
(2003) 04 P&H CK 0106
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15626 of 1966

Prem Chand (Deceased) through his Legal heirs	APPELLANT
Vs	
Additional Director Consolidation and Others	RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (2003) 135 PLR 844 : (2003) 4 RCR(Civil) 56

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Sumeet Mahajan, for the Appellant; Tejinder Dhir and Ramesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—Prem Chand (now deceased through his legal representatives) filed the instant petition under Articles 226/227 of the Constitution of India for quashing the order 6.11.1995 (Annexure P4) passed by the Additional Director Consolidation, Punjab, Mohali (respondent No. 1 herein), vide which an application filed by Harbans Singh (respondent No. 2 herein) u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act") for correction of the mistake during the consolidation proceedings were allowed.

2. In this case, the dispute is about khasra No. 98/15/1 total measuring one kanal, situated in village Rahaun, Tehsil Khanna, District Ludhiana. Prior to the consolidation this land was comprised of Khasra No. 834 and was owned and possessed by one Waryam Singh, father of respondent No. 2. That was his only holding in the said village. In the consolidation the aforesaid khasra number was converted in 96/15/1,6/3 and these khasra numbers were allotted to petitioner Prem Chand alongwith other land. He was allotted near about 61 kanals of land.

3. On 27.3.1995, respondent No. 2 filed an application u/s 42 of the Act before respondent No. 1 alleging therein that he and his brother were having only khasra No. 834 measuring 0 bigha 16 biswas 5 biswas in the aforesaid village. That was their only land. During the consolidation, the aforesaid area comprising in Khasra No. 834 was to be allotted to them after changing its khasra number but the same was not allotted to them by mistake. Therefore, respondent No. 2 sought correction to be made in the scheme of consolidation to the effect that he be allotted the land out of aforesaid Khasra No. 98/15/1, 6/3. On the aforesaid application, notice was issued to the predecessor of the petitioners and after hearing the arguments of both the sides and after perusing the consolidation record, respondent No. 1 allowed the said application filed by respondent No. 2 vide order dated 6.11.1995 (Annexure P4), while making the following observation;

"I have gone through the record placed in file and heard both the parties. From the perusal of the file, it is clear that as per record of khewat No. 467 Khatauni No. 1124 and Khasra No. 834, area (0-12-3) standard stands entered as Gair Mutnkin. Its ownership stands entered in the names of Harbans Singh, Ranjit Singh sons of Waryam Singh and Inder Singh, Italy an Singh sons of Kehar Singh. The value was worked out by treating Harbans Singh as its owner in the map of share-holders. But after that, no area was given to Harbans Singh etc. which ought to have been given. The non-allotment of area during the implementation of the scheme, is a mistake on the part of the officials of Consolidation Department and that there is a no limitation in law for such mistake to be rectified. Therefore, the objection taken with regard to limitation is rejected. The second objection is in regard to the compliance of Rule 17. Rule 17 has been fully complied with. There is no weight in this argument of the counsel for the respondent. So far as the question of deficiency in the area of the respondent is concerned. Deficiency in his area can be made good by allotting in lieu of that (deficit area) out of Gram Panchayat Jumia-Mushtarka Malkana area, because cent per cent area of the petitioner was located at one spot and old khasra No. 834 was replaced by new khasra Numbers No. 98/5/1 and 6/3 which ought to be allotted to the petitioner. Making of allotment of 98/15/1(1-0) in favour of Harbans Singh, Ranjit Singh sons of Waryam Singh etc. is justified. Whatever deficiency is caused to the respondent, the same can be made good out of the area belonging to Jumla Mashtarkans/Gram Panchayat."

The aforesaid order has been challenged by the petitioners in the instant writ petition.

4. Aforesaid Khasra number was the only land owned and possessed by his father and the same should have been allotted to him. Learned counsel submitted in view of the decision of Supreme Court in Gram Panchayat Kakran v. Addl. Director of Consolidation and Ors. 1997(2) P.L.J. 375 and decision of this Court in Gram Panchayat of village Mahadian and Anr. v. The Additional Director, Consolidation Punjab and Ors. 1999(2) P.L.J. 282, respondent No. 1 should not

have exercised his jurisdiction u/s 42 of the Act for making change in the scheme of the consolidation after such an inordinate delay. Secondly, he submitted that if there was any deficiency in the area of respondent No. 2, he should have been given land from Zumla Mustarka Malkan land of the Gram Panchayat instead of giving and from that land of the petitioner. In that way substantial justice would have been done to the parties.

5. On the other hand, learned counsel for respondent No. 2 submitted that undisputedly father of respondent No. 2 was having only Khasra No. 834 as owner in possession. This land was Gair Mumkin land and except that land, there was no other land in his possession therefore, this land should have been allotted to him. But during the consolidation, though he was found to be entitled to this Khasra number while preparing Naqsha Hakdarwar, but no land was allotted to him. The consolidation authorities by mistake, did not allot any land to him in average of the aforementioned khasra number. He submitted that the aforesaid mistake was apparent on the record and respondent No. 1 has the jurisdiction u/s 42 of the Act to correct such mistake and for correcting such mistake, there is no limitation. In this regard, learned counsel referred to the Full Bench decision of this Court in *Sh. Jagtra Singh v. Additional Director, Consolidation of Holdings, Punjab and Anr.* (1984)86 P.L.R. 364 (F.B.), wherein it was held that bar of limitation of six months as provided for in Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Rules, 1949 does not apply to those petitions in which legality or validity of a scheme prepared or confirmed or repartition made in the consolidation is challenged. Rule 18 provided limitation only for petitions filed against orders passed under the Act. This decision of the Full Bench of this Court was approved by the Supreme Court in *The Cram Panchayat Village Kanonda v. Director, Consolidation of Holdings and Ors.* 1990 P.L.J. 213. Learned counsel for respondent No. 2 further submitted that by the impugned order respondent No. 2 has been allotted only one kanal of land comprising in khasra No. 98/15/1. He submitted that the this land was in possession of father of respondent No. 2 before the consolidation as well as after the consolidation since this was the only land owned by him, therefore, this small piece of land was to be allotted to him as it was Gair Mumkin land. Thus respondent No. 1 has rightly passed the impugned order and allotted land in question to him for which he was entitled. Leaned Counsel for respondent No. 2 submitted that there is no jurisdiction error or illegality or impropriety in the impugned order.

6. After hearing the arguments addressed by learned counsel for both the parties and perusing the record of the case, I am of the opinion that the impugned order passed by respondent No. 1 does not require any interference. Admittedly, the dispute pertains to only one kanals of land comprising in Khasra No. 98/15/1. During the consolidation, this area was allotted to Prem Chand, predecessor of the petitioners, in the year 1957. The old number of this khasra number was 834 which was owned and possessed by father of respondent No. 2. This was the only land, which was owned by him. The said land was Gair Mumkin and during

the consolidation, same area should have been allotted to him. But by mistake no area was allotted to him. In the impugned order, it has been clearly mentioned that by mistake the aforesaid khasra number was not allotted to respondent No. 2. By the impugned order, respondent No. 1 has corrected the mistake committed by the consolidation authorities during the consolidation.

7. In view of the aforesaid factual position, I find no jurisdictional error in the impugned order passed by respondent No. 1. It is undisputed that the Director, Consolidation has the jurisdiction u/s 42 of the Act to correct the mistake committed by the consolidation authorities at the time of consolidation. The only grouse of the petitioners is that the said power was exercised by respondent No. 1 after inordinate delay of 37 years, the Hon"ble Supreme Court in *Gram Panchayat Kakran v. Addl Director of Consolidation and Anr.* (supra) has observed that though no limitation is prescribed for an application u/s 42 of the Act dealing with the confirmation of the scheme, but such application should be made within a reasonable time and this question will have to be decided on the facts of each case. In the instant case, respondent No. 1 has exercised the jurisdiction after 37 years, but it has been found that there was a mistake committed by the consolidation authorities at the time of consolidation, as no land was allotted to the predecessor of respondent No. 2, though he was entitled for a share as per Naqsha Hakdarwar. That mistake was corrected by the impugned order. Since the dispute pertains to a very small piece of land i.e. land measuring 1 kanal, therefore, it will not be appropriate to set aside the impugned order in exercise of the discretionary power of this Court under Articles 226/227 of the Constitution of India, particularly when a mistake which was committed by the consolidation authorities was corrected by respondent No. 1. The impugned order is a just and reasonable order and the same should not be interfered by this Court on the ground that respondent No. 1 has corrected the aforesaid mistake after an inordinate delay of 37 years.

In view of the aforesaid discussion, the instant writ petition is without any merit and the same is hereby dismissed with no other as to costs.