
(2002) 08 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2303 of 2001

Kartara and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-08-2002

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

Citation : (2002) 4 RCR(Civil) 194

Hon'ble Judges : V.K. Bali, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : P.K. Gupta, for the Appellant; Ashok Aggarwal, Addl. A.G. and Ashok Singla, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioners claiming themselves to be tenants of Gram Panchayat and putting reliance upon decision of the Hon'ble Supreme Court in Swaran Singh and others Vs. State of Punjab and others, are challenging the order dated 15.12.1998 (Annexure P-9), passed by the Financial Commissioner, Revenue Punjab, Chandigarh, dismissing the application filed by them u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act of 1948") seeking setting aside of the order dated 19.9.1995 (Annexure P-1), passed by the Director, Consolidation of Holdings, Punjab, Jalandhar. The Ground of challenge the impugned order (Annexure P-9), is that the petitioners were the interested party within the meaning of the proviso to Section 42 of "the Act of 1948" and were entitled to be heard before passing any order on the application filed by the proprietors against the Gram Panchayat and thus, the order, Annexure P-1, passed by the Director, Consolidation of Holdings is not binding on them and same is liable to be set aside.

2. The petitioners have stated that the proprietors of the Shamlat land, i.e. respondents No. 5 to 12, filed an application u/s 42 of "the Act of 1948" before the Director, Consolidation of Holdings, Punjab, Jalandhar on the ground that the disputed land was shown in revenue record as Shamfat Deh Hasab Rasad Zer Khewat belongs to the right holders of the village and the same was wrongly mutated in the name of the Gram Panchayat as it was never used for any common purpose of the village. The prayer made in the application was that the disputed land be partitioned amongst the right holders of the village being Bachat land. The said application was allowed vide order dated 19.9.1995 (Annexure P-1), by holding that the land in question was Shamlat Deh Hasab Rasad Zer Khewat before consolidation and later on this entry was wrongly changed to Shamlat Deh under the ownership of Gram Panchayat. It was held that the land in question did not vest in the Panchayat, which was having no right to lease out the same for its income. It is the proprietors of the village, who are owners of the land. Accordingly, it was ordered that share of the proprietors be separated from the common land reserved for the common purpose as per the scheme of consolidation. The said order was challenged by the Gram Panchayat by filing writ petition in this Court, which was dismissed in limine on 5.12.1995 (Annexure P-2). The SLP was also dismissed by the Hon'ble Supreme Court vide order dated 7.2.1996 (Annexure P-3). The order (Annexure P-1), passed by the Director, Consolidation of Holdings, Punjab, in favour of the right holders, thus, became final. Consequent upon passing the order (Annexure P-1), the matter went to the Consolidation Officer for making correction in the record and for re-partition of the Shamlat Deh between the right holders, The Consolidation Officer, Mohali, vide his order dated 27.12.1995 (Annexures P-4), ordered modification in the record and re-partition of the land regarding some proprietors. After three years of passing of the aforesaid order, the petitioners filed a petition before the Financial Commissioner, Revenue Punjab, Chandigarh, u/s 42 of the Act of 1948 with a prayer to set aside the order dated 19.9.1995 (Annexure P-1), passed by the Director, Consolidation of Holdings, Punjab and the order dated 27.12.1995 (Annexure P-4), passed by the Consolidation Officer, on the ground that they were the necessary party in the application filed by the proprietors before the Director, Consolidation of Holdings, but neither they were impleaded nor any opportunity of hearing was afforded to them before passing the aforesaid orders. It was their contention that though they were tenants of Gram Panchayat and dispute was between proprietors on the one hand and the Gram Panchayat on the other, but still they were the necessary party and the said application could not have been decided in their absence. Therefore, the aforesaid orders are illegal and are liable to be set aside. The Financial Commissioner, after hearing the petitioners as well as the proprietors, dismissed the petition filed by the petitioners vide order dated 15.12.1998 (Annexure P-9), which has been impugned in the present petition, after more than two years.

3. On issuing notice of the petition, respondents No.6 to 9 filed written statement, contesting the prayer made by the petitioners.

4. Counsel for the petitioners has relied upon Sarwan Singh's case (supra) and contended that the order dated 19.9.1995 (Annexure P-1) and the consequent order dated 27.12.1995 (Annexure P-4) are liable to be set aside because these were passed without providing an opportunity of hearing to the petitioners, who are tenants of the Gram Panchayat and who are legally entitled to be heard in any dispute between the proprietors and the Gram Panchayat.

5. On the other hand, counsel for respondents No.6 to 9, while referring to the preliminary objections raised in the written statement, contended that the petitioners have not approached this Court with clean hands for invoking discretionary jurisdiction under Articles 226 and 227 of the Constitution of India, as they have concealed the material facts. In this regard, it has been pointed out in the written statement that before filing the present petition, the petitioners filed a petition u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act of 1961") on 27.8.1999 before Collector, Patiala, in which they claimed ownership of the land in question. The said petition is still pending. It is further submitted that in those proceedings, the petitioners filed an application for stay of dispossession from the land in question, which was rejected. Against that interim order, an appeal was filed before the Director, Panchayats, which was also dismissed. Counsel for respondents further contended that the petition filed by the petitioners suffers from laches as they are challenging the impugned order after lapse of two years of the passing thereof, without giving any explanation for the same, particularly when in between, they have filed a petition u/s 11 of the Act of 1961 before the Collector.

6. We have considered the submissions made by the learned counsel for the parties. Though there is no dispute, as laid down in Sarwan Singh v. State of Punjab (supra), that the tenants of Gram Panchayat are interested party in a dispute of title between the persons claiming to be right holders and the Gram Panchayat in respect of Shamlat Deh u/s 42 of the Act of 1948. They have also a right to be heard in the proceedings before Director, Consolidation. But keeping in view the facts and circumstances of this case, the impugned order dated 15.12.1998, Annexure P-9, passed by the Financial Commissioner, Revenue Punjab, Chandigarh, does not require any interference in exercise of the discretionary power under Articles 226 and 227 of the Constitution of India for three reasons. Firstly, the petitioners have concealed the material facts and have not, approached this Court with clean hands. On 27.8.1999, they have filed a petition u/s 11 of the Act of 1961, before Collector, Patiala claiming ownership of the land in question and when the said proceeding is still pending, they cannot file the present petition claiming themselves to be tenants in the land in question. The whole claim of the petitioners is based upon their assertion that they are tenants of the Gram Panchayat. Once they assert themselves as owner in a petition u/s 11 of the Act of 1961 before the Collector, they cannot maintain the present petition by taking a reverse stand. When they claim their title on the disputed land and deny the title of their landlord, the right of tenancy is forfeited.

Therefore, the whole base of the petitioners on which they are filing the present petition has eroded. Secondly, when the private respondents filed an application u/s 23(2) of the Act 1948 on 16.5.1996 before the Consolidation Officer claiming possession of the land in question, the petitioners submitted themselves to the jurisdiction of the Consolidation Officer and filed reply and contested the matter. But subsequently, the petitioners filed application u/s 42 of the Act of 1948 for setting aside the order dated 19.9.1995. Thirdly, the petitioners have approached this Court more than two years after passing of the impugned order. They have given no explanation in this regard. Thus, the petition suffers from latches. In view of the above, we find no merit in the present petition and the same is hereby dismissed with no order as to costs.