
(1964) 01 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1275 of 1963

Jit Singh and Another

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 02-01-1964

Acts Referred:

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

Citation : AIR 1964 P&H 419 : (1964) 2 ILR (P&H) 88 : (1964) 66 PLR 583

Hon'ble Judges : PC. Pandit, J

Bench : Single Bench

Advocate : M.R Agnihotri and J.N. Kaushal, for the Appellant; H.S. Doabia, Additional Advocate General with Mr. T.S. Doabia and Mr. A.S. Bains for Respondents Nos. 4 to 7, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pandit, J.—This is a petition under Articles 226/227 of the Constitution challenging the legality of the order dated 15th February, 1953 passed by the Additional Director, Consolidation, respondent No. 2, u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act).

2. According to the allegations of the petitioners, they were the khewatdars of village Ismail Pur in tehsil and district Kapurthala. During the course of consolidation proceedings in this village, on 25th May, 1960 they were allotted by the Consolidation Officer wrong kurrahs in lieu of the land previously owned by them. Against this order, they filed an appeal before the Settlement Officer, who vide his order dated 23rd August, 1960 accepted the same and allotted the correct khasra numbers to them. Feeling aggrieved by this order, Malkiat Singh and others, respondents 3 to 7, filed an appeal to the State Government u/s 21(4) of the Act. It was decided by the Assistant Director, Consolidation, to whom the powers of the State Government had been delegated u/s 41 of the

Act. The same was rejected by him on 9th May 1961. 1 hereupon, respondents 3 to 7 filed a revision application to the State Government u/s 42 of the Act. The Additional Director, by the impugned order, modified the order of the Assistant Director and thereby withdrew certain khasra numbers from the share of the petitioners and allotted the same to the respondents. This had led to the filing of the present petition. Learned counsel for the petitioners has submitted that once the Assistant Director, Consolidation, had exercised the powers of the State Government as its delegated u/s 21(4) of the Act, his order became final and was not open to any revision, modification or interference by the state Government under sect on 42 of the Act. The Additional Director, Consolidation, had, thus no jurisdiction to modify the order passed by the Assista it Director.

3. There is merit in this contention. Their Lordships of the Supreme Court in Roop Chand Vs. State of Punjab, have held that when Government delegates its powers under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act to an officer and that officer in pursuant to such delegation hears an appeal and makes an order, the order of the officer is the order of the Government and the Government cannot interfere with it u/s 42 of the Act. After this decision of the Supreme Court, the Punjab Legislature enacted the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act 1962 (No. 23 of 1962) which came into force on 13th December, 1962. The relevant portion of section 11 of this Act is as under:

S. 11. Notwithstanding anything contained in the principal Act, or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, where, at anytime before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962:

(a) the State Government or. an Offifcer to whom powers of the State Government u/s 42. have been delegated, has passed an order against an order of the Assistant Director of Consolidation passed by him under sub-section (4) of section 21 of the principal Act, as a delegate of the State Government, the order u/s 42 shall be, and shall be deemed always to have been, valid and shall not be questioned on the ground that it could not be made under that section against the order of the delegate of the State Government;

* * * *

According to this, all orders passed by the delegates of the State Government u/s 42 of the Act before 13th December 1962 have been validated. The impugned order, however, as already mentioned above was made on 15th February 1963 and, therefore, the same is not saved by this provision.

4. Learned counsel for respondents 3 to 7 submitted that according to section 6 of the Amending Act, the appeal filed by them against the order of the Settlement Officer before the State Government u/s 21(4) of the Act should be

deemed to have been filed before the Assistant Director (Consolidation) and, therefore, the order passed by the State Government u/s 42 of the Act was quite valid.

5. The relevant portion of section 6 of the Amending Act is as follows:

S. 6. In section 21 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:

(4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3), whether made before or after the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, may, within sixty days of that order, appeal to the Assistant Director of Consolidation.

(5) Any appeal against an order of the Settlement Officer (Consolidation), pending under sub-section (4) immediately before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, either before the State Government or any officer to whom the powers of the State Government in this behalf have been delegated, shall be decided by the Assistant Director of Consolidation.

* * * *

A perusal of the above would show that the amended sub-section (4) of section 21 provides that an appeal against an order of the Settlement Officer would lie to the Assistant Director. The amended sub section (5) mentions that appeals, which were pending immediately before 13th December 1962 u/s 21(4) of the Act would be decided by the Assistant Director of Consolidation and not by the State Government. These provisions, therefore, relate to the appeals which were either pending before the commencement of the Amending Act or which had to be filed after 13th December 1962. No provision has, however, been made with regard to the appeals which already stood decided by the delegate of the State Government u/s 21(4) of the Act before the enforcement of the Amending Act. In the present case, the appeal u/s 21(4) of the Act was decided on 9th May 1961, that is, before the commencement of the Amending Act, and consequently, the provisions of section 6, mentioned above, are of no assistance to the respondents. 6. No doubt, the revision u/s 42 of the Act was pending at the time of the commencement of the Amending Act, but section 11 thereof, as already mentioned above, only validates those orders of the State Government u/s 42, which were passed before 13th December 1962. It appears that by oversight no provision had been made in the amending Act for the revisions that were pending before the State Government u/s 42 of the Act and the learned Additional Advocate-General frankly conceded that there was a lacuna in the Amending Act in this respect.

7. The result is that this petition succeeds and the order dated 15th February 1963 passed by the Additional Director u/s 42 of the Act is hereby quashed. In

the circumstances of this case, however, I will make no order as to costs in this proceedings.