

(1967) 08 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1619 of 1964

Mange Another

APPELLANT

Vs

Additional Director, Consolidation of Holdings, Punjab and
Others

RESPONDENT

Date of Decision : 08-08-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 20, 21, 42

Citation : AIR 1968 P&H 10

Hon'ble Judges : R.S. Narula, J;P.C. Pandit, J;A.N. Grover, J

Bench : Full Bench

Advocate : P.C. Jain and A.S. Anand, for the Appellant; U.D. Gaur, for A.G. and
Puran Chand, for the Respondent

Final Decision : Dismissed

Judgement

Grover, J.—The facts which have led to the reference to a Full Bench of this petition under Articles 226 and 227 of the Constitution may be shortly stated. The consolidation proceedings started in village Chhanauli, Tehsil and District Rohtak, in the year 1951-52. Respondents 2 and 3 raised certain objections before the Consolidation Officer to the repartition which were dismissed by the Consolidation Officer. The aforesaid respondents filed an appeal before the Settlement Officer which failed. Respondent No. 2 preferred an appeal to the Assistant Director, Consolidation of Holdings. The Assistant Director remanded the case to the Settlement Officer but it was decided against respondent No. 2. It would appear that the Settlement Officer observed in his order that the respondent's contention could be sympathetically looked into in case he filed a revision petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred to as the Act). Respondent No. 2 then filed an application u/s 42 before the Director, Consolidation of Holdings This was forwarded by the Director in March 1955 to

the Settlement Officer. Consolidation of Holdings, for report. The report was sent to the Director under the signatures of the Deputy Commissioner who was overall in-charge of consolidation work in the district.

The report of the Deputy Commissioner was examined by the Additional Director, Consolidation of Holdings and he was of the view that the rights of the parties in respect of inferior land be examined. He therefore, forwarded the case to the Assistant Director. Consolidation of Holdings, for submitting an equitable proposal. The case was then examined by the Assistant Director on 8th August 1959 in the presence of the parties. Mange, petitioner No. 1 was present before him. The Assistant Director discarded the proposal of the Deputy Commissioner and prepared a new proposal after examining the records and hearing the parties. The Additional Director heard the parties on 9th January 1963 when he made an interim order. By that order he desired the Settlement Officer to assess the improvements, if any, and to suggest what compensation was required to be even if the proposal made by the Assistant Director was to be accepted. The final order was made by the Additional Director on 12th June 1964. After examining the proposal in the presence of the parties, he felt that certain changes were necessary in their respective allotments because the petitioner (Kanhya) had been hard hit and had not been given any area out of his own land. It is this order which has been impugned by means of the present petition. It may be mentioned that these facts are to be found in the relevant orders and the return filed by the State.

2. It is common ground that as a result of the adjustments directed by the impugned order the petitioners have been awarded four kurrahs whereas the consolidation scheme framed for the village provided for a maximum of three kurrahs. As has been observed in one of my earlier judgments (*Karnail Singh v. Additional Director, Consolidation of Holdings*, Civil Writ No. 1928 of 1963 D/-7-1-1965 Pnnj)), the scheme as framed under the Act constitutes the charter under which repartition can be made and it is not permissible for the consolidation authorities to travel beyond it unless it is so provided in the scheme itself. Section 42 confers powers on the State Government to amend the scheme. The Additional Director exercising those powers could have amended the scheme and the question which has been canvassed is whether the scheme was amended in the present case or should be deemed to have been amended.

3. It is admitted that there is nothing in the application filed u/s 42 of the Act which was disposed of by the Additional Director asking for amendment of the scheme nor is there any indication in the order itself that the scheme was being amended as such. The view of the majority constituting the Full Bench in *The Director of Consolidation of Holdings, Jullundur and Another Vs. Johri Mall Karori Mall*, was that the power of the State Government u/s 42 was wholly independent of the powers of the authority confirming the scheme and that it was not at all necessary to have recourse to the procedure prescribed by Section 36 while ordering amendment of the scheme u/s 42. The only limitation

prescribed in Section 42 as contained in the proviso was that before the State Government made any order the parties interested were to be given notice to appear and afforded an opportunity to be heard. Mention, in particular, may be made to what has been observed by Dulat J., in paragraph 32 of the judgment while dealing with Mr. Sachar's contention that the scheme of consolidation in that case had not been varied, for the scheme in general stood intact, and the Director of Consolidation or the State Government had merely made an order touching a particular individual in respect of a particular piece of land and this could not be called an order varying the scheme. This is what was said -

"There is no doubt that a scheme of consolidation was prepared and confirmed, and equally no doubt that the Director of Consolidation considered that scheme and concerning a part of that scheme he made an order, and that order is that in spite of the scheme the particular gher in Khasra No. 3942 will not be retained by Johri Mal but will be reserved for the extension of the abadi. It is, to my mind, impossible to accept the suggestion that the scheme of consolidation has not been varied although, of course, the variation is only in respect of a small part of the scheme".

Pandit J., in a short order, agreed with the judgment of Dulat J. and said-

"I am unable to accept the suggestion that the impugned order had expressly stated that Para. 7 of the scheme was varied to the extent that the order impliedly varied it, the order would have been competent. What has not been expressly stated is still implicit in the order and if it is otherwise valid, it cannot be disturbed for lack of expression alone. A reading of the whole order leaves no doubt that the scheme has been varied in one particular and this the State Government was under the amended Act competent to do".

The Director of Consolidation of Holdings, Jullundur and Another Vs. Johri Mall Karori Mall, , went up to the Supreme Court (Johrimal Vs. Director of Consolidation of Holdings, Punjab,). It was argued before their Lordships that the order of the Director of Consolidation was an order varying paragraph 7 of the confirmed scheme and no such variation could be made without following the procedure laid down u/s 36 01 the Act, viz., the requirement with regard to the publication and bearing of objections contemplated in Sections 19 and 20 of the Act. This contention was repelled with the following observations -

"But when a scheme is to be varied by the State Government itself u/s 42 of the Act, there is no requirement of the statute that the varied scheme should be published, for the State Government is required to give notice and to give an opportunity to the interested parties to be heard before the variation is made."

The judgment of the Full Bench was, however, set aside by according to another submission that the order of the Director was illegal because it violated Section 18 (c) of the Act read with Rule 16 (ii). It is noteworthy that no such submission was made to their Lordships as had been made by Mr. Sachar to the Full Bench of this Court that the scheme of consolidation had as a matter of fact not been

varied and that the order of the Director or the State Government touching a particular individual in respect of a particular piece of land could not be regarded as an order varying the scheme. It would thus appear that in the Supreme Court counsel proceeded on the accepted premises that there had been variation of the scheme and the main controversy centred round the procedure which was to be followed by ordering amendment of a confirmed scheme u/s 42 with particular reference to Section 36 of the Art.

4. After the decision of the Full Bench a number of writ petitions came up before learned Single Judges of this Court. P. C. Pandit J. himself, who was a member of the Full Bench, while deciding Civil Writ No. 7 of 1964 reported as Suresh Chandra Goswami Vs. Suresh Chandra Deb Nath, , repelled the contention advanced by the counsel for the State that u/s 42 of the Act the Additional Director was competent to make an order for the alteration in the scheme and that is what he had done in that case by saving .

"There is no merit in this contention, because, firstly, respondent No. 1 has not said so in the impugned order; secondly, no such prayer was made to him by the respondents in this respect and, thirdly, it is again a doubtful point whether the Additional Director could change the scheme u/s 12 of the Act after the repartition order had become final u/s 21 as admittedly, the respondents had not filed an appeal u/s 21 (4) against the order of the Settlement Officer made u/s 21 (S) of the Act"

In Jai Kishan Singh v. State of Punjab, Civil Writ No. 1057 of 1963, D/-12-11-1965 (Punj), it was held by me that under the law the consolidation authorities including the Additional Director had no jurisdiction whatsoever to go beyond the scheme once it had been confirmed and no other considerations could prevail with them in the matter of repartition or allotment except the provisions of the scheme. In Ratti Ram v. State of Punjab, Civil Writ No. 1551 of 1964, D/-12-5-1966 (Pnnj), the argument raised on behalf of the petitioner was that the Additional Director had no jurisdiction to amend the scheme for the benefit of a single individual and indeed had no warrant to defy the provisions of the scheme. Shamsheer Bahadur J. was of the view that repartition under sub-section (1) of Section 21 of the Act had to be done in accordance with the scheme and where the Additional Director had himself admitted that he was defying the provisions of the scheme which was the result of the order made by directing readjustments between two right-holders his orders had to be quashed. J. N. Kaushal J., in Ram Singh v. Punjab Government, Civil Writ No. 659 of 1965, D/-25-5-1966 (Punj), referred to the decision of the Full Bench in The Director of Consolidation of Holdings, Jullundur and Another Vs. Johri Mall Karori Mall, , and held in categorical terms that unless the scheme was amended or modified in accordance with law, its provisions could not be deviated from. In the case before him the Additional Director had relaxed the provisions of the scheme for reasons of equity and justice. This, according to the learned Judge, he had no power to do. He also referred to the fact that no order had been made by the

Additional Director amending the scheme.

5. The trend of the above decisions of the learned Single Judges, clearly is that there must be some indication or material on which the Court can be satisfied that the Additional Director while directing re-adjustments of hicks or kurrahs between individual right-holders was desirous of or intended to amend the scheme and that amendment or modification of the scheme could not be spelt out by necessary implication from the mere fact that on grounds of fairplay or justice or expediency the Additional Director departed from the scheme while ordering re-adjustments of the tucks or kurrahs made or allotted between individual right-holders who had moved u/s 42 of the Act and whose main grievance related not to the merits of the scheme hut to the injustice on harshness in the matter of their respective allotments made on repartition. That essentially is the argument which has been elaborated before us on behalf of the petitioners

6. With the almost deference to the views expressed in the majority judgment of the Full Bench, I find it difficult to accept that whenever the State Government or the Director or Additional Director who exercises its powers orders readjustments or changes in repartition between various individual right-holders in petitions u/s 42 of the Act without either giving any notice in writing or even oral at the time of hearing to the parties that it is intended or proposed to amend the scheme qua an individual right-bolder the Courts are bound and indeed should imply a variation or amendment of the scheme. Indisputably the provisions of the Act provide first for the framing of a scheme leading to its confirmation u/s 20. Then the stage of repartition commences. The scheme of consolidation and repartition are two entirely distinct matters. When a right-holder approaches the State Government u/s (42?) with regard to the lands allotted to him, and while giving him relief the authority concerned allots to him or changes allotment of others in a manner contrary to the scheme its order would be open to challenge on the ground that repartition has not been made in accordance with the scheme. If, however, the authority is convinced that without amending the scheme proper relief cannot be given to the petitioner or to any other aggrieved person I venture to think that the proper course to follow under the proviso to Section 42 would be to inform the parties concerned that the scheme is proposed to be amended to the extent it is necessary to give the required relief. The parties would then have notice as to what is proposed to be done and make their submissions supporting or opposing the amendment. Only then, if an amendment is ordered, can it be said that it has been made after giving the parties interested a proper hearing and opportunity to explain their ease and in such a situation no express order may be necessary that the scheme is being amended.

This does not mean that any specified or set procedure is required for amendment of the scheme u/s 42 but there must be something to indicate firstly that the authority concerned applied its mind to the question of amendment and

secondly, that it followed a procedure which conformed to the requirements of the proviso to Section 42. To my mind, the parties interested will have no notice in the matter of amendment if all that they have been informed is that relief is being sought on the merits in regard to repartition. In order to sustain an order which contains no mention of amendment of the scheme as such, the least that should be shown is that the mind of the authority concerned was brought to bear on the question of amendment of the scheme. It may be mentioned that this point was neither canvassed nor decided in the judgment of the Supreme Court in *Johrimal Vs. Director of Consolidation of Holdings, Punjab*,).

7. The view which I am inclined to take is essentially different and comes into conflict with the majority judgment of the Full Bench on this aspect. It would, therefore, have been necessary to refer the question of law to a larger Bench but it appears that the petitioner will ultimately fail on the ground that the impugned order has not resulted in a miscarriage of justice. From the facts which have been set out in the earlier part of the judgment it is clear that the consolidation authorities looked very thoroughly and fully into the rival claims of the parties and it was after prolonged proceedings that the Additional Director made the order which has been challenged. The petitioner as also the other parties were heard at all material stages and the order of the Additional Director dated 12th June 1964 was made after he had gone into the various proposals which had been submitted from time to time under his directions. In this view of the matter the petition is dismissed but there will be no order as to costs.

P.C. Pandit, J.

8. I agree with my learned brother that since the impugned order has not resulted in a miscarriage of justice, this writ petition should be dismissed, but with no order as to costs.

R.S. Narula, J.

9. I also agree that in view of the circumstances detailed in the closing part of the judgment prepared by my Lord Grover J., we should decline to interfere in this case as no manifest injustice appears to have been occasioned to the petitioners by the impugned order. But for this peculiar situation, I would have preferred the reference of this case to a Full Bench of more than three Judges to reconsider certain observations made by me earlier. Full Bench of this Court in *Director of Consolidation of Holdings, Jullundur and Another Vs. Johri Mall Karori Mall*, and to lay down authoritatively certain criteria or rules to canalise or guide the exercise of State Government's power to amend u/s 42 a confirmed scheme in somewhat the same manner as their Lordships of the Supreme Court laid down criteria for exercise of discretion conferred on the Competent Authority by Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956; for which there was no guidance in the Act itself, in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, .

10. After the pronouncement of the Supreme Court in *Johrimal Vs. Director of*

Consolidation of Holdings, Punjab, , there is no doubt that the State Government has the power u/s 42 of the Act to vary even a confirmed scheme without resorting to the procedure prescribed by Section 36 subject to the statutory safeguard (of giving a notice and affording a real opportunity of being heard to the parties interested) contained in the proviso to Section 42. The question, however, still remains as to what should broadly be the contents of a notice required to be served on interested parties in a case in which variation of a confirmed scheme is either specifically prayed for or otherwise intended to be effected; and also about the nature of opportunity required to be afforded to the interested parties in a case of that kind. I do not think that it would ever be argued on behalf of the State that it can vary a scheme u/s 42 (except in cases where the scheme is vitiated by unlawful considerations) at any time and to any extent in an arbitrary and unguided manner at the time of writing the orders even though the interested parties had no notice of the particular variation proposed. To allow such a course to be adopted would in my opinion relegate the statutory safeguard contained in the proviso to Section 42 to a mere illusion. I am in full agreement with the opinion expressed by my learned brother Grover J., in the penultimate paragraph of his judgment. Adopting another view may make it impossible to distinguish by looking at an order passed u/s 42 of the Act as to whether the Director unwillingly and possibly oblivious of the relevant provision in the scheme passed an order in contravention thereof, or where the officer really intended to vary the scheme in the given case. I am also substantially inclined to agree with the view taken by various Single Benches of this Court (noticed by my Lord Grover J.), while applying and interpreting the dictum of the Full Bench judgment of this Court in *The Director of Consolidation of Holdings, Jullundur and Another Vs. Johri Mall Karori Mall*, , to individual cases which came up for hearing after the pronouncement of the Full Bench.

11. This particular writ petition is, however, dismissed without any order as to costs for the reason already assigned.