
(2000) 09 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4106 of 1999

Kaka Singh

APPELLANT

Vs

Additional Director of Consolidation, Punjab

RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 6

Citation : (2001) 4 RCR(Civil) 14

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. Naresh Prabhakar, for the Appellant; Mr. S.N. Chopra, Mr. P.K. Gupta and Mr. J.S. Bandhowal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—C.W.P. Nos. 4106 and 6208 of 1999 have been listed together for hearing. Learned Counsel have referred to the facts in C.W.P, No. 4106 of 1999.

2. The two petitioners claim to be members of the Scheduled Castes. They complain that the order passed by the Additional Director Consolidation on March 29, 1996, a copy of which has been produced as Annexure P1 with the writ petition, is contrary to regulation 6 of the Punjab Village Common Lands (Regulation) Rules, 1964. This claim has been made on the ground that being the members of the Scheduled Castes they have a right to take land on lease. The Director by the impugned order has directed the restoration of the land to the members of the village proprietary body. As such, the petitioners have lost the right to take the land on lease. Thus, the petitioners pray that the impugned order be quashed.

3. The respondents contest the claim of the petitioners. It has been inter alia averred that the petitioners have not produced a complete copy of the impugned order. It has been further pointed out that the validity of this order had been challenged by the Gram Panchayat through Civil Writ Petition 5118 of 1996, Gram Panchayat Village Gunia Majra v. Additional Director Consolidation of Holdings, Punjab and others. This writ petition was dismissed by a Division Bench of this court by a speaking order passed on April 11, 1996. Aggrieved by the order of the Division Bench, the Panchayat had approached their Lordships of the Supreme Court through a petition for Special Leave (Civil) No. 15079 of 1996. This petition was dismissed on August 16, 1996. The order passed by this Court was affirmed. That having happened, the respondents maintain that the order should not be interfered with. Still further, it has been pointed out that according to the entries in the revenue record the land has remained in the possession of the proprietors. Panchayat has no right in the land. After the consolidation a mutation had been sanctioned in favour of the Panchayat. This was wholly illegal. The error has been corrected by the impugned order. On these premises, the respondents maintain that the petitioners have no cause of action and that their petition should be dismissed. The petitioners have filed a replication.

4. Counsel for the parties have been heard.

5. Mr. Naresh Prabhakar, learned Counsel for the petitioners, has made a two-fold submission. Firstly, it has been contended that the Additional Director Consolidation could not have given the impugned directions in a petition u/s 42 of the Act. Secondly, it has been submitted that the petitioners were necessary parties as their rights under Regulation 6-A of the Rules have been adversely affected. These two submissions have also been supported by Mr. S.N. Chopra, appearing for the respondent-Gram Panchayat. However, learned Counsel appearing for the other respondents have submitted that the impugned order having already been upheld by their Lordships of the Supreme Court, no interference is called for.

6. The petitioners have not placed a complete copy of the order of the Director on record. However, it is An-nexure R1 with the written statement filed on behalf of the private respondents. A perusal of this order shows that during consolidation a pro-rata cut had been imposed on the holdings of the landowners. This was done to reserve land for use by the village community. However, there was neither any order nor any requirement of law that the land reserved for common purposes has to be transferred to the Panchayat or that it becomes the property of the Gram Panchayat. In fact, even in the revenue record the land was shown to be in the ownership of the village community. However, a mutation was sanctioned in favour of the Panchayat. Before the Panchayat could assert its right the landowners had approached the Director for suitable remedial measures by filing a petition u/s 42 of the Act. The Director found that in the Jamabandi for the year 1950-51 the ownership was entered in favour of the village proprietary body. The proprietors of land in the village were

also the proprietors of the land which was the subject-matter of dispute. Consequently, by the impugned order he gave directions for the restoration of the land to the true owners. Still further, the Panchayat had challenged this order. Its petition was dismissed by the Division Bench. The order passed by the Bench has the approval of their Lordships of the Supreme Court. Thus, it is clear that the order has been upheld by the Apex Court.

7. Mr. Chopra contends that the Director lacks jurisdiction. Thus, the order passed by the Director was a nullity. The objection regarding the validity of the order can be raised even in collateral proceedings. As a proposition of law the contention is unexceptionable. However, in the present case, we are unable to accept the contention that the order passed by the Director was a nullity. The Director had the jurisdiction to entertain a petition u/s 42 of the Act. He was entitled to take cognizance of the dispute between the parties. He had the jurisdiction to deal with the subject-matter of dispute viz. the land regarding which consolidation proceedings had taken place in the village. Still further, it is undisputable that the dispute was only in respect of land which had been pooled together by imposing a pro-rata cut on the holdings of the landholders. In any case, neither the petitioners nor the Panchayat have placed any document on record which may even remotely suggest that the land vested in the Panchayat or was in its ownership. In this situation, we cannot accept the submission that the Director did not have the jurisdiction to deal with the land in dispute.

8. It has also been contended on behalf of the petitioners that proceedings under the provision of the Punjab Village Common Lands (Regulation) Act, 1961 should have been initiated by the respondents if they were wanting possession of the land. We are unable to accept this submission. Since the land is not shown to have vested in the Panchayat, the question of the respondents seeking a remedy under the 1961 Act could not have arisen.

9. In view of the above, we find no infirmity in the order passed by the Additional Director.

10. Mr. Parbhakar contends that the right of the petitioners to take the land on lease has been adversely affected. The contention is misconceived. The petitioners may have a right in the land which is given on lease by auction by the Panchayat. The Panchayat can give only that land on lease which is part of the shamlat land as defined u/s 2(g) of the Act. Nothing has been produced on record to show that the land in dispute was a part of the shamlat land. Thus, the petitioners never had a right in the property in dispute. It cannot be said that the impugned order is contrary to the provisions of Rule 6 of the Rules or that any right of the petitioners has been affected. It may also be mentioned that the impugned order has been passed in March, 1996. The petitioners have challenged it long after the Panchayat had lost its battle upto Apex Court. There is an inordinately long delay in approaching this Court. The order has been challenged after a period of more than three years. Even on the ground of laches the petition deserves to be dismissed.

11 . In CWP No. 6208 of 1999 the only additional argument raised by the counsel for the petitioners is that respondents No. 3 to 5 were not the actual owners of the land which vested in their elders/father etc. who are alive.

12. This makes no difference. They have a subsisting interest in the property belonging to their ancestors. Thus, it makes no difference in the facts and circumstances of the present case.

13. No other point has been raised.

14. In view of the above, we find no merit in these writ petitions. These are, consequently, dismissed.

15. Petitions dismissed.