
(1996) 01 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2330 of 1982

Manjit Singh and Others

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 31-01-1996

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (1996) 113 PLR 683 : (1996) 3 RCR(Civil) 486

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Amarjit Markan, for the Appellant;

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The writ petitioners are invoking the certiorarial jurisdiction of this Court under Articles 226/227 of the Constitution of India to quash the order of the Additional Director, Consolidation of Holdings dated 24 11.1981 vide Annexure P. 4.

2. According to the petitioners, they and the 2nd respondent are residents of village Jaitton and a notification u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 was published on 28 9.1953 and the consolidation proceedings were completed in the village on 24.10.1969 and subsequent schemes were also finalised by 13.10 1978. He further averred that one Harnam Kaur and Bikkar Singh owned the land jointly in the village Jaitton, in equal shares and Harnam Kaur sold her share to the petitioners by registered sale deed dated 3.6.1980 and the remaining portion of the land was inherited by the 2nd respondent after the death of his father Bikkar Singh. Thus the petitioners and the 2nd respondent became co-owners. It is further averred that during consolidation a Schemi Khal marked as "AB" and a Ploti Khal marked as "CDEFG" as shown in sketch which is annexed as P-2 to the writ petition have been provided and the same were in existence since a long

time. While so the 2nd respondent made an application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 on 17.6.1981 to provide a new watercourse along with the common boundary of Killa Nos. 123/21 and 20 which is marked as "HE" in Annexure P-2. The 1st respondent, Namely the Additional Director, Consolidation of Holdings, Punjab, accepted the application of 2nd respondent on 24.11.1981 without notice to the petitioners and ordered a water channel be provided along with common boundary of Killa Nos. 123/21 and 20 from the land of the petitioners by his order Annexure P.4. Challenging the said order Annexure P-4, the petitioners approached this Court for quashing the same.

3. A written statement has been filed on behalf of the 2nd respondent, wherein he pleaded ignorance of the sale in favour of the petitioners. He further stated that the petitioners were not impleaded to his application filed u/s 42 of the Act as the petitioners at that time were minors, but their father was impleaded. Therefore, the order passed by the Additional Director is binding on the petitioners. He admitted that the 1st respondent amended the previous khal. He further stated that the amendment of the khal became necessary as he was not receiving proper supply of water and to ensure the supply of water to his fields for irrigation. Therefore, he prayed that the writ petition be dismissed.

4. There is no dispute that the existing watercourse has been changed by the Additional Director of Consolidation of Holdings, Punjab by the impugned order dated 24.11.1981. The main contention of the learned counsel for the petitioners is that the Additional Director, Consolidation of Holdings, has no power either to provide or change the watercourse already in existence and included in the consolidation proceedings which became final. Therefore, according to the learned counsel for the petitioners, Section 42 of the Act does not apply and the Additional Director has no jurisdiction to amend or change the watercourse. He relied upon a decision of this Court in *Harbeant Singh and Ors. v. The Additional Director, Consolidation of Holdings, Punjab and Ors.* 1973 PLJ 374, wherein it has been held as follows :-

"The legislature has enacted a specific statute for providing a water-course to a shareholder and for that purpose the specific procedure has been laid down in the Canal Act. Without following that procedure, a share, holder cannot be provided with a watercourse, nor can. a change be made in the existing watercourse. u/s 42 of the Act, the Additional Director had no jurisdiction to direct the Consolidation Officer to provide respondent No. 2 (petitioner in the petition u/s 42 of the Act) with a watercourse. From the impugned order it is clear that a new water-course has been provided to respondent No. 2. I do not agree with Mr. Gujral, that an amendment could be made in the schemi khal provided during repartition in exercise of the powers u/s 42 of the Act and that absolutely a new watercourse could be provided at any time by the Additional Director finding that the schemi khal did not provide proper irrigation. If this is allowed to be done, then it would result in usurpation of the functions of the

canal authorities, by the authorities under the Act which cannot be envisaged. In this view of the matter I hold that the Additional Director had no jurisdiction to provide a watercourse in exercise of his powers under section-42 of the Act, to respondent No. 2 and the impugned order cannot legally be sustained. The proper course for respondent No. 2 was to have approached the canal authorities under the provisions of the Canal Act for the redress of his grievance."

The above decision has been followed in *Mukand Singh v. The Additional Director, Consolidation of Holdings Punjab* and Anr. 1992 PLJ 247, wherein his Lordship observed as follows :-

" I am of the view keeping in view the observation made in *Harbeant Singh's* case (supra), that once the consolidation scheme had been framed and implemented any change in the alignment of the watercourse could have been made only by taking re-course to the provisions of the Northern India Canal and Drainage Act by filing the requisite application."

In view of the above decisions of this Court and also on perusal of Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, and the provisions of Northern India Canal and Drainage Act, I am of the considered view that an application to change the water-course u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, is not maintainable and the proper remedy for the party affected is only to approach the Authorities under the Canal Act. In this view of the matter, the impugned order of j the 1st respondent cannot be sustained.

5. In the result the writ petition is allowed, but without costs.