
(2003) 05 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4082 of 1988

Pannu Ram and Another

APPELLANT

Vs

The Additional Director, Consolidation of Holdings and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

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

Citation : (2003) 134 PLR 688

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : P.S. Kang, for the Appellant; Swati Gupta, A.A.G. for Respondent No. 1, Suresh Singla, for Respondent Nos. 2 to 5 and Ramesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—In this writ petition filed under Articles 226/227 of the Constitution of India, Pannu Ram and Banta Ram sons of Wazira, petitioners, have impugned the orders dated 12.01.1984 (Annexure P-5) and 28.08.1987 (Annexure P-7) passed by Additional Director, Consolidation of Holdings, Punjab (respondent No. 1 herein), vide which an application tiled u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act") by respondent No. 4 was allowed and the review application for reviewing the order dated 12.01.1984 was dismissed, respectively.

2. In the instant case, the dispute is with regard to providing the passage to the hilly "chak" of the petitioners by the consolidations authorities. In the year 1968-69, the consolidation of the land holdings was carried out in the revenue estate of Village Sakhpur, District Ropar under the provisions of the Act. The revenue estate of the aforesaid village comprised of hilly as well as plain lands. As per consolidation scheme, the consolidation of the plain area was to be done

and the hilly area was to be kept as it is. In the consolidation, the passage was provided to every "chak" of the landowner. The petitioners were also provided passage to their land in the plain area. Since no consolidation was carried out regarding the hilly area as per the consolidation scheme, the hilly area of every land owner was kept as it is. On 7.3.1969, the petitioners filed objections u/s 21(2) of the Act against not providing the passage to their hilly area. Those objections were allowed and vide order dated 25.4.1969 (Annexure P-i), the Consolidation Officer provided two karmas passage to Hilly "chak" of the petitioners from killas No. 291/3 and 291/4 belonging to respondents No. 2 to 5. Subsequently, respondent No. 4 filed an application (Annexure P-4) u/s 42 of the Act before the Director, Consolidation of Holdings, Punjab that passage No. 423 measuring 35 karmas x 2 karmas was wrongly provided to the Hilly "chak" of the petitioners from their land, which is situated in the plain area, as there was no scheme in the consolidation to provide separate passage from the plain area to the hilly "chak" of the owner. The Additional Director, Consolidation, Punjab, vide his order dated 12.1.1984 (Annexure P-5) allowed the said application, while holding that the petitioners were illegally provided passage to hilly "chak" from the land of the contesting respondent, as there was no scheme for providing any passage to the hilly "chak", for which no consolidation was carried out. Therefore, the passage, provided to the petitioners vide path No. 423 measuring 35 x 2 karmas passing from killa No. 291/2 was ordered to be abolished. Against that order, petitioner No. 1 filed a review application (Annexure P-6) which was also dismissed by the Additional Director, Consolidation of Holdings, Punjab vide order dated 28.8.1987 (Annexure P-7). On 13.5.1988, the instant writ petition was filed by the petitioners challenging the aforesaid two orders.

3. After hearing the learned counsel for the parties and perusing the record, I am of the opinion that there is no merit in the instant writ petition. The controversy in this petition revolves around the fact as to whether in the consolidation scheme, consolidation of the hilly area was to be carried out or not; or whether the passage was to be given to the hilly "chak" of the individual land owner. The petitioners did not place on record scheme of the consolidation, in which it was provided that the hilly area of the village was also to be consolidated. On the other hand, the contesting respondents have made a definite averment in the written statement that no consolidation of the hilly "chak" was to be carried out and only consolidation of the plain area was to be carried out. It has further been pleaded that actually during the consolidation, no change was made in the hilly area, therefore, question of providing path to the hilly area of a particular individual did not arise.

4. Though learned counsel for the petitioners could not controvert the aforesaid factual position, but it has been argued by him that as per Clause 13 of the consolidation scheme every block, was to be provided a path of 2 karmas width on the common boundary of two blocks. In case it is not possible then the path can be given traversing a block also, in my view, there is no force in this

contention of learned counsel for the petitioners because the aforesaid Clause 13 pertains to the consolidation of plain area. While doing the consolidation of the land situated in the plain area, every individual has to be provided path of 2 Karams. From this Clause, it cannot be inferred that a 2 Karams path was to be provided to the hilly area of every individual, even though no consolidation of the hilly area took place in the village. In view of this, I find no infirmity or illegality in the impugned orders passed by the Additional Director, Consolidation of Holdings, Punjab.

5. Facing with this situation, learned counsel for the petitioners submitted that once the Consolidation Officer had provided two karams passage to the petitioners to their hilly "chak" from the land of the contesting respondents vide order dated 12.1.1984, the same order should not have been interfered by the Additional Director, Consolidation of Holdings, Punjab, after the expiry of period of limitation i.e. six months from the date of order, as provided under Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as "the Rules"). In support of his contention, learned counsel for the petitioners relied upon a Full Bench decisions of this Court in Jagtar Singh v. Additional Director, Consolidation of Holdings, Punjab and Ors. (1984)86 P.L.R. 364.

6. I have also considered the aforesaid submission made by learned counsel for the petitioners and do not find any force in the same. In the instant case, the application filed by the contesting respondents u/s 42 of the Act was not against the order dated 25.4.1969 passed by the Consolidation Officer. Actually the said application was filed under the inherent power of the State Government u/s 42 of the Act which is being exercised by the Director, Consolidation of Holdings. This Section provides that the State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto thinks fit. Since in the instant case, there was no scheme for providing passage to the hilly area, therefore, the passage was wrongly provided to the petitioners from the land of the contesting respondents. Rule 18 of the Rules is not applicable to the proceedings initiated u/s 42 of the Act. Under this Section, there is no limitation for exercising the power of the State Government as this Section itself provides that any order passed under the Act or any scheme prepared or confirmed or repartition made by any officer under this Act can be reversed or modified at any time. The only requirement is that no order under this Section can be passed without providing an opportunity of hearing to the effected party. In the instant case, undisputedly when the impugned orders were passed by the Additional Director, Consolidation of Holdings, the petitioners were given opportunity of hearing and thereafter, the impugned orders were passed. Thus, I find no infirmity or illegality or any jurisdictional error in the impugned orders passed by respondent No. 1.

7. In view of the aforesaid discussion, there is no merit in the instant writ petition and the same is hereby dismissed with no order as to costs.