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(2004) 02 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 983 of 1983

Karnail Singh and another — APPELLANT

Vs

State of Punjab and others — RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Citation : (2004) 2 RCR(Civil) 730

Hon'ble Judges : G.S.Singhvi, J

Advocate : Mr. Onkar Rai, Advocate.Mr. S.S. Behl, Addl. Advocate General, Punjab.For the Respondent Nos. 3 to 7, Mr. Amarjit Markan, Advocate., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.

1. This petition is directed against order dated 9.8.1982 (Annexure P6) vide which Additional Director, Consolidation of Holdings, Punjab (respondent No. 2) allowed the petitioners filed by respondent Nos. 3 to 10 under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, the Act) and restored the position in regard to allotment of land obtaining at the time of repartition in so far as the private respondents are concerned.

2. The facts of the case lie in a narrow compass. After finalisation of the scheme of consolidation of holdings for village Gadhera, Tehsil Sirhind, District Patiala and notification thereof under Section 20 of the Act, the petitioners filed an application in terms of para 25 of the scheme for joint allotment of land. By an order dated 28.3.1981 recorded on the application itself, Consolidation Officer, Sangrur filed the same. However, the objection petition filed by the petitioners under Section 21 of the Act was allowed by the same officer vide his order dated 30.6.1981 (Annexure P3/A). The relevant extract of that order is reproduced below:

"Though the petitioner had made application for the purpose during the Village

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Scheme which is annexed with the Scheme, but the petitioner and his wife had not been provided land at one place whereas the other rightholders of the village had been so given. By considering the area of both these numbers husband & wife at one place no rightholder is adversely affected because Bhajan Singh and family members have been consolidated together as one unit near the area of the petitioner and their II right. There is Bachat land available which is their original area. Thus, the petitioner and his wife''s area can be consolidated here without any difficulty. The land held at S. No. 17 is left as Bachat and in lieu thereof the petitioners are provided land jointly at Sr. No. 62 out of the land of Bhajan Singh and Bhajan Singh is provided land out of the Bachat area which amendment is given hereunder :

S. No.

Name of the owner

Area withdrawn

Area given

1.

Karnail Singh s/o Thakar Singh

32/23 70 411

11/18 64 412 (28 & 40)

S.No. 18

Sarak

24 70 315

19 64 413 (28 & 40)

34//3 90 59

20 18 11

20 416 312

(28 x 31)

05

Kitte : 3. 230 1316 Kitte : 4.

1812 1319

2.

Smt. Tej Kaur daughter of Binder Singh

11/18 80 60

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10//15 80 60

29 80 60

16 73 87

11517

S. No. 87

20 116 17

11 016

Kitte : 3 1716 137

Kitte : 4. 1719 1310

3.

Bhajan Singh s/o Thakar Singh

11//20 46 312

11//18 116 17

Sr. No. 82

19 116 17

20 08 08

10/7 07 05

6 011 08

Kitte : 4.

418 313

4.

Mathura Dass

10//7 07 05

10//6 11 016

No. 110

6 011 08,

Kitte : 2. 018 013

5.

Jumla Mushtarka Malkan

10//18 80 60

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32//2 70 412

16 73 57

24 70 315

6 23 112

24/3 90 59

Kitte : 4. 191 146

Kitte : 3. 230 1596

With the above modifications, the objection petition is accepted partially. Implementation may be affected in the record and on the spot."

3. The appeal filed by respondent Nos. 3 to 10 against the order of the Consolidation Officer was dismissed by Settlement Officer (Consolidation of Holdings), Jullundur.

4. Feeling dissatisfied with the orders of the Consolidation Officer and the Settlement Officer, respondent Nos. 3 to 10 filed two petitions under Section 42 of the Act which were allowed by respondent No. 2. This is clearly evident from the operative portion of the impugned order which is reproduced below :

"I have given careful consideration to the entire matter and I feel that the ends of justice would be duly met if (i) the position as obtaining at the time of repartition is restored in so far as Tej Kaur, Bhajan Singh and others are concerned and (ii) the respondentKarnail Singh is given land of the equal area from the Bachat land which is available in the village according to the consolidation record. In view of the above discussion both the petitions are allowed to the extent indicated above and consequently the following changes are ordered:

1.

Karnail Singh son of Thakar Singh :

Area withdrawn

11/18/1

64

413

19/1

64

413

20/1

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44

33

20/2

20

110

1812

1319

Area given

32/23/2

70

412

24

70

315

34/3/2

90

59

2.

Smt. Tej Kaur d/o Nikka Singh

Area withdrawn

8/18

810

610

19 C

22 middle

712

419

39

211

180

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1310

Area given

11/18/1

64

413

19/1

64

413

20/1

44

33

20/2m

13

017

1715

136

3.

Bhajan Singh son of Thakar Singh

Area withdrawn

8/22 Middle

112

14

11/20/2S

017

013

4.

Jumla Malkan Bachan

Area withdrawn shown as area given at S. No. 1

8/18

80

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60

Area given

19 east

612

211

22 Middle

38

211

22 Min.

712

14

1912

1414"

5. I have heard learned counsel for the parties and carefully perused the record. In my opinion, the impugned order is liable to be quashed because while accepting the petitions fled by respondent Nos. 3 to 10 respondent No. 2 did not apply his mind to the vital issue relating to his jurisdiction under Section 42 of the Act. He allowed the petitions without even recording a finding that the orders passed by Consolidation Officer, Sangrur and Settlement Officer (Consolidation of Holdings), Jullundur were erroneous on facts and in law. In this view of the matter, it must be held that respondent No. 2 committed a jurisdictional error by entertaining the prayer made by respondent Nos. 3 to 10.

6. There is another reason for quashing the order under challenge, namely, that the same does not satisfy the requirement of a speaking order which respondent No. 2 was dutybound to pass as a quasi judicial authority.

7. Therefore, without examining other issues raised by the petitioners. I allow the writ petition and quash order Annexure P6. Respondent No. 2 is directed to decide afresh the petitions filed by respondent Nos. 3 to 10 under Section 42 of the Act. The parties are directed to appear before respondent No. 2 on 8.3.2004.

8. Copies of the order be given dasti on payment of fee prescribed for urgent applications.

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