
(1990) 04 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2117 of 1985

Mrs. Renuka Sekhon	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 10-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14(1)
Punjab Municipal Act, 1911 — Section 241

Citation : (1990) 98 PLR 58

Hon'ble Judges : J.V. Gupta, Acting C.J.; M.S. Liberhan, J

Bench : Division Bench

Advocate : T.S. Doabia, for the Appellant; H.S. Mattewal and P.S. Thiara, Iqbal Singh and A.S. Chahal for Respondent No. 13 and Jaishree Jhohar, for the Respondent

Final Decision : Allowed

Judgement

M.S. Liberhan, J.—In this Writ Petition, two questions of law were raised before the learned Single Judge and were referred for decision by a larger Bench. The questions posed are :

- (i) Can the consolidation proceedings be continued with regard to land which was situated in a village at the time of issuing Notification u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 when subsequently at the time of effecting re-partition the land becomes part of a Notified Area Committee on a declaration having been made by the State Government u/s 241 of the Punjab Municipal Act, 1911; and
- (ii) in which authority would the land reserved for common purposes vest after the Gram Panchayat ceases to exist and a new authority by the same Notified Area Committee comes into existence.

2. The questions were raised in view of the undisputed facts, that 56 Acres 4

Kanals of land forming a part of Khasra Nos. 1192 to 1337 of village Dakha Hadbast No. 142, Tehsil Ludhiana, District Ludhiana, was notified u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The consolidation proceedings were going on when the State notified the area under consolidation as notified area of the Notified Area Committee. Resultantly the area under Consolidation fell within the Municipal limit of the Municipal Committee. The petitioner challenged the continuation of the consolidation proceedings on the grounds viz. (i) that the consolidation proceedings cannot continue as the land in dispute had become a part of the Notified Area of the Committee, and (ii) that the land in dispute was earlier subjected to consolidation in the year 1950 and having been kept in the said proceedings for extension of abadi, it cannot be subjected to the consolidation proceedings again.

3. It would be expedient to collate the scheme of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The Act was enacted with the object of bringing prosperity to the peasantry and to promote the village economy by making the plots viable for agricultural purposes and further to prevent fragmentation of the agricultural land holdings. It was an act in the nature of agrarian reforms. It provides compulsory consolidation of agricultural holdings. "Consolidation of Holdings" has been defined by Section 2(b) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Consolidation Act), to mean the amalgamation and the redistribution of all or any of the lands in an estate or sub division of an estate so as to reduce the number of plots in the holdings. The definition of "land" as envisaged by Section 2(d) of the consolidation Act provides that "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of building and other structures on such land. The "estate" has not been defined in the said Act. Section 2(k), however, provides that words and expressions used in this Act but not defined, have the meanings assigned to them in the Punjab Land Revenue Act, 1887 (XVII of 1987). The Punjab Land Revenue Act defines "estate" to mean any area for which a separate record of-right has been made; or which has been separately assessed to land revenue; or would have been so assessed if the land revenue has not been released, compounded for or redeemed; or which the State Government may, by general rule or special order, declare to be an estate. In order to implement the object of the Act, the Government has been empowered by Section 14 of the Consolidation Act to notify its intention to make a scheme for the consolidation of holdings in such estate or part thereof as may be specified. Section 14 of the said Act reads as under;

"14. Government may of its own accord or on application declare its intention to make scheme for consolidation of holdings. --(1) With the object of consolidating holdings in any estates 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.

(2) and (3) xx xx xx xx xx xx xx xx

4. On such publication in the estate concerned, the State Government may appoint a Consolidation Officer who would prepare a scheme for the consolidation of holdings in such estate or estates or part thereof as the case may be in consultation with the land owners of the estate or estates concerned and the non-proprietors and the Gram Panchayat, if any, of the village. The scheme has to provide for the payment of compensation, valuation of land and rights of occupancy tenants to be effected, provision for petition of joint land and joint occupancy tenancy, amalgamation of roads, reservation of lands for common purposes and extension of abadi.

5. A reading of Section 18, which is in the following terms :

"18. Lands reserved for common purposes.--

Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct-

(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;

(b) that any land under the bed of a stream or torrent flowing through or from the Siwalik mountain range within the State shall be assigned for any common purpose;

(c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other and for such purpose."

makes it obvious that that the Consolidation Officer is required to reserve the land for extension of the village abadi, if no land is already reserved and if the land so reserved is inadequate to assign another land for this purpose. The scheme was to come into force only when the persons entitled to possession of the holdings under the Act and the scheme have entered into possession of the holdings allotted to them. It has been so provided by Section 24.

6. Vide Section 23-A, management and control of lands for common purposes has to vest in Panchayats or the State Government. The Section is to the following effect:

"23-A. Management and control of lands for common purposes to vest in Panchayats or State Government--As soon as a scheme comes into force the management and control of all lands assigned or reserved for common purposes of the village u/s 18.--

(a) in the case of common purposes specified in Sub-clause (iv) of Clause (bb) of

Section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and

(b) in the case of any other common purpose, shall vest in the Panchayat of that village;

and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing there from for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly :

Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the pro motors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of Consolidation."

7. From a reading of the provisions of the Act, the scheme of the Act, the object of the Act and applying the rule of pith and substance of the Legislation and not permitting hyper-technical analysis to a point of defeating justice, it is obvious that the State is authorised to legislate for consolidation with respect to rural agricultural lands and it would be reasonable to hold that consolidation proceedings can be initiated with respect to agricultural lands. The moment agricultural land ceases to be agricultural, the proceedings cannot be allowed to be continued.

8. The contention that consolidation can be effected only in the village is a sine qua non for initiating the consolidation proceedings cannot be sustained. It is obvious from a reading of Section 14 that the Gram Panchayat is to be consulted only if it exists otherwise the scheme can be framed without consultation of the Gram Panchayat with respect to the estate as defined in the Punjab Land Revenue Act which defines "estate" as any area for which a separate record-of-right has been made or which had been separately assessed in land revenue. It is clear that the village is not a sine qua non for initiating the consolidation proceedings. The consolidation proceedings can be initiated even in a town but only with respect to agricultural lands.

9. In the present case, there is no dispute nor it is controverted in the course of arguments that about 25 per cent land is already under houses and shops and further the land in dispute has been notified u/s 241 of the Municipal Act as the notified area Section 241(3) provides that the notified area can be declared only if it contains a town or bazar and is not purely an agricultural village. The Notification thus carries a assumption that it is an urban property falling within the notified area and no more available for agriculture as such. The nature of the land has to be determined and merely payment of land revenue does not necessarily make it agricultural land. It is the apparent form which determines the nature of the land. It may be emphasised that in the course of arguments it was stated that it was urban valuable property, where shops, houses and other commercial buildings including warehouses etc. have come into existence. It was

emphasised that earlier during consolidation in the year 1950 the land was reserved for the extension of the village abadi. In our considered view since the land in dispute had ceased to be an agricultural land and had fallen in the Notified area Committee, the consolidation authorities ceased to have jurisdiction over it under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act.

10. In the circumstances, so far as question No. 1 is concerned, it is answered in the negative to the effect that consolidation proceedings cannot be continued with regard to land which was situated in a village at the time of issuing Notification u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 when subsequently at the time of effecting re-partition the land becomes part of a Notified Area Committee on a declaration having been made by the State Government u/s 241 of the Punjab Municipal Act, 1911.

11. So far as question No. 2 is concerned, there is no gainsaying that the Gram Panchayat is a juristic person and capable of holding property. If a part of the property of the Gram Panchayat has been taken or notified as an urban area, or falls within the municipal limits, the Gram Panchayat does not cease to be a juristic person to hold the property. The Gram Panchayat can hold the property and the ownership continues with the Gram Panchayat. The said view finds support from a judgment reported in Gram Panchayat Nasrali v. The State of Punjab and Ors. In the above cited judgment, the learned Single Judge has taken the view that inclusion of Sabha area within the Municipal limits or by partial inclusion Sabha area within the Municipal limits. Gram Sabha or Gram Panchayat does not cease to be juristic person, nor the properties owned by the Gram Panchayat cease to be properties in its ownership. It remains the property of Gram Panchayat, though it may cease to be amenable to the provisions of the Gram Panchayat Act. We respectfully agree with the ratio of the judgment to which nothing more can be added.

12. In view of the above, the answer to the second question is that the property reserved for common purposes would continue to vest in the Gram Panchayat and it would not vest in the Notified Area Committee.

13. For the reasons recorded above, the Writ Petition is allowed. Further proceedings of consolidation in continuation of Notification, dated October 3, 1977, Copy Annexure P-2, are quashed.

14. There will, however, no order as to costs.