal representatives of the deceased, does not implead them, then it will lead to passing an order against a dead person. According to the learned counsel that could not be the intention of law. This argument is based on a misconception of the contentions raised by the learned counsel for the petitioners.

7. Mr.Kapoor did not argue that any order could be passed to the detriment of estate of Balbir Singh without impleading his legal representatives. He has only argued that his application could not be dismissed when the fact regarding the death of Balbir Singh had come to the notice of the Additional Director, Consolidation of Holdings. It was his duty to see that the legal representatives of Balbir Singh had been brought on the file. If despite his asking, the petitioners had failed to bring on record the legal representatives of Balbir Singh, the Additional Director, could dismiss the revision or petition or application under

section 42 of the Act for non prosecution. However, he could not dismiss the same as having abated.

8. The fact that the petitioners filed an application for impleading the legal representatives of Balbir Singh, deceased, after the dismissal of their application on 22nd March, 1974, by the Additional Director, is of no consequence. This application was misconceived. When the Additional Director had already dismissed the application, there was no occasion for him to implead the legal representatives of Balbir Singh. The contention of Mr. Kapoor that provisions of Order XXII, Civil Procedure Code, are applicable only to suits and appeals is fully borne out by two decisions of this Court. They are Ram Saran Dass Tara Chand v. Ram Richhpal L. Mannu Lal and another, A.I.R. 1963 Punjab 206 and Smt. Dhan Devi and another v. Bakshi Ram and another, A.I.R. 1963 Punjab and Haryana 270. It has been held in both these cases that the provisions of Order XXII, Civil Procedure Code, are applicable to suits and appeals only and they do not apply to the revision petitions.

9. Mr. Sarin has not controverted this proposition of law.

10. Mr. Sarin then argued that the point that the application could not be dismissed as abated, was not raised before the Additional Director. So, it could not be allowed to be raised for the first time in the writ petition. In support of this contention, he has relied upon a Division Bench decision of this Court in Bhagat Singh v. Additional Director, Consolidation of Holdings, Punjab, Jullundur and others, 1966 P.L.R. 496. The Division Bench in that case has held that if a question of limitation had not been raised before the Additional Director, it could not be allowed to be raised in a writ petition impugning that order. The principles regarding raising the plea of limitation are different. The question of limitation, generally have been decided on fact. In the present case, the attack is that the Additional Director had no jurisdiction to dismiss the application as abated. The question of jurisdiction can be raised for the first time in these proceedings. It is now well settled that a question of jurisdiction can be permitted to be raised for the first time in the writ petition. So, this argument is also without merit.

11. It was then argued by Mr. Sarin that the petitioners are in possession of the land, in dispute, for the last more than 50 years and if they are now disturbed, it will lead to grave injustice. On the other hand, if the order is allowed so stand, the petitioners will not suffer any manifest injustices. I have held that the order Annexure P.3 was without jurisdiction and wholly against law. Every legal infraction ends in injustice to the aggrieved party. The petitioners have stated in the petition that they were entitled to the land, in dispute, and the respondents had no right to the same. If they are deprived of their claim, naturally, injustice will be done to them.

12. The point that the petitioners have been in possession of the land for the last five years is, no doubt, a relevant consideration and has to be taken into account while deciding as to whether a writ petition has to be allowed or not. However, it

is not conclusive.

13. In fairness to Mr. Sarin he had raised a preliminary objection that the writ petition was highly belated. The petitioners had sought to impugn orders (Annexures P.2, P.3 and P.4). I have not been impressed by this preliminary objection. The main attack in this writ petition is not against the order, Annexure P.2. This Court had observed that the petitioners could go against the order (Annexure P.2) to the Additional Director, Consolidation of Holdings, and raise their grievances before him. Accordingly, the petitioners made an application before the Additional Director which was dismissed on 22nd March, 1974 (Annexure P.3). Against this order a wholly misconceived application was filed before the Additional Director, Consolidation of Holdings, in which a couple of confused prayers were made. One of them was that legal representatives of Balbir Singh should be impleaded in a case, which had already been decided. It is apparent from the order that this application had been filed on the advice of a learned counsel, because during the hearing of the petition, the petitioners were represented by Shri Dev Paul Kashyap, Advocate. The petitioners are not guilty of inactivity or passiveness during this period. This application had been made on 5th April, 1974, and the same had been dismissed on 10th June, 1975. The writ petition had been filed about three months, thereafter. So, it cannot be said that there has been any necessary delay in filing the writ petition.

14. For the foregoing reasons, I allow this writ petition and set aside the order dated 22nd March, 1974 (Annexure P.3). The proceedings culminating in order dated 10th June, 1975 (Annexure P.4) are wholly misconceived. No application for review of the order dated 22nd March, 1974 was competent. So, whatever stated on merits, the order dated 10th June, 1975 (Annexure P.4) is of no consequence. I remit the case for a fresh decision of the application filed by the petitioners in pursuance of the orders of this Court in accordance with law and after hearing both the parties and any other person, who may be legitimately interested. The name of Balbir Singh son of Mohan Singh alias Bagga Singh is deleted from the array of the respondents, as requested by Mr. Sarin, because no relief is claimed against him. He is entitled to Rs. 200/ as costs from the petitioners. The other respondents are not allowed any costs.

Case remanded.