

(1972) 07 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 458 of 1969

Puran Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 28-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 —
Rule 18

Citation : AIR 1973 P&H 131 : (1975) 1 ILR (P&H) 423

Hon'ble Judges : D.K. Mahajan, J; Bal Raj Tuli, J

Bench : Division Bench

Judgement

1. Jiwan Singh and others filed a petition under Arts. 226 and 227 of the Constitution of India for the issuance of a writ of certiorari for quashing the order of the Additional Director, Consolidation of Holdings dated 27-7-1967, a copy of which was filed as Annexure "A" to the writ petition. Written statements were filed on behalf of Puran Singh and Shankar Singh, sons of Sunder Singh, in whose favour the order had been made by the Additional Director, Consolidation of Holdings. The writ petition was allowed by a learned Single Judge of this Court on the ground that the application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act). had been made beyond the period of six months prescribed by Rule 18 of the East Punjab Holdings (consolidation and Prevention of Fragmentation) Rules, 1949, (hereinafter called the Rules) and that the delay in filing the application had been condoned by the learned Additional Director, Consolidation of Holdings, on wholly extraneous grounds. In coming to that conclusion, the learned Judge relied on Division Bench judgment of this court in Sewa Singh v. State of Punjab ILR (1967) P&H 89, and refused to go into the merits of the case. Puran Singh has filed the present appeal under clause 10 of the Letters Patent against the judgment of the Learned Single Judge.

2. This appeal was earlier heard by us and accepted on October 19, 1970, on the ground that rule 18 of the Rules was ultra vires section 42 of the Act with the result that the application u/s 42 could be made at any time and could not be dismissed on the ground of limitation as had been held by the learned Single Judge. That judgment has since been reported as *Puran Singh v. The State of Punjab* 1971 Cri LJ 30.

3. An application for leave to appeal to the Supreme Court (S. C. A. 16 of 1971) was then filed and in that application it was pointed out that Section 46 (2)(ff) of the Act, which had not been brought to our notice at the hearing of the appeal, authorised the State Government to frame a rule providing the period of limitation for filing applications u/s 42 of the Act. At the hearing of that application, it was submitted by the learned counsel for the State of Punjab that the appeal might be reheard. The learned counsel for the respondents to that application had no objection to that course being adopted. Accordingly by our order dated April 28, 1972 we set aside our judgment delivered on October 19, 1970 and directed that this appeal may be set down for hearing on May 19, 1972. Due to certain reasons, the appeal could not be heard till today.

4. The learned counsel for the appellant has again argued that rule 18 of the Rules is ultra vires section 42 of the Act and in support of his submission reliance has been placed on the judgment of the Delhi High Court (K. S. Hegde, C. J., now a Judge of the Supreme Court). in *M. C. Rahbar v. Union of India*, 1968 Delhi LT 78, as was done earlier. The section under consideration in that case was section 24 of the Displaced persons (Compensation and Rehabilitation) Act (44 of 1954). and rule 104 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which are as under:--

"Section 24(1) the Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Managing Officer or a Managing Corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

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Rule 104(1) A petition for revision under the Act shall be drawn up and presented in the same manner and within the same period as a memorandum of appeal and shall be accompanied by a copy of the order sought to be revised.

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5. On a parity of reasoning, it is submitted that section 42 of the Act gives the power to the State Government to satisfy itself as to the legality or propriety of

any order passed, scheme prepared or confirmed or repartition made by any officer under this Act after calling for or examining the record of any case at any time and that time cannot be curtailed by the rule-making authority. The case before the learned Chief Justice of Delhi High Court is, however distinguishable from the instant case. In the Displace persons (Compensation and Rehabilitation) Act, there is no provision authorising the rule-making authority to provide the period of limitation for any application made under the said Act. Section 46(2) (ff) of the Act gives the power to the State Government to make rules providing for the "period within which the application shall be filed." This clause (ff) was added to section 46 of the Act by Punjab Act No. 20 of 1959 and thereafter the State Government framed Rule 18 on 18-3-1960, which reads as under:-

"18. Limitation for application u/s 42.

An application u/s 42 shall be made within six months of the date of the order against which it is filed.

Provided that in computing the period of limitation, the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of section 21, required to accompany the application, shall be excluded.

Provided further than an application may be admitted after the period of limitation therefore if the applicant satisfies the authority competent to take action u/s 42 that he had sufficient cause for not making the application within such period."

6. According to section 46 of the Act, rules can be framed with a view to carry out the objects of the Act. The objects of the Act appear to be that the consolidation proceedings should be terminated as expeditiously as possible. This indication is quite clear from the periods of limitation prescribed for various appeals in section 21 of the Act. It was taken for granted by the Legislature and the rule-making authority that the parties who file objections and appeals against the repartition to various officers u/s 21 of the Act shall also exhaust the last remedy provided by section 42 of the Act with speed and that is why a period of six months has been provided by the rule-making authority in rule 18. The state government or its delegate acting u/s 42, has however, been given the power to extend the period of limitation prescribed in rule 18, if the applicant satisfies the authority competent to take action that he had sufficient cause for not making the application within such period. Genuine case, on applications made after the period of limitation, can be dealt with by the State Government to act section 42 of the Act suo motu at any time has not been curtailed. The period of limitation has been prescribed only for an application to be made u/s 42 of the Act. It cannot, therefore, be said that the rule goes beyond section 42 of the Act and is, therefore, ultra vires. Both the provisions have to be reconciled if they can be reconciled, which is the first principle of interpretation of statutes. In this case,

we find that by the interpretation set out above, both the provisions of the section and the rule are reconciled.

7. Moreover, clause (ff) was added to section 46(2) of the Act by the Legislature giving power to the rule-making authority to make rules prescribing the period of limitation for any application under the Act more than ten years after the enactment of section 42 in the Act. There is no other provision under the Act under which an application has to be made. The application has to be made only u/s 42 of the Act for which period of limitation has been prescribed in rule 18 and court-fee is prescribed in rule 19. The addition of clause (ff) to section 46(2) of the Act, being later in time than section 42, is to prevail in case of any conflict between the two. It is, however, clear that it was present to the mind of the Legislature, while adding clause (ff) to section 46(2) of the Act, that the state Government and the rule-making authority will have to prescribe the period of limitation only for applications u/s 42 of the Act. That power was expressly and consciously given by the Legislature to the rule-making authority and being in accordance with the objects of the Act cannot be struck down as ultra vires. A similar view was taken by Narula, J. in *Sher Singh v. The State of Punjab* 1966 Cri LJ 362.

8. For the reasons given above, we hold that rule 18 of the Rules is intra vires section 42 of the Act and overrule our decision in 1971 Cri LJ 30 (supra).

9. While deciding the application u/s 42 of the Act, the learned Additional Director, Consolidation of Holdings, noticed that the application before him was barred by time. Puran Singh, appellant was the petitioner before him and he alleged that the dimensions of plot No. 301 were 8-8-4-3. In support of his assertion, he showed the pass-book which contained those dimensions. The report of the Assistant Consolidation officer revealed that the correction in the dimensions of the plot was subsequently made in the absence of the petitioner. The Additional Director, on these facts, came to the conclusion that there was no evidence to show that the petitioner was heard before making the correction, waived the limitation and in view of the report of the Assistant Consolidation Officer, set aside the rectification. The learned Single Judge was of the opinion that the period of limitation had been waived on extraneous grounds, We respectfully do not agree with that view. It was held by their Lordships of the Supreme Court in *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, :--

"Whether an appeal is competent whether a party has locus standi to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed are all matters for the decision of the appellate court so constituted. Such a tribunal falls within class 2 of the classification of the Master of the Rolls."

10. The judgment of the Master of the Rolls referred to is *Reg. v. Income Tax Commr.* (1888)21 QBD 313. It was held in that case that even if the Tribunal

decides such questions wrongly, a writ cannot be issued against it for quashing the order. It cannot be said in the instant case that the period of limitation was extended on extraneous grounds. The appellant had explained that the impugned order had been passed in his absence which explanation was accepted as sufficient by the Additional Director. We, therefore, hold that the learned Single Judge was in error in accepting the writ petition on the ground that the Additional Director had erroneously extended the period of limitation on extraneous grounds and had heard a time-barred application.

11. For the reasons given above, we accept this appeal set aside the order of the learned Single Judge and remand the case to the learned Single Judge for decision on merits. We, however, leave the parties to bear their own costs of this appeal.

12. Appeal allowed.