
(1965) 03 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2818 of 1964

Mahla Singh Anokh Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 11-03-1965

Acts Referred:

Constitution of India, 1950 — Article 14
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21(4), 21(5), 42

Citation : AIR 1967 P&H 446

Hon'ble Judges : S.B. Capoor, J; I.D. Dua, J

Bench : Division Bench

Advocate : B.R. Aggarwal, for the Appellant; M.J. Sethi, for R. Sachar, General,
for the Respondent

Final Decision : Dismissed

Judgement

1. Mahla Singh (petitioner in the present proceedings) feeling aggrieved by repartition during the course of consolidation proceedings in his village Chak Attari Saddar Wala, Tehsil Muktsar, District Ferozepur, filed objections u/s 21(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act with the Consolidation Officer but the same were dismissed on 15-2-1961. He appealed from this order to the Settlement Officer who gave him partial relief by making some slight changes in the allotments, but, according to the petitioner, to reproduce his own words, "those changes did not touch even a fringe of grievances of the petitioner". Feeling dissatisfied, a further appeal was preferred to the Assistant Director, Consolidation of Holdings, u/s 21(4) of the Consolidation Act which was disposed of on 31-1-1962. Here also, the petitioner got some relief, but again he was not fully satisfied. In the result, he moved the Director, Consolidation of Holdings, u/s 42 of the Consolidation Act. This application was dismissed as incompetent on 24-5-1964.

2. In the present proceedings, the order of the Director, Consolidation of

Holdings, dated 24-5-1964 is assailed. It may be pointed out here that in *Roop Chand Vs. State of Punjab*,), the Supreme Court decided that when Government delegates its power under the provisions of the Consolidation Act to an officer and that officer pursuant to such delegation hears an appeal and makes an order the order of the officer is the order of the Government and the Government cannot interfere with it u/s 42 of the Act. As a result of this decision, the order of the Assistant Director u/s 21(4) was to be treated as an order of the State Government, with the result that the petition u/s 42 to the State Government must be held to be incompetent. It was indeed as a result of this decision that the Additional Director on 24-5-1964 rejected the application u/s 42 as incompetent. It may also be noted that this decision of the Supreme Court invalidated a large number of orders passed u/s 42 of the Act. The Legislature, therefore, with the object of validating those orders passed the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962 (Punjab Act No. 25 of 1962) bringing about the necessary amendments in the Consolidation Act. The amendment which concerns us modified Section 21(4) by varying Sub-section (4) and adding inter alia Sub-section (5), which after the amendment, so far as relevant for our purpose, reads thus :--

"21. * * * *

(4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under Sub-section (3), whether made before or after the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act 1962, may, within sixty days of that order, appeal to the Assistant Director of Consolidation.

(5) Any appeal against an order of the Settlement Officer (Consolidation) pending under Sub-section (4) immediately before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act 1962, either before the State Government or an officer to whom the powers of the State Government in this behalf have been delegated, shall be decided by the Assistant Director of Consolidation.

X X X X X X."

The counsel has complained that amending Act gives relief to those persons who had secured orders on their applications u/s 42 of the Act and also to those persons who had not yet presented any application under this section, but in cases like the present where the application u/s 42 of the Act was pending at the time of amendment, no provision has been made for the disposal of those applications, with the result that the amending Act has discriminated against persons in the position of the petitioner without any good reason.

3. I quite see that persons in the position of the petitioner have not been given any relief, but then this is a grievance which should be addressed to the legislative wing of the Government and not to this Court. This Court cannot while

exercising judicial power re-write a statutory enactment for the purpose of providing a remedy to those who have been deprived of it by the law-maker. The argument based on the challenge founded on the plea of discrimination is, in my opinion, misconceived in the present case. The petitioner's counsel does not and obviously cannot, ask this Court to strike down as unconstitutional the provisions of the amending Act which provide relief to other parties because such a course can by no means redress his client's grievance or give him any relief. For securing for himself relief against the effect of the Supreme Court decision, the petitioner needs a positive legislative provision and not mere exclusion from the Act of the provision affording relief to others. It is, therefore, not open to us on the argument of discrimination to hold the impugned amendment to be ultra vires and indeed the petitioner cannot possibly have any locus standi to urge this contention, because that cannot by any process give him relief.

We are quite clearly incapable of adding to the amending Act the kind of positive provision which the petitioner's counsel requires for redress of his grievances. May be that the lawmaker when drafting the amending provision did not visualise cases like the one before us, but then as already observed, this is an omission which can only be remedied by the Legislature. While interpreting statutory enactments, this Court cannot encroach on the function of the Legislature and cannot fill in, what may appear to us to be, a lacuna in an enactment. The doctrine of equal protection of laws which is perhaps a command which the State is expected to respect does not vest such a power in the Courts when dealing with a case like the present.

4. For the foregoing reasons, this petition fails and is dismissed. It is stressed on behalf of the petitioner that had the Director disposed of the petition u/s 42 with due promptitude, the petitioner's case would have been covered by the amending Act and the order would have been valid. He has, therefore, prayed that he should not be burdened with costs. We agree with the counsel and order that he should not be burdened with costs.