

(2013) 07 DEL CK 0036

In the Delhi High Court

Case No : Writ Petition (C) 5147 of 2012

Late Smt. Bhagwati and Another

APPELLANT

Vs

Consolidation Officer

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21, 42

Citation : (2013) 07 DEL CK 0036

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Sat Pal Singh, for the Appellant; Vinay Kr. Garg, Advocate and Mr. Amit Shrivastava, for the Respondent

Judgement

Manmohan, J.—Present writ petition has been filed under Article 226 of the Constitution challenging the order dated 02nd September, 2011 passed by the Financial Commissioner, Delhi, dismissing the petitioners' application u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (for short "Act, 1948") on the ground of delay. Since the order passed by the Financial Commissioner is a rather short one, the same is reproduced hereinbelow in its entirety:-

This is an application u/s. 42 of the East Punjab Holding (Consolidation & Fragmentation) Act, 1948 herein after referred as the Act. This has been filed by the LRs. of one Smt. Bhagwati Devi namely Sh. Uday Ram and Sh. Udai Bhan. The petitioners state that Sh. Rati Ram and Sh. Ram Kishan were two brothers. They had their own land in the village in different khata numbers. Consolidation proceedings were initiated in the village Kapashera and the proceedings continued till 1997. According to the petitioners, Sh. Rati Ram had expired before the consolidation proceedings. The widow of Sh. Rati Ram Smt. Bhagwati as well as Sh. Ram Kishan had their own land in khata no. 225 and 226 as per the revenue records. The petitioners are aggrieved by the fact that during the

consolidation, the land of Smt. Bhagwati who was their aunt was taken away for purpose of making a road as well as a pond. They state that at that time the Consolidation Officer had undertaken to give Smt. Bhagwati the land in some other part of the village. However, this did not happen. As a result when Smt. Bhagwati filed objection u/s. 21 before the Consolidation Officer for curing the deficiency of 4 biswas, he observed that her land had been withdrawn out of Khasra no. 29/7 min (W) (3 biswas) and 4 min (W) (1 biswas) and the deficiency would be made good later on. This order of the Consolidation Officer is dated 15.2.89. In spite of the fact that the order had been so passed, replacement of the land taken away was never made good. Smt. Bhagwati represented to the Consolidation Officer through an application dated 15.6.1993 but there was no reply. The petitioners pray that the deficiency of the land taken away during the consolidation in 1988 now be made good through this petition.

2. Despite several opportunities the Consolidation Officer did not give his comments in this case.

3. In this case, the petitioners are approaching the court, more than 22 years after the passing of the impugned order. There is no application for condonation of delay. There are no reasons adduced in the body of the main petition for seeking relief after such a long period. Besides, the copy of the will annexed is a mere photocopy on which no reliance whatsoever can be placed. The petition merits rejection on these short grounds, and it is so ordered.

Announced in the open court.

2. Learned counsel for petitioners submits that the prayer in the application filed u/s 42 of the Act, 1948 was to make good the deficiency of land in favour of the petitioners as the petitioners' claim has already been admitted by the Consolidation Officer in his order dated 15th February, 1989. Learned counsel points out that the predecessor-in-interest of petitioners had made applications to the Consolidation Officers in the years 1993, 1994 and 1997.

3. On the other hand, learned counsel for respondent submits that the impugned order calls for no interference as the application u/s 42 of the Act, 1948 had been filed after a lapse of more than twenty-two years. He further submits that in accordance with Rule 18 of the East, Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (for short "Rules, 1949"), the period of limitation to file an application u/s 42 of the Act, 1948 is six months.

4. In rejoinder, learned counsel for the petitioners submits that no period of limitation applies to an application filed u/s 42 of the Act, 1948. In support of his submission, he relies upon a judgment of the Supreme Court in Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana, Chandigarh and Others, wherein it has been held as under:-

11. While the Division Bench comprising P.C. Jain and Tewatia, JJ of the Punjab and Haryana High Court in the instant case applied the period of limitation to the

confirmation of the scheme and in that view of the matter set aside the Director's order, the Full Bench comprising P.C. Jain, Acting C.J., Tewatia and Tiwana JJ held (at p. 219 of AIR 1984 P & H:

A bare persual of Rule 18 of the Rules would show that it provides, limitation only for petitions filed against orders passed. There is no reference in the Rules to a scheme prepared or confirmed or repartition made. The fact that in Section 42 of the Act the words "scheme prepared or confirmed or repartition made" have been added as a result of amendment, cannot justify the conclusion that in Rule 18 of the Rules these words have also to be read.

We respectfully agree with this view. Rule 18 has to be interpreted as we find it and the words of the rule are simple, precise and unambiguous and no more is necessary than to understand these words in their natural and ordinary sense. Two different meanings cannot be given to the same word "order" namely, that in Section 42 it does not include scheme prepared or confirmed or repartition made, while in Rule 18 it would include them. The Full Bench therefore rightly held that Rule 18 of the Rules does not apply to those proceedings in which the legality or validity of the scheme prepared or confirmed or repartition made is challenged. The Full Bench rightly approved the decision in Haqiqat Singh Vs. The Additional Director, Consolidation of Holdings, Punjab, Chandigarh and Others, , wherein it was held that a reading of Section 42 as well as the scheme of the Act unmistakably pointed out that the statute made a clear distinction between order passed by an officer under the Act and the performance of duties by the authorities under the Act in the matter of preparation and confirmation of scheme of consolidation and re-partition made in pursuance thereof. So it could not possibly be held that preparation or confirmation of a scheme and the repartition carried would fall within the scope of "order" as used in Rule 18 of the rules. The Rule did not come into play when a petitioner challenged either the scheme of consolidation including its preparation or confirmation of the repartition made in pursuance thereof. The amendment made this position clear.

5. Learned counsel for petitioners also places reliance on a judgment of the Punjab and Haryana High Court in Civil Writ Petition No. 4177/1985 Gram Panchayat Village Gujjarpur Tehsil Nawanshahar vs. The State of Punjab through Additional Director, Consolidation of Holdings, Jullundur and Others wherein according to him, delay of twenty-seven years was condoned.

6. Having heard the learned counsel for parties, the question that arises for determination is whether a period of limitation applies to an application filed u/s 42 of the Act, 1948?

7. Sections 42 of the Act, 1948 and Rule 18 of the Rules, 1949 are reproduced hereinbelow:-

a) Section 42 of the Act 1948

42. Power of State Government to call for proceedings-The State Government

may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice" to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.

a) Rule 18 of the Rules, 1949

18. Limitation for application u/s 42:--An application u/s 42 shall be made within six months of the date of the order against which it is filed:

Provided that in computing the period of limitation, the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of section 21, required to accompany the application shall be excluded:

Provided further, that an application may be admitted after the period of limitation prescribed therefore if the applicant satisfies the authority competent to take action u/s 42 that he had sufficient cause for not making the application within such period.

8. Keeping in view the aforesaid provisions as well as the Supreme Court's judgment, this Court is of the opinion that the period under Rule 18 of the Rules, 1949 will apply only in respect of orders which are passed under the Act and will have no application to a scheme which is framed or repartition which has been effected under the Act.

9. However, this Court is of the opinion that an aggrieved party cannot make an application u/s 42 of the Act, 1948 after an unreasonable long lapse of time. The Supreme Court in *Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another*, after considering its earlier judgment of *The Gram Panchayat, Village Kanonda (supra)* has held as under:-

4. This, however, cannot be understood as enabling the party which is aggrieved by the scheme or by repartition to make an application u/s 42 after an unreasonably long lapse of time. Even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. In fact this Court in the case of *Gram Panchayat v. Director, Consolidation of Holdings* dealing with Rule 18 itself, said that when no limitation is prescribed for an application u/s 42 dealing with confirmation of the scheme, the application should be made within a reasonable time and this question will have to be decided on the facts of each case. In that case the delay of about 3 years and 8 months in filing an application u/s 42 by the Panchayat was held to be not unreasonable. In the present case, however, the delay is of 40 years....

10. The judgment of Punjab and Haryana High Court in Gram Panchayat Village Gujjarpur Tehsil Nawanshahar (supra) also offers no assistance to the petitioners as in the said case during the alleged period of delay, the 1983 order passed by the Consolidation Officer in favour of the applicant had attained finality as it had never been challenged. The relevant portion of the judgment in Gram Panchayat Village Gujjarpur Tehsil Nawanshahar (supra) is reproduced hereinbelow:-

7. The two-fold contention raised by the learned counsel for the petitioner is that:

(i) The drain in question was proposed to be dug by the Drainage Department in the year 1957 and respondent No. 2 filed the petition u/s 42 of the Act on 21.4.1984. As such, it is contended on behalf of the petitioner, that the petition u/s 42 filed respondent No. 2, which was filed after about 27 years of the preparation of the scheme, was hopelessly barred by limitation and....

8. In answer to the first objection, a perusal of the case-file shows that the land of respondent Nos. 2 and 3 was acquired vide notification No. 2023/44 dated 28.3.1963 and they filed the application u/s 42 of the Act in the year 1981, i.e., after 18 years, which was decided ex parte by the Additional Director (respondent No. 1) on 14.6.1982 and the case was remanded to the Consolidation Officer with the direction that he should bring the land of the said respondents on one side of the drain. The Consolidation Officer issued notice to the Gram Panchayat on receipt of the remand order from the Additional Director and no one put in appearance on behalf of the Gram Panchayat despite service of the notice. The Consolidation Officer, Jalandhar, carried out the directions of the Additional Director vide order dated 4.8.1983..... Moreover, the order dated 4.8.1983 passed by the Consolidation Officer (Annexure R-2/2), whereby the land on one side of the drain has been allotted to respondent Nos. 2 and 3, has nowhere been challenged by the Gram Panchayat. Thus, the said order has attained finality as it remained unchallenged throughout. Thus, there is no force in the first objection raised on behalf of the Government.

11. In fact, a learned Single Judge of this Court in Sanjay Vs. Financial Commissioner and Others, has also held as under:-

13..... The Apex Court in Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another, held that the expression "at any time" in Section 42 cannot be understood as enabling a party who is aggrieved by the scheme or by repartition to make an application u/s 42 after an unreasonably long lapse of time and that even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. The reasonable time was held to be dependent on the facts of each case and the explanation for delay. No error requiring interference under Article 226 is found in the order of the Financial Commissioner.

12. This Court is of the view that in the present case there is no explanation on the part of the petitioners for not taking any action between 1997 and 2010. Consequently, this Court is of the opinion that in the present case the Section 42

application had been filed by the petitioners after an unreasonable long lapse of time. This Court also finds no material irregularity or illegality in the impugned order passed by the Financial Commissioner. Accordingly, present petition is dismissed, but with no order as to costs.