
(1969) 12 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2437 of 1969

Lal Singh and others

APPELLANT

Vs

The State Of Punjab and others

RESPONDENT

Date of Decision : 18-12-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 12 P&H CK 0036

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : B.S. Jawanda, for the Appellant; Rattan Singh, for Respondents Nos. 1 to 4 and Mr. S.P. Goyal, for Respondents 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—Lal Singh and others have filed this petition under Articles 226 and 227 of the Constitution of India challenging the legality of the notice issued by the Consolidation Officer, Bhatinda, dated 11th August, 1969 (copy Annexure "A" to the petition).

2. Briefly the facts as stated in the petition are that the Petitioners are land owners in village Balian Khurd, Tehsil Malerkotla, District Sangrur, Consolidation proceedings in this village were completed in the year 1958 when the entire consolidation records were consigned to the record room. The land owners, Petitioners and Respondents 5 and 6 were also put in possession of their new holdings allotted to them.

3. Feeling aggrieved from the allotment made during the consolidation proceedings, Bhag Singh deceased, father of Petitioner No. 4 filed an appeal before the Assistant Director, Consolidation of Holdings, which was decided on 28th July, 1959, and an order was passed to his detriment. However, it seems that inspite of the fact that an adverse order was passed, the same was not challenged u/s 42 of the East Punjab Holdings (Consolidation and Prevention of

Fragmentation) Act, 1948 (hereinafter referred to as the Act). It is further stated that in spite of the order of the Assistant Director, the parties were allowed to remain in possession of their holdings which existed prior to the order of the Assistant Director. Petitioners 2 and 3, it is alleged, have sunk tube wells and have also made improvements along with Petitioner No. 4 by levelling the land which was allowed to remain in their possession in spite of the adverse order of the Assistant Director. However, all of a sudden, Petitioner No. 1 received the impugned notice from the Consolidation Officer on 5th September, 1969, requiring him to hand over possession to Respondent No. 5 within 15 days of the receipt of the notice. Certain objections were filed by Petitioner No. 1 against the notice before the Consolidation Officer, but the same were not entertained. The Petitioners have approached this Court under Articles 226 and 227 for quashing the impugned notice.

4. Shri Hardeep Singh Consolidation Officer alone has filed a written statement in which the issuance of the impugned notice has been justified.

5. The main ground urged by Mr. Jawanda, learned Counsel for the Petitioners is that in the Act there is no provision under which possession could be delivered after about ten years of the passing of the order by the Assistant Director. According to the learned Counsel, the only remedy available to Respondents 5 and 6 is to file a suit for possession in the civil Court. On the other hand, it is contended by Mr. Goyal, learned Counsel for Respondents 5 and 6 that there is no limitation provided under the Act to deliver possession of the land to a person in whose favour an order has been passed by an appropriate authority and that the impugned notice issued by the Consolidation Officer is perfectly legal and within jurisdiction.

6. Sections 23 and 24 of the Act and Section 122 of the Punjab Land Revenue Act (hereinafter referred to as the Revenue Act), to which reference was made by the learned Counsel for the parties, are in the following terms-

23. (1) If all the owners and tenants effected by the repartition as carried out under Sub-section (1) of Section 21 enter into possession of the holdings allotted to them thereunder, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him.

(2) If all the owners and tenants as aforesaid do not agree to enter into possession under Sub-section (1), they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed manner in the estate or estates concerned ; and the Consolidation Officer shall, if necessary put them in physical possession of the holding to which they are so entitled including standing crops if any, and for doing so may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887.

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24. (1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the the holdings, respectively allotted to them the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of consolidation, or, as the case may be by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of Sub-sections (2), (3) and (4) of Section 21 or an order passed u/s 36 or 42 of this Act.

(2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 (Act XVII of 1887), for purposes of compliance with the provisions of Sub-section (1)."

122 Delivery of possession of property allotted on partition.

An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue Officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.

7. After giving my thoughtful consideration to the entire matter. I am of the view that there is considerable force in the contentions of the learned Counsel for the Petitioners and this petition deserves to be allowed.

8. Section 23 of the Act deals with the right to possession of new holdings and Sub-section (I) provides that if all the owners and tenants agree between themselves to enter into possession of the holdings allotted to them in repartition carried out under Sub-section (1) of Section 21, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him. But there may be cases where the owners and tenants may not agree between themselves to enter into possession under Sub-section (1), then they under Sub-section (2) shall be entitled to the possession of holdings and tenancies allotted to them from such date as may be fixed by the Consolidation Officer and published in the prescribed manner in the estate or estates concerned. It is also provided under Sub-section (2) that the Consolidation Officer shall, if necessary, put the owners and tenants in possession of the holdings to which they are so entitled and while doing so, he may exercise the powers of a Revenue Officer under the Revenue Act. The other Sub-sections of Section 23 are not relevant for the purpose of deciding this case.

9. Section 24 provides as to when the scheme comes into force. It further provides that the possession of the persons on their allotted holdings shall not be disturbed until a fresh scheme is brought into force or a change is ordered in

pursuance of provisions of Sub-sections (2), (3) and (4) of Section 21 or an order passed u/s 36 or 42 of the Act. Under Sub-section (2), it is provided that for the purposes of complying with the provisions of Sub-section (1), the Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Revenue Act.

10. I have gone through all the other provisions of the Act and find that there is no provision in the Act which prescribes some specific procedure that may be adopted by the Consolidation Officer for delivering possession or which may impose some time limit for giving effect to the changes which may be ordered under the provisions of Sub-sections (2) (3) and (4) of Section 21 or u/s 36 or 42 of the Act. The only relevant provision in the Act is Section 23, but that too deals with the right to possession of new holdings. However, from the plain reading of the two sections of the Act, one thing is clear that in order to carry out the purpose of the sections the Consolidation Officer has been permitted to exercise the power of a Revenue Officer under the Revenue Act. Section 122 of the Revenue Act prescribes the procedure and authorises a Revenue Officer to deliver possession to an owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition; but this can be done only if an application for this purpose is made within a period of three years from the date recorded in the instrument of partition. In case no application is made within the prescribed period of three years, then a Revenue Officer has no jurisdiction to deliver possession and the only remedy available to the aggrieved person is to go to the civil Court.

11. As earlier observed, the Consolidation Officer while delivering possession, exercises the power of a Revenue Officer under the Revenue Act. If the Revenue Officer cannot deliver possession of a holding after three years, I fail to understand how and under what provision of law the Consolidation Officer can as a Revenue Officer have unlimited powers to deliver possession of a holding to a rightholder. He while acting as a Revenue Officer will only enjoy the same powers as are enjoyed by a Revenue Officer under Revenue Act. In this view of the matter, I do not find any escape from the only possible conclusion that a Consolidation Officer can deliver possession of a holding to a rightholder or a tenant within three years of the order passed under the provisions of Sub-sections (2),(3) and (4) of Section 21 or an order passed u/s 36 or 42 of the Act, in pursuance of which change is made. The impugned order in this case was passed in favour of Respondents 5 and 6 on 28th July 1959, and in view of my finding above, Respondents 5 and 6 could apply to the Consolidation Officer for delivery of possession within three years of the passing of that order. The Consolidation Officer had no jurisdiction to issue the impugned notice in September, 1969, after the lapse of ten years, requiring the Petitioners to deliver possession to Respondents 5 and 6. The Impugned notice, in my view, is wholly without jurisdiction and cannot be sustained.

12. It was also urged by Mr. Jawanda that the impugned order of the Assistant

Director dated 28th July, 1959, was without jurisdiction, but I find myself unable to agree with the contention of the learned Counsel. The Petitioners did not challenge its legality earlier and allowed it to become final. They cannot now, after the expiry of about ten years, be permitted to challenge its correctness on merits.

No other point was urged.

For the reasons recorded above, I allow this petition, and quash the impugned notice (Annexure "A" to the petition). The Petitioners shall have their costs from Respondents 5 and 6. Counsel fee Rs. 100/-.