

(2001) 07 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 404 of 1992

Mohan Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42
Penal Code, 1860 (IPC) — Section 302

Citation : (2001) 3 ShimLC 46

Hon'ble Judges : C.K. Thakker, C.J;A.K. Goel, J

Bench : Division Bench

Advocate : K.D. Sood and Anish Garg, for the Appellant; Vivek Thakur, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

Aran Kumar Goel, J.—Petitioner has filed this writ petition for the grant of following reliefs :

- (i) Quashing the order of the learned Additional Director of Consolidation dated 1.4.1992 (Annexure PH).
- (ii) Directing the Additional Director of Consolidation to consider the report of the Consolidation Officer and to make necessary changes in accordance with the report of the Consolidation Officer.
- (iii) Directing the Additional Director of Consolidation to allot 1-6 Kanals of land within the Phirni for the extension of abadi in accordance with the Scheme.
- (iv) Directing the learned Additional Director of Consolidation to grant the land to the Petitioner within the Lal Lakir as suggested by the Consolidation Officer. ,
- (v) Any other writ, order or direction as this Hon''ble Court in view of the circumstances of the case may deem fit may also kindly be issued.

(vi) Cost of the petition may also kindly be awarded in favour of the Petitioner and against the Respondents.

2. Case as set up in the writ petition is that Petitioner is the heir of late Puran Singh son of Shri Pal Singh, resident of Village Majara, Tehsil and District Una, H.P. According to him, all the villages after the enforcement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, (hereinafter referred to as the "Act"), consolidation process was started. This was aimed on enabling the land owners of the villages to effectively cultivate their holdings. With a view to achieve this object, village Majara was also covered under this Act and notification was issued in that behalf (in the writ petition in paragraph 2 it is stated that the scheme of consolidation was prepared for village Mehatpur. Record of the case shows that this writ petition pertains to village Majara and not Mehatpur.)

3. Process of consolidation started in village Majara in the year 1962. Scheme was prepared in consultation with the Advisory Committee under the Act. Amongst other things, manner in which land was to be allotted to various shareholders as well as area reserved by the land owners was also provided in the Scheme. It was, thereafter, that the repartition proceedings were to be undertaken as per the Scheme.

4. There was a well situate in Khasra No. 1862/872 in the village and it was owned by Pal Singh father of Puran Singh, because Chinta Singh and Raja Singh, original Respondents No. 2 and 3 in the writ petition (Respondent No. 3 had died during the pendency of the writ petition), and predecessor of Respondents No. 4 and 5 were claiming rights in the aforesaid well; a suit came to be filed by the father of the Petitioner and his deceased brother Ishar Singh. This was decreed by the Sub Judge 2nd Class, Una on 8.8.1953. It was held that Respondents No.2 and 3 as well as predecessors of Respondents No. 4 and 5 had no right title in the said well.

5. In these circumstances as per scheme of consolidation of village the well alongwith land comprised in Khasra No. 1862/872/1 was reserved for the owners of the well and in the event of partition, well along with this land was to be given to such co-sharers, who had made reservation for it. Other co-sharers who had not done the reservation of well were entitled to be compensated for an equal area out of other land of the same value. Father of the Petitioner having reserved the well with land as aforesaid, Respondents No. 2 to 5 had no right to keep the same or the other adjoining area reserved in re-partition for themselves.

6. In addition to this, under the Scheme parties were to be allotted land owned and possessed by them for extension of abadi to the extent of 2 kanals. Copies of Resolution No. 7 and other Resolution to similar effect are filed as Annexures PA and PB to the writ petition, respectively. Scheme also envisaged the area falling within the Lal Lakir (red line) should go to the owners who possessed such area within it.

7. Because Lal Lakir (red line) was not correctly demarcated and reservation had not been correctly made according to the scheme, well and chahi of the Petitioner's father had not been given to him, besides wrongly excluding the area which fell within the phirni (circle), this reserved area was excluded contrary to scheme. As also demarcation having not been properly carried out, Petitioner's father moved the State Government u/s 42 of the Act for quashing the re-partition being contrary to Scheme and reservation.

8. When matter came up before the Additional Director exercising the powers of State Government, he passed order, copy whereof is placed on the file as Annexure PC. This order is in the following terms :

Petitioner Puran Singh has contended that the Lal Lakir has not been correctly demarcated with the result that the plots allotted in paper outside the Lal Lakir actually on the spot fall within the Lal Lakir. I have seen the old and new Musavies and I find that the contention raised is correct. The file is returned to the SOC/H with the request that he will please depute CO. to go into the matter at the spot, demarcate Lal Lakir correctly and because this mean adjustment in plots to necessary proposal should also be prepared to remove shortages.

The second contention was in regard to the original area of the Petitioner which he got reserved. He contends that reservation has not been done correctly and some area belonging to him has been given to Raja Singh. A rough sketch of the area involved has been added. The original area of the Petitioner has been shaded red. A look at the sketch would show that this contention too is correct. This will also call for adjustment. Proposal in regard to this should also be got prepared. Other such points raised by the Petitioner will also be considered when the file is received back from the S.O.C/H.

9. After passing of the aforesaid order, file was ordered to be sent to Settlement Officer, who was required to comply with the said order.

10. The Settlement Officer (Consolidation of Holdings) instead of complying with the aforesaid order, deputed Consolidation Officer to go to the spot. On 6th November, 1964 Assistant Consolidation Officer came to the spot, when he and father of the Petitioner were prevented from doing the needful at the spot by the Respondents and they murdered Piara Singh, younger brother of the Petitioner and also inflicted serious injuries to the Petitioner. Case was registered u/s 302 of the IPC against Bakshish Singh, Arjun Singh and Piara Singh who were convicted after trial. This order was upheld in appeal by the High Court. Petitioner and his father continued to approach the Settlement Officer and the Consolidation Officer to visit the spot. They learnt from the ladies of their house that measurement had been undertaken in their absence and without notice to the Petitioner's father. A prayer was made to re-demarcate the land but without any result. As such, another petition was filed by the father of the Petitioner u/s 42 of the Act.

11. On re-organisation of the State of Punjab area of Village Majara came to the State of H.P. As such this revision came up before Deputy Commissioner, Bilaspur

exercising the powers of State Government. On 18.11.1970 he came to Una and partly allowed the relief to the Petitioner. Whereas part of the claim was illegally rejected according to the Petitioner. This was challenged by the father of the Petitioner in CWP No. 67 of 1971 in this Court. After hearing the parties and after going through the record, this writ petition was allowed on 14.12.1977. Operative portion of this judgment is as under :

12. In the light of the above, the petition, therefore succeeds with the result that the orders as contained in Annexures PI and PJ are quashed and it is ordered that the case shall go back to the Settlement Officer for carrying out the directions as contained in the remand order of the State Government passed on 26.7.1963. In view of these facts the parties are left to bear their own costs.

13. As a consequence of the aforesaid decision, matter came up before the Consolidation Officer, Una who vide order dated 2.10.1983 (Annexure PG) submitted his report recommending certain amendments.

14. After receipt of the aforesaid report, matter came up before the Additional Director Consolidation, who was required to proceed further. Vide impugned order Annexure PH, Additional Director instead of looking to the matter and taking action in accordance with law has ignored the report of the Consolidation Officer and has made amendments to it and thus, disturbed the scheme subject to which consolidation proceedings were to be undertaken and land was to be re-partitioned. Petitioner is aggrieved by this order and has challenged the same on a number of grounds.

15. Petitioner was wanting the area reserved by him to be allotted to him. This was to be done on the basis of the revenue record, which was prepared at the time of consolidation as per scheme. After completion of consolidation proceedings, settlement etc. had taken place, latter was to follow the consolidation. Entries as well as the dimensions of fields i.e. "karunakns" were to be included on the basis of consolidation record and then were to be filled in the settlement record. Respondents were put to notice as far as back on 18.6.1992 in this writ.

16. Amongst other things, Respondents No. 2 to 5 were restrained from interfering in any manner with the land in dispute and also from changing its nature. Writ petition was admitted on 6.1.1993 and the ad-interim order was made absolute.

17. Respondent No. 1 has tried to justify the impugned order Annexure PH. It is pleaded that the petition is bad for non joinder of other heirs of Ishar Singh son of Pal Singh. Regarding decree of the Civil Court, its reply is evasive. Though it is admitted that land comprised in Khasra No. 862/872/1 old (which was reserved as per claim set up in the writ petition by Petitioner's father in para No. 7) was in joint ownership of Pal Singh and father of the Petitioner in half share and Smt. Gurnav Kaur etc. in the other half. Petitioner after having reserved khasra number as claimed including Khasra Nos. 1863/872, 1862/872/1, 1862/872/2,

1856/689 and 1855/689, was admitted. Reason not to take into account the report of Consolidation Officer dated 7.10.1983 Annexure PG with the writ, given is that it had no validity after settlement operation. Thus it prayed for dismissal of the writ petition. While filing rejoinder, all pleas to the contrary made in the reply of Respondent No. 1 were denied and contents of the writ petition were reiterated.

18. Stand taken by the Respondents No. 2 to 5 in their reply was that writ petition is bad for non joinder of Gurneb Kaur etc. Respondent No. 2 Chinta Singh having raised his house and also cattle shed on the disputed land was about 30 years back after the completion of consolidation proceedings in the year 1962. Thus latches were pressed into service as a ground for dismissal of the writ petition, especially on the part of the Petitioner. While admitting that consolidation proceedings started in the year 1960 in village, were completed in the year 1962-63. It is alleged that the Petitioner is not entitled to the area reserved for the allotment of the land reserved by them (Respondents).

19. According to them, the demarcation was carried out by the revenue staff at the spot and area marked with lal lakir has been allotted to the person to whom it belonged. Respondents also claimed that they have a right of passage from the disputed land, the doors of their building also open there. Thus while justifying the impugned order Annexure PH, they have prayed for the dismissal of the writ petition.

20. In rejoinder claim as put up by the Respondents No. 2 to 5 in the reply has been denied. Delay in the circumstances, of this case according to Petitioner, cannot be pressed into service as a ground to deny his claim. It was further pleaded that interim orders had been passed from time to time including those of this Court and thus Respondents cannot be allowed to take advantage of their own wrongs. When needful was not done, according to the Petitioner a mandate was issued by this Court as detailed hereinabove. Thus he has prayed for allowing this writ petition.

21. A fact that needs to be mentioned herein is that original Respondents No. 2 to 5 were represented by Shri S.S. Kanwar, Advocate, who had filed reply on their behalf. Record of the case shows that Respondent No. 3 died during the pendency of the writ petition when CMP No. 211 of 95 was filed. It was allowed and the legal representatives of the said Respondent, namely, Mohinder Singh and Harpal Singh were ordered as party. Name of Mohinder Singh was ordered to be deleted on the application filed by the Petitioner being CMP No. 963 of 1998 as per orders of the Court dated 23.7.1998.

22. The matter came up before the Court for final hearing on 4.6.2001. In these circumstances as such following order was passed on the said date :

Let notice be issued to Respondent No. 2 Shri Chinta Singh son of Shri Wazir Singh, 3(b) Shri Harpal Singh, 4 Shri Sawaran Singh and Respondent No. 5 Shri Charan Singh, returnable on July 9, 2001." When the matter appeared on

10.7.2001, as per office report Respondent Nos. 2, 3(b), No. 4 and 5 were duly served, but were not present. Finally the matter was heard on this date.

23. Learned Counsel for the Petitioner made a precise statement that so far his client is concerned, right from 1963 onwards he had been vigilantly as well as diligently prosecuting the matter. According to him, if certain consolidation staff did not adhere to carry out what was ordered as far as back as in 1963, and thereafter when orders were passed contrary to law, his client immediately came to this Court for setting aside the said order in CWP No. 67 of 1971, which was allowed on December 14, 1977. Despite direction of this Court when consolidation officer submitted his report, Additional Director of Consolidation did not adhere to it and took up the plea that since settlement had taken place, therefore recommendations made by revenue officials is of no significance. Thus he has wrongly passed the impugned order. According to the learned Counsel for the Petitioner, the writ was liable to be allowed.

24. On the other hand, learned Assistant Advocate General submitted that no fault can be found with the impugned order which calls for no interference. As according to him after consolidation, settlement had taken place, therefore, boundaries, karukans i.e. measurements as given in the revenue record at the time of consolidation were not tallying, as such Additional Director Consolidation was justified in passing the impugned order. Thus he has prayed for dismissal of the Writ petition.

25. With the assistance of the learned Counsel present for the parties, stand of Respondents No. 2 to 5 as put up in their reply was also examined by us. It is in line what was pleaded by Mr. Vivek Thakur learned Assistant Advocate General. They have claimed title over the disputed land as Respondent No. 2 having constructed a double storeyed residential house and also he has a cattle shed over the disputed land and the entrance door of the house opens towards the well and also towards the land which is under dispute.

26. After having heard the submissions urged on behalf of the parties and for the reasons to be recorded hereinafter, we feel that this writ petition deserves to be allowed and the Annexure PH quashed and set aside.

27. Chequered history of the case clearly suggests that Petitioner and prior to him his father as well as grand-father had been diligently prosecuting the matter. When cloud was cast on their rights to the well in question, at their instance decree was passed as noted hereinabove. Because they immediately approached the civil court, where the claim of Respondents No. 2 and 3 and of predecessor of interest of Respondents No. 4 and 5 was negatived. Similarly when they found that the consolidation authorities are acting contrary to the scheme and area reserved by them was not being allotted to them, they again approached the competent authority and restraint order was passed as far back as in the year 1963. In the ordinary course of things, consolidation staff was expected as well as required to carry out what was ordered by the Additional Director

Consolidation. Needful having not been done as per the said order, therefore, father of the Petitioner was again forced to file another revision petition, which was partly allowed by Deputy Commissioner, Bilaspur and rest of the claim was wrongly negated. Again Petitioner immediately approached this Court wherein the order of Deputy Commissioner was set aside and mandate was given to carry out the orders extracted hereinabove.

28. In these circumstances, to say the least, Respondents No. 2 to 5 cannot put up the plea of delay and laches for dismissal of the writ petition. And by no stretch of imagination, it can not be said that either the Petitioner or his predecessor slept over the matter. Thus this plea of delay and laches on behalf of Respondents No. 2 to 5 is hereby rejected being without merit.

29. Admittedly, as per stand of Respondents No. 2 to 5 consolidation proceedings were completed in the year 1962-63 after those were commenced in the year 1960. This reply was filed in the court on 9.11.1992. On their own showing alleged house was constructed by Chinta Singh about 30 years back. If he has taken up the risk of constructing his house without consolidation proceedings attaining finality, he is to bear the consequences. We may clarify here that he was well aware that the proceedings are on and the Additional Director of Consolidation had passed the order as far back as in the year 1963. Thereafter proceedings were on before the subordinate Consolidation Officer as well as Deputy Commissioner, Bilaspur and finally before this Court. In these circumstances, he did everything at his own risk and peril, therefore, no equity much less right has arisen in his favour. He cannot be permitted firstly to create a situation by his own acts and then plead for equity. As such raising of construction by itself cannot be permitted to be a ground on the part of the Respondents for dismissal of this writ petition.

30. Additional Director Consolidation appears to have been swayed by the fact that after consolidation settlement had taken place, therefore mutation of the consolidation proceedings vide Annexure PG were not to be carried out. We feel that he has failed to carry out not only the order 1963 but has also failed to carry out the mandate of this Court issued in CWP No. 67 of 1971, *supra* (Chinta Singh, Respondent No. 2 in the present writ petition as well as Raja Singh and Mal predecessors-in-interest of Respondents No. 3(a) and 4 and 5 collectively were a party to this writ petition). Therefore, they are precluded from saying anything to the contrary. In this behalf it may be appropriate to mention that this judgment has attained finality inter se the parties. It is an additional ground to negative the claim of Chinta Singh regarding raising of house as claimed in the reply of Respondents No. 2 to 5. In this judgment again order dated 26.7.1963 of the State Government was required to be carried out. Additional Director had no authority to have sat over this order as has been done by him while passing the impugned order Annexure PH. He was bound in law to see that writ of this Court in CWP No. 67 of 1971 is carried out in its letter and spirit. So far carrying out of settlement is concerned, it was expected of him to have put greater labour

by keeping in view the revenue record prepared at the time of consolidation as well as settlement as claimed by him, then he ought to have tallied the khasra number with the old khasra numbers, then with the khasra numbers allotted in the Scheme of consolidation and finally with those of the settlement record. Thereafter keeping in view the scheme of the consolidation, he should have tallied the measurements, karukans etc. and then ensured that the area reserved by the Petitioner/his predecessor was allowed to him and deficiency, if any, was made good. This could be done by accepting the report of Consolidation Officer dated 2.10.1983 Annexure PG. As a consequence of it, the Petitioner ought to have been put in possession of the land and deficiency, if any made good. No doubt, this required lot of extra labour to be undertaken by the concerned staff.

No other point is urged.

31. As a consequence of the aforesaid discussion, Annexure PH is hereby quashed and set aside. Director Consolidation, H.P. exercising the powers of State Government is directed to keep in view the orders of the Additional Director Consolidation of Holdings, Pb. Jullundur exercising the powers of State Government supra, as well as direction of this Court dated 14.12.1977 in CWP No. 67 of 1971, and then to proceed further by accepting the recommendations dated 2.10.1983 in Annexure PG by the Consolidation Officer, Una and then pass appropriate orders. If in this process some area of Respondent need to be cleared, they be allowed some reasonable time to clear the same and on their failure to do the needful, Petitioner shall be entitled to take possession of the land without payment of any compensation for such allotted land Respondent No. 1 State shall also pay to the Petitioner the cost of this litigation.