

(1991) 09 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 33 of 1988

Piara Singh

APPELLANT

Vs

Additional Director, Consolidation of Holdings, Punjab

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Citation : (1992) PLJ 552 : (1993) 1 RRR 336

Hon'ble Judges : Amarjeet Chaudhary, J

Advocate : Jasbir Singh, Advocate., Advocates for appearing Parties

Judgement

Amarjeet Chaudhary, J.

1. The petitioners, who are residents of Village Bhasour, Tehsil Malerkotla, District Sangrur, have filed the present writ petition under Articles 226/227 of the Constitution of India praying for quashing the impugned order dated 9.12.1987, copy Annexure P5 to the writ petition, vide which the Additional Director, Consolidation of Holdings, Punjab, Chandigarh, respondent No. 1 accepted the petition of Gram Panchayat, respondent No. 2, and set aside the orders dated 22.9.1978 and 8.10.1978 and the rehearing of the case which was earlier decided on 22.9.1978 was ordered to be fixed for 8.1.1988 at Ludhiana.

2. The facts in brief are that the petitioner in the year 1976 filed an application before the Additional Director, Consolidation of Holdings, under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, (hereinafter referred to as the "Act"). The same was accepted and deficiency in the land of the petitioners was ordered to be made good from the panchayat land by the respondent No. 1 vide his order dated 22.9.1978, copy Annexure P2 to the writ petition. Aggrieved by this order, Gram Panchayat, Bhasour, respondent No. 2 filed an application under Section 42 of the Act which was dismissed by Respondent No. 1 vide order dated 8.10.1987 copy Annexure P4 to the writ petition. Again on 21.10.1987, respondent No. 2 Gram Panchayat moved second application under Section 42 of the Act praying for quashing of orders dated 22.9.1978 and 8.10.1987, Annexures P2 and P4 respectively on the ground that

these were ex parte orders. The Additional Director, respondent No. 1 while accepting the plea of the respondent Panchayat ordered the rehearing of the original case which was decided on 22.9.1978 whereby the deficiency of the petitioner land was ordered to be made good from the Panchayat's land.

3. Feeling aggrieved against the aforesaid order, the petitioners have filed this writ petition challenging the impugned order Annexure P5 on the ground that the Additional Director, respondent No. 1 had no jurisdiction to review its orders dated 22.9.1978 and 8.10.1987 as the same have become final. The next plea of the petitioners is that Jaggar Singh, Sarpanch and Smt. Jangir Kaur, Panch, who earlier moved application under Section 42 of the Act on behalf of Gram Panchayat, respondent No. 2, were duly served. In order to verify this fact, the learned petitioners' counsel has drawn attention of this Court to Annexure P1. It has been further urged on behalf of the petitioners that the applications moved by the Panchayat on 1.9.1987 and 21.10.1987 were time barred and respondent No. 1 should not have entertained the same.

4. In order to fortify the argument, the learned counsel for the petitioner has placed reliance on AIR 1966 Supreme Court 641 in which it was held that there is no provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act granting express power of review to the State Government with regard to an order made under Section 42 of the Act. In the absence of any such express power, the Director, Consolidation of Holdings, cannot review his previous order of dismissing the application of the petitioner under Section 42 of the Act.

5. The learned counsel for the respondents has contended that the Gram Panchayat was served on 13.9.1978 and not on 13.8.1978 as alleged by the petitioner. At the relevant time, Shri Jaggar Singh had ceased to be Sarpanch. At the time of effecting service upon him, he was not holding the office of the Gram Panchayat as Sarpanch. Smt. Jangir Kaur was only a Panch and no valid service was effected upon her. Therefore, she was not legally authorised to appear before the then Additional Director, Consolidation of Holdings, Punjab. It was further contended that neither Jaggar Singh nor Smt. Jangir Kaur could represent and defend the Gram Panchayat under rule 16 of the Punjab Village Common Lands (Regulation) Rules framed under the Act.

6. I have considered the submissions of the counsel for the parties and perused the paperbook. A perusal of Annexure R1, which is Jamabandi for the year 195960, reveals that Nagar Panchayat was the owner of Khasra No. 2400 and the same has been shown as "Shaream" (thoroughfare). This entry continued up to the year 197475 as reflected in the copies, Annexures R1 to R3. The Additional Director, Consolidation of Holdings, Chandigarh vide his order dated 22.9.1978 had proceeded ex parte against Jaggar Singh, Sarpanch who had not appeared before him despite service which was affected upon him on 13.9.1978 as is evident from Annexure R5. However, from the perusal of Annexure R6, which is a certificate issued by the Block Development and Panchayat Officer,

Malerkotla, it is clear that on 25.8.1978, Sh. Bhajan Singh was the Sarpanch and Smt. Jangir Kaur was the female Panch. This certificate does not indicate that Jaggar Singh was the Sarpanch. In the light of the foregoing position, it is apparent that service on Jaggar Singh, alleged Sarpanch, was effected on 13.9.1978, who was not holding the post of Sarpanch at that time. Admittedly, when the basic order dated 22.9.1978, Annexure P2, was passed, Jaggar Singh, was not the Sarpanch of the Gram Panchayat in question and as such this order cannot be sustained in the eyes of law. Once the Court reaches a conclusion that service was not effected on the validly authorised Sarpanch, then the basic order, Annexure P2, will be treated as non est and deserves to be ignored. Though Jangir Kaur, Panch, was served, but she was not duly authorised by the Gram Panchayat through a resolution to appear before the then Additional Director when the order, Annexures P2, was passed. Once the basic order, Annexure P2, is held to be non est then the subsequent order cannot be taken into consideration and as such, order dated 8.10.1987, Annexure P4, will be treated as an invalid order in the eyes of law. In view of the reasons recorded above, I have reached the conclusion that the Additional Director, Consolidation of Holdings, Punjab, Chandigarh at Mohali had rightly passed the order dated 9.12.1987, copy Annexure P5 to the writ petition saying that Jaggar Singh against whom ex parte proceedings were ordered on 22.9.1978 was not the Sarpanch at that time. In the aforesaid order, I find no illegality vide which original File No. 298 of 1976, which stood decided on 22.9.78, was requisitioned from the record room and fixed for hearing at Ludhiana on 8.1.1988, against which order, the present writ petition has been filed.

7. In view of the aforesaid discussion, I find no merit in this writ petition and the same is dismissed with no order as to costs. However, under the circumstances, it is directed that respondent No. 1 will decide the original File No. 298 of 1976 on merits. The parties, through their counsel, are directed to appear before the Additional Director, Consolidation of Holdings, Punjab, Chandigarh on 30.10.1991 to receive further directions in the matter.