
(1997) 03 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5317 of 1982

Kirpal Singh alias Pal Singh	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (1998) 118 PLR 665 : (1997) 4 RCR(Civil) 15

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Navneet Kumar Gupta and Ashwani Kumar Gupta, for the Appellant;
M.S. Kang, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The petitioner in this writ petition challenges the orders passed by the Assistant Director, Consolidation of Holdings, Jalandhar, dated April 2, 1981, as confirmed by the order of the Additional Director, Consolidation of Holdings, dated August 31, 1982.

2. Respondent No. 3 filed an application before the Settlement Officer u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act) for providing khal to irrigate his land in killa No. 64/26. That application was dismissed by the Settlement Officer vide his order dated December 21, 1980, on the ground that applicant-respondent No. 3 has been irrigating his land from a tubewell. Against the said order, respondent No. 3 preferred an appeal to the Assistant Director, who allowed the appeal and held that khal has to be provided from the tubewell so as to enable respondent No. 3 to irrigate his land. The petitioner filed an appeal to the Additional Director unsuccessfully. Hence, this writ petition.

3. The record shows that respondent No. 3 filed an application before the Additional Director u/s 42, of the Act for providing khal. In that application, the

Additional Director, Consolidation of Holdings, by his order dated September 13, 1979, directed the Consolidation Officer to examine if there was any provision in the consolidation scheme providing khal to irrigate the lands of respondent No. 3 and if such a provision of khal was provided in the scheme, the Consolidation Officer was directed to pass suitable orders. In pursuance of the directions given by the Additional Director in his order dated September 13, 1979, the Consolidation Officer found that the scheme does not provide any khal to the petitioner's land and new channel cannot be given from the tubewell. Accordingly, he rejected the claim of respondent No. 3. Thereafter, respondent No. 3 filed a fresh application on January 7, 1980, before the Additional Director, Consolidation of Holdings, who by his order dated May 7, 1980, remanded the matter to the Settlement Officer Consolidation of Holdings. On that, the Settlement Officer passed the order dated December 21, 1980, dismissing the claim of respondent No. 3. Thereafter, Annexure P-7 and P8 came to be passed.

4. It is not necessary to go into the merits of the case as I am of the opinion that the application u/s 42 of the Act is not maintainable for carving out the khal to supply water to the fields of respondent No. 3. It has been held in *Harbeant Singh v. The Additional Director, Consolidation of Holdings* 1973 P.L.J. 374 that the Additional Director has no jurisdiction to provide water course in exercise of his powers u/s 42 of the Act and that the proper course was to approach the authorities under the provisions of Northern India Canal and Drainage Act. The same view was also taken in *Mukand Singh v. Additional Director, Consolidation of Holdings* and Anr. 1992 P.L.J. 247. Following the above authorities, I also held in *Manjit Singh and Others Vs. The State of Punjab and Another*, that the application to change the water course u/s 42 of the Act is not maintainable and the proper remedy for the party affected is only to approach the authorities under the Northern India Canal and Drainage Act. In this view of the matter, I am of the opinion that the application filed by the petitioner u/s 42 of the Act is not maintainable and the authorities have no power to decide and carve out the water course for the irrigation of the fields of the petitioner.

5. The Writ Petition is, therefore, to be allowed on this ground alone. In this view of the matter, it is not necessary for me to go into the other contentions raised by the learned counsel for the petitioner.

Writ petition is accordingly allowed. However, there will be no order as to costs.