

(1964) 10 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 12 (sic) 0 of 1964

Kabul Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 20-10-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 10 P&H CK 0041

Hon'ble Judges : Grover, J;Dua, J

Bench : Division Bench

Advocate : Puran Chand, for the Appellant; L.D. Kaushal and R.P. Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—These four writ Petitions (Civil Writ No. 690 of 1963, Civil Writ No. 1249 of 1963, Civil Writ No. 1210 of 1964 and Civil Writ No. 122 of 1964) have been heard together and involving as they do a common question, they are being disposed of together by one judgment.

2. In Civil Writ No. 1210 of 1964, 73 petitioners have approached this Court under Articles 226 and 227 of the Constitution alleging that the total area of their village Dialpur, Tehsil Phillaur, District Jullundur is about 800 Ghamons and there are about 80 land-owners of the said land. In 1940, consolidation of holdings was carried out fully in this village under the provisions of the Consolidation Act of 1936 and the land of every land-owner was brought under consolidation. After the said consolidation, the land owners constructed pucca houses and some on them planted gardens with the result that the value of the property has considerably increased. It is added that after consolidation no further partition in the previous taks has taken place and indeed the previous taks are actually in existence on the spot even today. About two weeks prior to the presentation of the writ petition, the Punjab Government issued a notification ordering fresh consolidation in this village and the Qanungo and Patwari Consolidation have

arrived in the village to prepare fresh scheme of consolidation. The notification, it is further averred has been issued without consulting the land-owners of the village and since no land owner has ever applied for fresh consolidation, the notification is wholly illegal and without jurisdiction.

2. In the return on behalf of the four respondents, it has been asserted in paragraph 8 that the village in question "was consolidated under the co-operative Act in year 1939-40" and in paragraph 5 it pleaded that there has been considerable fragmentation in the village due to inheritance, alienation by sale and other reasons. According to the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948 (hereinafter called the Act) the Government is empowered even of its own motion to take up the consolidation of agricultural holdings and the Government and u/s 14(1) of this Act notified this village for consolidation in June, 1964. The scheme, however, according to the plea, has not yet been prepared. It has further been averred that the present consolidation will prove more beneficial to the petitioners including the rightholders of the village and will consolidate their lands which have been subjected to fragmentation after the earlier consolidation under the Co-operative Act. The pucca houses constructed by the rightholders of the village will, so proceeds the return, be reserved in the name of the owners. The petitioners' pleas of the existence of gardens in the village has been denied. though it has been admitted that a few fruit trees have been planted by the right-holders According to the reply, since the scheme has not yet been published, the question of reservation of land for various common purposes does not arise at the present moment. "Co-operative Act" in the return presumably means the Punjab Co-operative Societies Act, 1912.

3. The learned counsel for the petitioners has very forcefully urged that the plea taken by the respondents that the land in the village has been subjected to fragmentation after the earlier consolidation of 1940 is wrong and factually incorrect. The counsel complains that in the return no facts have been mentioned and no information has been given as to in what circumstances and how much fragmentation has taken place during the last 20 or 35 years.

4. In any opinion, the question whether or not there has been fragmentation of holdings in this village cannot be gone into by this Court in the present proceedings. It is indisputable that this Court would ordinarily refrain from holding an enquiry into disputed facts in proceedings under Articles 226 and 227 of Me Constitution. The plea that the notification is bad because the State Government has not consulted the right-holders in the estate before doing so has also not been seriously pressed, as indeed it is not possible to do so in face of the language of section 14 of the Act.

5. Some argument has been made at the bar on the scope and effect of a Bench decision of this Court in Jagir Singh and others v. The State of Punjab 1. A Bench of this Court in that case upheld the vires of section 14 of the Act and also sustained re-consolidation of holdings under this section, although there had

been a prior consolidation of holdings by Co-operative Societies registered under the Co-operative Societies Act of 1912, under the Punjab Consolidation of Holdings Act No. 4 of 1936 According to Shri L.D. Kaushal, the learned counsel for the State, the decision in Jagir Singh case (1962) 65 P.L.R. 754 completely covers all the four writ petitions before us. The petitioner's learned counsel, however, has maintained that the four cases with which we are concerned are cases in which prior consolidation had taken place under the Consolidation Act of 1936 whereas in the reported case it had taken place under the Punjab Co-operative Societies Act of 1912. The submission appears to me to be incorrect. In Jagir Singh's case as I find from the record of this Court, prior consolidation had been effected 20 years earlier "on co operative basis" and not as is suggested under the Co operative Societies Act. This is clear both from the writ petition as well as from written statement; and then the Co-operative Societies Act does not contain any provision for consolidation of holdings. The consolidation of holdings was provided by the Punjab Consolidation of Holdings Act No. IV of 1936 which contemplated consolidation on voluntary basis there being no provision for compulsory consolidation as is the scheme of Punjab Act 50 of 1948. The distinction sought by the learned counsel for the petitioner does not exist and the ratio of the Bench decision in Jagir Singh's case 1 would clearly seem to cover the present case as well. It is noteworthy that no attempt has been made to question the correctness of the earlier Bench decision.

6. In the result, this petition fails and is hereby dismissed but without costs.

7. No separate arguments were addressed in the other connected petitions and it is conceded that they would stand or fall with this writ petition. Accordingly those writ petitions also fail and are dismissed with no costs.

Grover, J.

I agree.