
(1963) 02 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 265 of 1961

Pal Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 27-02-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) 02 P&H CK 0037

Hon'ble Judges : Dua, J

Bench : Single Bench

Advocate : D.S. Nehra, for the Appellant; C.L. Lakhanpal and Mrs. J.S. Wasu, for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—Forty two Petitioners have approached this Court under Article 226 of the Constitution for a writ in the nature of certiorari or mandamus quashing the order of the Director, Consolidation of Holdings, dated 10th January, 1961 an ordering him to forbear from giving effect to the same and prohibiting the Settlement Officer, District Bhatinda, and the Consolidation Officer, Sub-Tehsil Phul, District Bhatinda from taking any further action in pursuance of the aforesaid order of the Director, Respondent No. 2. Any other appropriate writ, direction or order as may be considered necessary has also been prayed for.

2. The Petitioners who claim to be the residents of village Burj Ladha Singh Wala (Sub-Tehsil Phul, District Bhatinda) and of village Sukha Nand, Tehsil Moga, the boundaries of which villages are stated to adjoin each other and the residents of the two villages are stated to own land in both the villages indiscriminately, have averred in the petition that the consolidation operations in village Burj Ladha Singh Wala started in December, 1954 and in April, 1955, a consolidation scheme was prepared and published in accordance with the provisions of Pepsu (Fragmentation and Consolidation of Holdings) Act of 2007 Bk. No objection was filed to this scheme by any landowner. In August, 1955, repartition of land was

started and it was completed in October of the same year. On repartition the land was allotted to the respective landowners by means of resolutions which were duly signed or thumb-marked by the allottees in token of their consent. In January, 1956, a shajra of the land allotted to the landowners on repartition was published according to the rules. About forty landowners filed objections to the repartition, but out of them some withdrew their objections, some compromised and the remaining cases were decided by the Consolidation Officer on merits. About 14 or 15 persons only filed appeals from the orders of the Consolidation Officer to the Settlement Officer. Out of them five were filed by the residents of village Sukha Nand and the remaining ten by the residents of village Burj Ladha Singh Wala. All of the appeals were, however, either compromised or decided on merits. Only six persons went up on further appeals from the orders of the Settlement Officer which were heard by the Additional Director of Consolidation on merits after the merger of the erstwhile Pepsu State with the State of Punjab. It is then averred that all claims, objections and appeals were thus finally disposed of by the authorities in accordance with law.

Early in 1958 the possessions of their respective holdings were delivered to the new allottees. The residents of village Burj Ladha Singh Wala spent huge amounts in sinking wells and tube-wells on the new allotments and also made other improvements as a result of which the value of the land was considerably increased. They took a loan from the Government to the extent of about Rs. 50,000/- and also spent large amounts from their own pockets. Out of 24 wells and tube wells sunk, 24 were actually sunk by the residents of this village. They spent this amount because proceedings of consolidation had been completed in every respect.

3. Sometime in 1957, two persons belonging to village Sukha Nand filed an application with the Punjab Government (Respondent No. 1) u/s 42 of the Consolidation Act. After an enquiry held by the Flying Squad and senior officers of the department, the Government ordered some modifications by providing passages to home plots and by making up the deficiency in the value of some landowners wherever it was considered necessary. The Consolidation Officer complied with these orders. In November or December, 1960, the department declared the completion of the consolidation of Holdings in the village and the case was filed according to rules under the orders of Respondent No. 2, the Director. In this way all the landowners became absolute owners of their respective plots.

4. About the same time viz November or December, 1960 elections to the Panchayat were held in the village and one Santa Singh of village Shri Ladha Singh Wala, who is closely related to Dr. Parkash Kaur, Deputy Minister, Punjab Government (his daughter being married to her brother; and who was a Naya Panch during the previous term got annoyed with the residents of the village because they did not lend him support in his contest for a seat of Sarpanch. On account of his influence with the Government due to the aforesaid relationship,

he along with one Mohan Singh of village Sukha Nand submitted an application to the Honourable the Chief Minister who on directed Respondent No. 2 (Director of Holdings) to take action in the light of the complaint contained in the application. On 10-1-1961 the Director went to the village and purporting to exercise his power u/s 42 of the Consolidation Act arbitrarily ordered prepartition in the village.

5. It is this order which, as already observed, is being assailed and it is described to be mala fide having been passed for collateral purposes. The object of the order as contained in Clause (c) of para (sic) is to punish the residents of the village for their failure to elect members to the Pan-chayat according to the desire of the authorities and the Government. The consolidation having been completed, it is pleaded that Section 42 is wholly inapplicable and it is also averred that action under this section could not be take once. Inter alia it is also averred that no notice was given to all the residents as required by law and Respondent No. 2 acted arbitrarily and did not even record the statements of the parties affected by the proposed order. Santa Singh who approached the Government had not even objected to the repartition at any stage and Mohan Singh had not chosen to go up on further appeal, with the result that according to the Petitioners they had no locus sinnii to object to the repartition,

6. In the return filed by Respondents Nos. 1 to 4 a preliminary objection has been raised against the competency of a joint petition but this was not pressed at the hearing. On the merits, it is submitted that repartition of village Burj Ladha Singh Wala was duly published under the Pepsu Consolidation Act on 9-1-1956 and it is admitted that with the exception of a few right holders, the others along with the members of the Advisory Committee thumb-marked the resolution under which new plots were allotted to them. Against the repartition thus published, 44 objections were filed out of which 9 were withdrawn, 10 accepted and 25 dismissed by the Consolidation Officer. Fifteen appeals were filed from the order of the Consolidation Officer out of which five were filed by the rightholders residing in willage Sukha Nand and the remaining by those residing in village Burj Ladha Singh Wala. Out of them, three appeals were withdrawn, four accepted and the remaining eight rejected. Six appeals were filed with the Settlement Commissioner in the erstwhile Pepsu State from the orders of the Settlement Officer and they were decided by the Assistant Director, Consolidation in the New State constituted after the merger. of these, one was accepted and five rejected. Possession over new plots was transferred after 1956 and thereafter 12 new wells were sunk and 12 pumping sets installed on the wells. The exact amount spent by the rightholders on the improvements made by them is according to the reply, to be assessed by the consolidation authorities in compliance with the directions contained in the impugned order. Recommendation for revocation of the consolidation proceedings was made in pursuance of enquiries held into a number of applications made by the right holders to the consolidation authorities and the Punjab Government alleging irregularities and illegalities committed by the consolidation staff during

consolidation proceedings of village Burj Landha Singh Wala. A copy of the report of the Consolidation Officer, Flying Squad, has also been attached with the return and marked as annexure R-1 dated 21-2-1958. The Settlement Officer varied the scheme u/s 36 of the Consolidation Act with a view to remove certain defects substantiated by the Flying Squad with the result that repartition of this village was published afresh under the Consolidation Act on 26-4-1960. The changes made during this repartition were, however, considered not to be enough. It is not disputed, and indeed it is expressly admitted, that records of the village in question were consigned to the record room on 13-12-1960, though it is averred that the defects mentioned in the impugned order still persist and it was not possible to remove them without amending certain portions of the scheme and repartition. It has, however, been also pleaded that on the report of the Flying Squad mentioned above no specific order was passed which could be considered to be u/s 42 of the Consolidation Act. It has also been admitted that an application dated 2-1-1961 was received from the Chief Minister with his orders that the village in question should be visited and the whole position should be explained to the persons concerned and to pass the necessary orders and also to change the Patwari. A copy of the said application has been attached with the reply and marked as annexure R-2. It may here be mentioned that this application purports to be on behalf of the residents of village Landha Singh Wala and Sukha Nand, though it bears the specific names of S. Santa Singh and Mohan Singh. Reading this application in the background of the earlier applications and the enquiry, according to the reply, indicates that there were numerous cases of injustice in spite of the repartition proceedings. Some defects of general nature are also alleged to have been discovered and if not removed, would, according to the return, tend to give rise to unnecessary and serious complications in future. There is an express denial of the allegations of extraneous consideration or political pressure and the complaints have been asserted to be genuine. The application in question, it has also been averred, was received by the Director, Consolidation in the normal routine. On 10-1-1961, the Director is stated to have visited the village and examined the consolidation operations in the presence of about 150 villagers including 66 rightholders whose list has also been attached as annexure R-3. After detailed discussion the consensus of opinion was considered to be in favour of republication of repartition and this course was adopted. Clear and reasonable directions in accord with rules of natural justice are stated to have been given by the Director in the impugned order and allegations of arbitrary conduct have been described as baseless. The allegations that the impugned order has been made for carrying out the directions of the Chief Minister has been denied and the order of the Chief Minister has been described to be merely a routine matter which did not interfere with the subjective assessment of the situation by the Director of Consolidation. Exercise of power u/s 42 of the Act by the Government in the year 1958-59 has also been denied, and it has also been pleaded that the power u/s 42 of the Act can be exercised at any time. The repartition of the village was, according to the reply, carried out on 26-4-1960 but the Petitioners did not care

to approach this Court against that repartition. The allegation of no notice having been given to the residents of the village as required by law has also been denied and it has been asserted that a telegram was addressed on 6-1-1961 to the Settlement Officer for informing the parties about the Director's visit to the village on 10-1-1961 and its purpose. A copy of this telegram has also been attached as annexure R-5. Failure to object or to appeal has been pleaded not to be a bar to an application u/s 42 of the Act. Santa Singh along with some other rightholders is admitted to have filed a joint application addressed to the Director on 17-6-1958, asserting that consolidation operations had been carried out in their village with the consent of the rightholders but this plea was not accepted and the scheme was varied by the Settlement Officer u/s of the Act to remove the defects pointed out by the Flying Squad. The impugned order, according to the reply, does not affect Santa Singh alone but it would remove the general defects pointed out in the impugned order. In the replication, the pleas of the written statement which are contradictory of the allegation- in the writ petition have been controverted and it has also been asserted that the Petitioners applied for the grant of the copy of the amended scheme but the same has not yet been supplied to them. It has been reiterated that after consigning the consolidation records to the record room the Government possesses no jurisdiction to pass the impugned order.

7. During the arguments main reliance has been placed by the Petitioners on a decision of this Court in *Bhukhan etc. v. The Punjab State* (1963) 65 P.L.R. 368 (F.B.), where Section 36 of the Consolidation Act was the subject-matter of discussion. It was held that u/s 36 it is incumbent upon the authorities to give a proper notice to the parties concerned and also an opportunity to present their case for its consideration. Power to vary or revoke a scheme of consolidation was also held to partake of a judicial nature and not to be exclusively administrative. By majority view it was also held that the phrase "at any time" in Section 30 means "at any time after preparation of the draft scheme but before repartition which takes place after all objectors, appeals, etc. are disposed of. The power u/s 36 cannot be exercised after the new record of rights comes into force." It has been urged that u/s 42 of the Act also the phrase "at any time" should be given the same meaning as in Section 36 and, therefore, the Government can not pass any order after the whole scheme has been actually finalised.

8. It may here be mentioned that unlike Section 36, section 42 itself contains a provision of notice to the interested parties for appearance and hearing except where the proceedings appear to have been vitiated by unlawful consideration. It is, therefore, unnecessary to refer to the Full Bench decision for the purposes of the argument based on absence of notice. Stress has been laid on the Full Bench decision in support of the contention that if the consolidation proceedings have concluded and the scheme has been completely worked out, there is no occasion for reopening the matter even u/s 42 of the Act. On behalf of the Respondents, the correctness of this position has not been controverted but interference u/s 42 has been sought to be justified on the ground that the

consolidation proceedings had not completely concluded on the date of the impugned order. Reference has been made to the record and my attention has been invited to an application by one Jaswant Singh dated 27th January, 1957 addressed to Shri Darbara Singh, Minister, Punjab Government in which certain complaints were made in regard to the consolidation of holdings in village Burj Ladha Wala. The learned Minister noted on this application that some serious irregularities had been mentioned in the representation and that the Consolidation Officer, Flying Squad, should be sent to enquire and report. Jaswant Singh and Puran Singh on 13th February, 1957 applied to the Director of Consolidation and after referring to their application dated 27th January, 1957 addressed to the Minister requested speedy compliance with the Minister's directions. There is also an application made sometime in August, 1957 addressed to the Consolidation Minister and signed by several persons including Santa Singh, Hazura Singh, Jagdev Singh and Pal Singh in which the consolidation work was described to have been very satisfactory in village Ladha Singh Wala and it was suggested that perhaps the Communist party of the village were trying to induce the people not to accept the consolidation peacefully. It was prayed that consolidation may not be cancelled and individual adjustments may otherwise be made. As a result of the enquiry, the Consolidation Officer submitted his report dated 9th April, 1958 in which defects and irregularities as a result of negligence of the Subordinate staff and lack of proper check up on the part of the supervisory staff were disclosed. The conduct of the Consolidation Officer and of the Assistant Consolidation Officer were held to be suspicious. The suggestion contained in the report was to revoke the scheme and order proceedings *denovo*. The report was submitted to the Minister Consolidation of Holdings, for his information as desired.

9. On 12th August, 1957, some other representations were made to the Minister, Consolidation purporting to be on behalf of the residents of village Ladha Singh Wala opposing reconsolidation and also praying that if reconsolidation was to be made then those who had spent sufficient money on the improvement of the allotted lands should be compensated. On 18th March, 1959, it was reported by the Director, Consolidation to the Under Secretary to Government Punjab, Consolidation Department, that cases of enquiry against Shri Harshivinder Singh, Consolidation Kanungo and Shri Nand Kishore Patwari C/H were filed as charges framed against them had not been proved and nothing was found against them during confidential enquiry by the Consolidation Officer. The case u/s 42 of the Consolidation Act was, therefore, to be fixed after receipt of a proposal from the Settlement Officer. On 10th July, 1959 it appears that the Settlement Officer ordered preparation of fresh scheme u/s 36 of the Consolidation Act for the purpose of making provision for common pool. On 25th July, 1959 the Director Consolidation wrote to the Settlement Officer asking for a detailed para-wise comments on the report of the C.O. Flying Squad and in this memorandum it is noted that the scheme had already been varied u/s 36 of the Consolidation Act. The Settlement Officer replied to this memorandum on 27th

June, 1960 in which he stated that the scheme had been varied u/s 36 of the Act and repartition also republished u/s 21(1) after making good the deficiency with certain rightholders and other clerical mistakes. According to this report all the main defects had been set right and the aggrieved rightholders could, in the opinion of the Settlement Officer, seek their remedy u/s 21(2), (3) and (4) if they so desired. A copy of this report was forwarded to the Deputy Secretary, Consolidation. On 5th October, 1960, the Deputy Secretary wrote to the Director Consolidation that the scheme had been varied by the Settlement Officer without obtaining Government orders when enquiries on the complaints of the rightholders were in progress. The Settlement Officer was, therefore, required to be asked to explain the circumstances in which he took the action in question. The Director was also instructed to fix responsibility on the staff responsible for committing irregularities during consolidation proceedings. On 9th November, 1960, the Director accordingly asked for the explanation of the Settlement Officer. The Director on 21st December, 1960 wrote to the Deputy Secretary that the village had been visited by the C. O. Flying Squad and after obtaining the views of the S.O. report was sent to the Government on 1st August, 1960. The scheme was thereupon varied by the Settlement Officer u/s 36 and the rightholders had remedy of regular objections and appeals u/s 21. Responsibility on the staff for irregularities was, according to this letter, being fixed. On 3rd February, 1961, the Settlement Officer wrote to the Director that the defects pointed out by the C. O. Flying Squad could not be removed without amending the scheme. It is also stated that there had been a discussion with the Director, Consolidation and it was as a result of this discussion that the scheme was directed to be amended u/s 33. Explanation, according to this memorandum, of Shri Gurkirpal Singh Ex. C. O. was called, but that officer being busy with flood work offered to send his explanation after seeing the record. Hazura Singh, A.C.O. had ceased to be in service by then.

10. It appears that certain appeals had actually been preferred u/s 21 of the Act, some of which were disposed of in August, 1960.

11. The resume of the various stages of the consolidation proceedings, as noted above, would clearly show that in August, 1960 certain appeals u/s 21 arising out of the order varying the scheme u/s 36 were disposed of. It is obvious that merely by deciding those appeals the consolidation proceedings cannot be held to have been concluded. As held by a Division Bench of this Court in *Jiwan Singh etc. v. Consolidation Officer, Sunam etc.* (1962) 64 P.L.R. 668, the phrase "as finally sanctioned" in Section 21 of the Consolidation Act denotes a repartition where all the objections against it and appeals and further appeals have been disposed of and that possession in the case of holdings allotted under repartition can only be transferred after the commencement of agriculture year next following the preparation of the record-of-rights. The Petitioner's counsel has not been able to show from the present record that the Consolidation proceedings had actually been concluded on the date of the impugned order so as to bar interference u/s 42 of the Act. This being the position, I have no option but to

hold that action taken u/s 42 in the present case cannot be held to be outside the statute on the ground of having been made after the consolidation had been completely finalised and concluded.

12. The next contention raised relates to the allegation of mala fide. It has been stressed that Santa Singh is a relation of Dr. Parkash Kaur, who is a Deputy Minister, and it is on account of this circumstance alone that the Chief Minister on 2nd January 1961 ordered the Director, Consolidation to take action in the light of the complaint contained in Santa Singh's application. Emphasis has been laid on the submission that the very fact that applicant Santa Singh directly approached the Chief Minister and secured an order showed that an extraordinary step, out of the ordinary routine usually available to the citizens generally, had been taken and this was prima facie evidence of favouritism and, therefore, of mala fides.

13. I am afraid it is not possible on this argument alone to spell out mala fides in the case in the hand. It is a matter of common knowledge that in the matter of consolidation of holdings in this State, the villagers do try almost invariably, so far as they are in a position to do so, to approach the Ministers with their grievances through members of the Legislatures or others having political affiliations or influence with the Ministers concerned. However unhealthy and undemocratic this practice may seem to be in the larger interests of a fully grown and truly democratic set up strictly adhering to the rule of law, in the existing state of affairs, as just mentioned, it does not necessarily lead to an inference of mala fides. It would certainly be a much more desirable situation to expect the administrative hierarchy to deal with the various complaints objectively and to discharge their official duties and functions without likes or dislikes, fear or favour, but it is not possible to shut our eyes to the actualities and the existing state of things. Democracy does not seem to have yet taken deep enough roots in this country and people still think in terms of always endeavouring to directly approach the Ministers concerned, because they think that it is by approaching them alone that they can get the needful done. In this background, it appears to me that the Ministers are also fully justified in looking into the complaints made to them direct by the citizens and also in seeing that the defects brought to their notice are not repeated. As a matter of fact, the Ministers are not only justified but entitled and indeed duty bound to investigate into the causes of the complaints brought to their notice and take all suitable and effective measures to ensure that such defects do not recur by, among other steps, taking suitable action against the delinquent officers without fear or favour. I am constrained to observe, at this stage, that bureaucratic red-tapism and traditional indifference on the part of the officials, to the requirements, needs and complaints of the common man, specially who has no political strings or other influence, has as every day experience shows, not yet completely disappeared from the administration, and the rule of law has not yet started ruling in actual practice. In other words, the administrative agency in our young welfare democracy has not yet imbibed and adopted the basic and essential norms of public conduct

expected of it. It is in the circumstances the solemn constitutional obligation of the Ministers to guide and lead their departments, towards the goal of putting them under the law and also to take serious notice of material deviations from the correct legal and constitutional path. It, is, therefore, not possible for me to infer favouritism and mala fides from the solitary circumstance of a Minister having entertained a complaint direct and taken action thereon. Though it can hardly be denied that such a course may and perhaps does, tend to give rise to an apprehension in the minds of those opposed to the reopening of the consolidation in question that the interference has been occasioned not solely and strictly on the basis of pure merit but as a result of some undue influence or pressure from the Minister concerned, I am on the facts and circumstances of this case, unable to persuade myself to strike down the impugned order as necessarily tainted with the vice of mala fides solely on this account. It must in this connection be borne in mind that a Minister is enjoined by the Constitution to take a solemn oath at the time of his appointment that he would, inter alia bear true and faithful allegiance to the Constitution, faithfully and conscientiously discharge his duties and do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will. This Court must, therefore, initially presume that the impugned action was free from mala fides unless satisfactorily shown to the contrary, for, breach of oath is not to be readily or lightly assumed. After going through the record, I find that it is not possible to sustain the allegation of mala fides, for, there are clear circumstances which suggest that there does exist sufficient material suggesting highly unsatisfactory nature of the consolidation proceedings. May be, as is argued, that even in consolidation proceedings relating to other villages similar defects may be traceable and the authorities have not chosen to take similar action there, but then that is not enough (assuming the contention to be justified on which I express no opinion) to hold the impugned order to be mala fides.

14. For the reasons foregoing, this petition fails and is hereby dismissed but without any order as to costs.