

(1967) 10 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 381 of 1967

Jang Singh and others

APPELLANT

Vs

Additional Director Consolidation of Holdings Punjab Jullundur
and others

RESPONDENT

Date of Decision : 08-10-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) 10 P&H CK 0049

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; B.S. Shant for Advocate-General (Pb.) for Respondents No. 1 to 3 and Mr. Rajinder Sachar, for Respondents No. 4 to 8, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This petition, under Articles 226 and 227 of the Constitution of India, has been filed by Jang Singh and certain other right-holders of village Kishan Garh, tehsil Mansa, district Bhatinda and is directed against the scheme of consolidation prepared for their village.

2. The scheme of consolidation was published on 30th of September, 1962 and the same was confirmed by the Settlement Officer on 20th of December, 1962. It appears that the consolidation proceedings in the village were stayed in August 1963 by the Additional Director of Consolidation, at the instance of Mst. Joginder Kaur and her minor sons and daughters, respondents, her deceased husband Harmolak Singh being one of the major proprietors of the village. This stay order was later on vacated by the Additional Director in March, 1965. The present writ petition was filed on 18th of March, 1967.

The main objection taken by the Learned Counsel for the petitioners against the scheme was that in 1962 when the scheme was published, the entire land in the village was culturable and in a good condition. During the period of five years

when the consolidation proceedings remained stayed the nature of the land had been considerably changed. There has been water-logging due to which the value of the land had been appreciably reduced. Considerable land had been effected by kallar and Sem and had thus been rendered absolutely useless and no value could be attached to it. Water-logged land had been assessed in the scheme at the value of Annas 8 to Annas 14, whereas now that land had become valueless. If the old scheme, according to the Learned Counsel, was given effect to, the right-holders would be put to a considerable loss. It was, therefore, necessary that a new scheme should be prepared and re-partition effected in accordance with it.

3. In the reply filed by the respondents, these allegations have been denied and it was stated that it was absolutely incorrect that the valuation of the land had undergone any change in the areas in question. It had also been said that no part of the land had become Kallar or Sem or water-logged

4. From the pleadings of the parties, it would be obvious that there was a serious dispute as to the fact whether some land in the village had become water-logged and part of it had been effected by Kallar or Sem after the consolidation scheme was prepared. It may be mentioned that originally the State was not represented, but when the case was placed before me on the last hearing, I asked the office of the Advocate General, Punjab, to contact the authorities concerned and file a written statement. My idea in doing so was that we might know the position of the State Government in this matter. Today the case was again set down for hearing after about two months and the counsel appearing for the State submitted that in spite of their having sent urgent reminders to the Department, the authorities concerned had not cared to send their written statement. In that situation, I have only to depend on the two affidavits filed by the private parties, one by the petitioners and the other by the respondents. As I have said, a dispute regarding facts has arisen on the point in issue between the parties. That being so, the petitioners are not entitled to any relief so far as this ground is concerned. It is noteworthy that the point regarding the valuation of the land was not raised before the Additional Director when he passed the order dated 11th March, 1965 vacating the stay order passed by his predecessor on 16th August, 1963. It is also significant that some of the petitioners had earlier approached this Court (C.W. 2730 of 1955) challenging the order dated 11th March, 1965 passed by the Additional Director and that petition was dismissed in limine on 1st November 1965 by Mehar Singh, C.J. and myself. The ground regarding valuation was not mentioned in that writ petition even.

5. The second objection taken by the Learned Counsel for the petitioners was that 402 Kanals and 13 Marlas of land had been reserved for the income of the Panchayat. This reservation was illegal as held by the Supreme Court in *Bhagat Ram and Others Vs. State of Punjab and Others*,

6. The reply of the respondents on this point was that no such land had been reserved for the income of the Panchayat and the true position was that there

was some Shamlat land in the village which, under the law, had vested in the Panchayat. No land belonging separately to the right-holders had been taken away from them and kept reserved for such income.

7. But even if some land had actually been reserved for the income of the Panchayat, we are informed that instructions have been issued by the Government of Punjab to all the consolidation authorities that the schemes should be brought in conformity with the rule of law laid down in the Supreme Court ruling in Bhagat Ram's case. No separate directions are, therefore, necessary to be given in this regard.

8. The third objection mentioned by the Learned Counsel for the petitioners was that at the time when the consolidation scheme was published, there was no drain passing through the village, although there was a proposal for the construction of such a drain. Now the drain had been completed and it passed through the village. Due to that drain, the Rastas (paths) and the village roads, which had been provided in the scheme, had all been disturbed, inasmuch as some of the paths had come under the drain and the location of most of them needed change because of the said drain. On that ground, according to the Learned Counsel the old scheme was liable to be set aside.

9. The respondents in their written statement had stated that by the passing of the drain in the village, no paths, etc had been disturbed and the allegations made in the petition on that ground were all based on mere imagination of the petitioners. This again becomes a disputed question of fact and cannot be gone into in proceedings under Article 226.

10. The fourth and the last objection mentioned by the Learned Counsel for the petitioners was contained in paragraph 20 of the writ petition, which ran as under:

That the scheme has not been published with the consent of the right holders. There are about 700 right-holders in the village out of which only about 50 of them consented, to the scheme. The scheme being in violation of section 14(2) of the Consolidation Act, is also liable to be set aside.

The reply of the respondents on this point was that the consolidation scheme had been published in accordance with law.

11. The allegations made in paragraph 20, in my opinion, even if true, would not show that there had been any breach of the provisions of section 14 (2) of the Act. Under that sub-section, the scheme had not to be published with the consent of the right-holders. It has nowhere been laid down therein that the consent of all the right holders was necessary. In section 14(2), all that is said is that after the notification u/s 14(1) has been issued, the State Government would appoint a Consolidation Officer who would, after obtaining in the prescribed manner the advice of the landowners of the estate and of the non-proprietors and the Gram Panchayat, prepare a scheme for the consolidation of

holdings in such estate or part thereof as the case might be. There is no question of the publication of the scheme, with the, consent of the right-holders of the village under this sub-section. Besides, if the scheme had not been published in accordance with law, as the allegation of the petitioners is, the cause of action to them accrued when the same was published in 1962. There is no reason why they should have waited for five years to attack the scheme on that ground. This objection, therefore, is pointless.

12. Apart from what has been said above, there are three other reasons why I Would not like to interfere with the scheme. under Article 226 of the Constitution. The first is that the present petition is highly belated. The scheme, as already mentioned above, WAS published on 30th of September, 1962 and confirmed on 20th of December, 1962. The present writ petition was filed in March 1967 i.e. after, more than four years. No. reasonable explanation is forthcoming for approaching this Court after such an inordinate delay. The second is that the, petitioners have not exhausted all the remedies provided to them under the Act before approaching this Court under Article 226 of the, Constitution. u/s 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, they could approach the Settlement Officer for varying or revoking the scheme. u/s 42, they could move the Additional Director for the same relief for which they have come to this Court. Both these remedies were available to them and they have not made use of them before coming to this Court under Article 226. The third reason is that the main objection of the petitioners, as already stated above, was regarding the change in the valuation of the land, after the scheme had been prepared and confirmed in 1962. Assuming for the sake of argument that this allegation was correct, does that afford a ground to the petitioners to approach this Court under Article 226 of the Constitution ? It is undisputed that before a writ of certiorari is issued, the petitioners must prove two things, namely (a) that there was an error of law apparent on the face of the record; and (b) that such error had resulted in manifest injustice to the petitioners. Could it be said that there was any error of law, if the valuation of the land had changed after the confirmation of the scheme ? The remedy for the petitioners to seek redress in that respect was to make an application to the Settlement Officer u/s 36 of the Additional Director u/ s 42 of the Act praying that the scheme should be varied or revoked on that ground. These officers would have then examined the questions of fact and if they were convinced that the allegations made by the petitioners were correct, they could have passed suitable orders in that behalf. These observations equally apply to the third objection of the petitioners regarding the village drain and the Rastas mentioned above, which had also raised a disputed question of fact.

13. In view of what I have said above this petition fails and is dismissed. There would, however, be no order as to costs.