
(1966) 03 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1398 of 1964

Mahant Som Dass

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 08-03-1966

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14(1), 18

Citation : AIR 1967 P&H 186

Hon'ble Judges : R.S. Narula, J; I.D. Dua, J

Bench : Division Bench

Advocate : S.P. Goyal, for the Appellant; M.R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been placed before us in pursuance of the order of my learned brother R.S. Narula, J. dated 22-10-1965.

2. According to the petitioner, the notification issued by the Government u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act) is intended to consolidate holdings in the estate of Kheri Naga along with some other estates. In the estate of Kheri Naga, the whole of the land belongs to Thakurdwara of which Mahant Som Dass petitioner is the Mahant. Khasra No. 124, measuring 4 bighas and Khasra No. 171 measuring 6 bighas and 9 biswas alone are shown to be belonging to persons other than the Thakurdwara in the revenue record of the year 1951-52. Khasra No. 171, however, was sometimes back gifted away by the then Mahant to the persons entered in the Jamabandi but they have all died without leaving any descendants. In the result, the land has reverted back to the Thakurdwara. In so far as Khasra No. 124 if concerned, this too was similarly gifted away to some Brahmans by the then Mahant which is now entered in the name of Mst. Biro and Mst. Thakari in the revenue records for the year 1951-52.

This entry, however, is also incorrect because both the widows died long time ago without leaving any descendants. This land has, therefore, also reverted back to the Thakurdwara. On this basis, it is contended that there is no occasion for consolidation and the notification issued u/s 14(1) of the Act is contrary to law and without jurisdiction.

3. On behalf of the respondents, Shri M. R. Sharma, has not controverted the facts relied upon on behalf of the petitioner. He has, however, referred us to paragraph 5 of the return in which it is averred mat:

- (1) a fairly large area of the petitioner is under possession of 38 tenants-at-will;
- (2) some non-proprietors also reside in this village; and
- (3) a Gram Panchayat has been constituted for this village.

The averment then proceeds to state that this village is complete in itself and it needs all the facilities which are made available to a village under consolidation i. e. all the facilities conducive to better cultivation and better planning of the rural area. This, according to the learned counsel, brings the consolidation within the fold of Section 14. According to the learned counsel the object of issuing the impugned notification is not only to bring about consolidation of holdings but also to provide the village with straight paths, area for extension of abadi, latrines, hospital, Panchayat Ghar and school etc., which fall abundantly within the purposes of the Act. In support of this submission, our attention has been drawn to the Preamble of the Act. Reliance has been placed by the learned counsel on a Bench decision of this Court in *Jagir Singh v. State of Punjab* (1963) 65 PLR 754: AIR 1964 P&H 90 and on a Supreme Court decision in *Ranjit Singh and Others Vs. State of Punjab and Others*, .

4. In my opinion, the writ petition deserves to be allowed and the contention pressed on behalf of the respondents is without merit. Section 14(1), on which the notification in question is founded, is in these words:

"14(1). With the object of consolidating holdings in any estate or group of estates or any part thereof for the purpose of better cultivation of lands therein the State Government may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified."

It is obvious that this provision of law only contemplates a notification with the object of consolidating holdings and for no other purpose. It is true that in the Preamble of the Act, in addition to the legislative intendment to provide for the compulsory consolidation of agricultural holdings and for preventing fragmentation of agricultural holdings, in 1960, the purpose was extended to the assignment or reservation of land for common purposes of the village, but the language of Section 14(1) of the Act is quite clearly confined only to the object of consolidating the holdings. While preparing a scheme for the consolidation of

holdings, the Act, of course, authorises reservation of land for common purposes, but that seems to me to be an incidental power conferred by the statute exercisable when consolidating the holdings in pursuance of the notification issued u/s 14(1) of the Act. On the language of Section 14, I am unable to persuade myself to hold that a notification can be issued for the sole substantive purpose of reserving land for common purpose or assigning land to a Panchayat without consolidating the holdings.

The decision of this Court in the case of Jagir Singh 65 PLR 754: AIR 1964 P&H 80 does not support the respondents' submission, nor does the decision of the Supreme Court in the case of Ranjit Singh and Others Vs. State of Punjab and Others, . All that can be said on the basis of these decisions is that it is not unlawful to reserve land for common purpose in the scheme pre-pared for consolidating the fragmented holdings. Section 18 of the Act to which also the respondents' learned counsel has made a reference, does not show that the Legislature has intended Section 14(1) to authorise a notification for the sole and exclusive purpose of reserving land for common purposes.

5. Shri M.R. Sharma has, however, very strongly argued that it is not open to this Court to go into the question whether the Government was justified in issuing the impugned notification because this is a matter who is peculiarly within the discretion of the Government. If, so argues the counsel, the State Government has in its wisdom chosen to issue a notification u/s 14(1), then even though there is no need for consolidating any holdings and even if there be no fragmented holdings requiring consolidation, this Court has absolutely no jurisdiction to scrutinise the order and strike it down as being outside the purview of Section 14(1). To this broad and sweeping submission, I am unable to accede. The power of the Government to meddle with citizens' property under the Act is strictly confined within the four corners of the power conferred by it and if Section 14(1) does not in terms, whether express or by necessary intendment, justify a notification for reserving land for common purposes without consolidating holdings, this Court, in my opinion, is competent and, indeed under a duty, to strike down a notification which seeks to reserve land for common purposes under this section. Such a notification would obviously be outside the statute and, therefore, ineffective.

6. For the foregoing reasons, this petition succeeds and allowing the same, we set aside and quash the impugned notification. In the circumstances of the case, there would be no order as to costs.