

(2000) 12 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9698 of 1997

Joginder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Citation : (2001) 3 LJR 785 : (2001) 2 PLJ 186 : (2002) 1 RCR(Civil) 19

Hon'ble Judges : V.K.Jhanji, J

Advocate : Mr. Vikas Singh, Advocate., Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. In this writ petition filed under Article 226 of the Constitution of India, challenge is to order dated 26.7.1995 (Annexure P2) passed by the Additional Director, Consolidation of Holdings, Punjab (for short the Additional Director) whereby land measuring 235 Bighas 14 Biswas has been ordered to be partitioned between various landowners. Challenge is also to order dated 9.4.1997 (Annexure P3) whereby Director, Consolidation of Holdings, Punjab dismissed the application filed by the petitioners for recalling order dated 26.7.1995.

2. In brief, the facts are that respondents No. 4, 5 and 6 alleging themselves to be rightholders of village filed petition under Section 42 Of the East Punjab Holdings (Consolidation and Prevention Fragmentation) Act, 1948 (for short the Act) before the Additional Director challenging the Scheme of repartition on the ground that they continued to be in possession of land in accordance with their shares prior to 26.1.1950 and the land does not fall within the definition of shamilat land under Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short the 1961 Act). They stated that they are entitled for partition of land according to their respective shares and the proceedings for repartition taken under the Act are wrong. The Additional Director vide order dated 26.7.1995 held that the rightholders continued to remain in possession of land and the mutation transferring the land to Panchayat

was wrong. He accordingly accepted the petition and ordered repartition of land measuring 235 Bighas 14 Biswas among the various rightholders.

3. Petitioners, on coming to know of order dated 26.7.1995, filed petition under Section 42 of the Act before the Additional Director for recalling the order on the ground that the order could not have been passed in their absence because the land was given to them by the Gram Panchayat and they were necessary parties to the petition. The Director dismissed the application filed by the petitioners saying that order dated 26.7.1995 was challenged by the Gram Panchayat in the High Court but the petition was dismissed and Special Leave Petition against the order of the High Court was dismissed by the Supreme Court and, therefore, order dated 26.7.1995 cannot be recalled. Both orders dated 26.7.1995 and 9.4.1997 (Annexures P2 and P3) are being challenged in this writ petition.

4. After hearing the learned counsel for the parties and going through the record, I find that orders dated 26.7.1995 and 9.4.1997 are not sustainable in law.

5. From the reading of order dated 26.7.1995, I find that the question before the Additional Director was whether the land in dispute was Shamilat Deh and as such was owned by the Gram Panchayat or it was owned by the rightholders of the Village. The Additional Director came to the conclusion that only 49 Bighas 8 Biswas of land was required for common purpose whereas area measuring 285 Bighas 5 Biswas was deducted from the share of rightholders. He held that transfer of land measuring 235 Bighas 14 Biswas in the account of Hasab Rasad Rakba Khewat on deduction from the shareholder was without any necessity and, therefore, the same was liable to be partitioned between the shareholders as per their shares. The findings of the Additional Director that despite entry in the Jamabani as Shamilat Deh Hasab Rasad Khewat, land was not Shamilat Deh, cannot be sustained because the Additional Director had no jurisdiction to go into the question whether the land in dispute was Shamilat Deh or not. In this regard, reference may be made to the judgment of Supreme Court in Gram Panchayat village Sidh v. Additional Director, Consolidation of Holdings, Punjab and others, 1997(3) RCR(Civil) 491 (SC) : 1997(1) PLJ 313 which reads as under :

"It is not disputed that consolidation proceedings were completed in the village in the year 195354. It is further not disputed that prior to consolidation proceedings, the entry regarding Khewat No. 78 measuring 1000 Bighas 16 Biswas was made in the Jamabandi as Shamilat Deh Hasab Rasad Raqba khewat. It is also not disputed that after the consolidation, the entry in the revenue record was in similar terms. The Additional Director, Consolidation by the order dated May 1, 1990 changed the mutation entries in the revenue record and distributed part of the land amongst the rightholders. We are of the view that after the enforcement of the Punjab Village Common Lands (Regulation) Act, 1961, the question of ownership could only be decided by the Collector under Section 11 of the Act. Mr. Palli, learned counsel for the rightholders has contended that the area which was Bachat area was distributed amongst the rightholders. It is a question to be decided by the Collector. The right holders

may raise all the points, if they wish to, before the Collector. We, therefore, allow this appeal, set aside the order of the Additional Director dated May 1, 1990 and remand the case to the Collector, District Patiala to decide the case afresh in accordance with law, after hearing the parties. No orders as to costs."

6. Likewise, reference may also be made to the judgment of the Supreme Court in Gram Panchayat village Nurpur v. State of Punjab and others, 1997(3) R.C.R. (Civil) 47 : 1997(1) PLJ 268. As in the case of Gram Panchayat Village Sidh (supra), in the present case too the entry regarding land in dispute was Shamilat Deh Hasab Rasab Rakba Khewat and, therefore, following the two judgments of the Supreme Court referred to above, I am of the view that the Additional Director had no jurisdiction to order partition of the land in dispute.

7. In regard to the contention of learned counsel for the contesting respondents that the order of the Additional Director cannot be challenged by the petitioners because the Gram Panchayat had earlier come to this Court but the petition filed by the Gram Panchayat was dismissed and the order dismissing the writ petition was upheld by the Supreme Court in Special Leave Petition, I do not find any merit.

8. Right from the beginning, it is the case of the petitioners that the Gram Panchayat was mixed up with the rightholders in proceedings under Section 42 of the Act in which order dated 26.7.1995 was passed. Petitioners have specifically averred that the Gram Panchayat failed to bring it to the notice of the Additional Director that the area described as Shamilat Deh in the revenue record was in occupation of a large number of persons who had constructed their houses and shops within the Abadi of town Bhadson. Petitioners were a necessary party to petition under Section 42 of the Act filed by the respondents but were not impleaded as such and, therefore, order passed by the Additional Director is not binding upon them.

9. Accordingly, order dated 9.4.1997 dismissing application of the petitioners for recalling order dated 26.7.1995 cannot be sustained. As a result this writ petition is allowed and orders dated 26.7.1995 and 9.4.1997 are quashed.

10. At the hearing of the writ petition, counsel appearing on behalf of private respondents stated that the Gram Panchayat has filed petition under Section 11 of the 1961 Act before the Collector for declaring title of the land. If it is so, respondents shall be at liberty to join the proceedings filed by the Gram Panchayat and raise all the points, if they wish to, before the Collector.