
(1993) 05 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 318 of 1982

Ralla Gir

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 03-05-1993

Acts Referred:

Citation : (1993) 2 CurLJ 279 : (1993) 2 LJR 298 : (1993) PLJ 482 : (1993) 2 RRR 642

Hon'ble Judges : R.S.Mongia, J

Advocate : M.S. Kang, Advocate., Advocates for appearing Parties

Judgement

R.S. Mongia, J. (Oral)

1. Petitioners as well as respondent Nos. 2 to 4 are rightholders of village Kansal, District Ropar. Respondent No. 2, Lal Gir (since dead) moved an application before the Additional Director, Consolidation, Punjab under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the "Act") claiming that he had been given some area in Rectangle No. 125, but he could not be put into possession of a part of that Khasra number because by that time repartition had taken place and Public Health Department had sunk a tubewell therein. Vide order dated 31.3.1976, the then Additional Director, Consolidation of Holdings withdrew the area under the tubewell from the petitioner and gave him equivalent area in Villa No. 122/9. However, respondent No. 2 had to approach the Additional Director again on 26.2.1978 on the ground that the area allotted to him by the then Additional Director vide order dated 31.3.1976 stood already acquired for the Harijans for Abadi purposes and, therefore, alternative land in lieu of land and killa No. 122/9 might be allotted to him. The Additional Director, Consolidation of Holdings vide order dated 10.10.1978 allotted alternative land in lieu of the land which was allotted to him in Villa No. 122/9. Copy of the order has been attached as Annexure P/1 with this petition. It may be observed that the area which was allotted to respondent No. 2 vide order dated 31.3.1976 measurement 1 kanal

and 9 marlas, which when converted into standard Annas valued 0.15 Annas. However, while passing the order dated 10.10.1978 the Additional Director allotted 1 kanal 9 marlas (ordinary) though as per the valuation fixed during the consolidation, the area then being allotted was less in value. The Additional Director observed in his order dated 10.10.1978 as under:

"But because of the changed circumstances its value has certainly gone very high although it has not been mentioned in record. So far, therefore, the value mentioned in the record cannot be taken as the basis for allotment of the area, so the petitioner would be allotted equivalent ordinary, area in lieu of the area in killa was 125/23/2/1 and 23/1/1 measuring 19 kanal only which was excluded from him vide my predecessor orders dated 31.3.1979. Hence I accept the petition and order the following changes."

2. From the above it is evident that the Additional Director was conscious of the fact that lesser area in value was being given to respondent No. 2. However, he took this fact into consideration that since the time the consolidation took place, the value of the land had increased at the time of passing the order.

3. Respondent No. 2 not being satisfied with the order of the Additional Director dated 10.10.1978 filed a writ petition in this Court (C.W.P. No. 3161 of 1979) which was dismissed in limine on 7.9.1979 by a Division Bench by passing the following order:

"We are unable to interfere with the order of the Additional Director, Consolidation of Holdings, Punjab with regard to the finding of fact concerning the valuation of the particular field and khasra numbers.

Dismissed".

4. Thereafter respondent No. 2 alongwith his brothers, respondent Nos. 3 and 4 again approached the Additional Director, Consolidation of Holdings with a prayer that in fact they had been allotted lesser land in value by the earlier Additional Director vide order dated 10.10.1978 and according to the scheme they had to be allotted area which was equivalent in value to 0.15 Annas. Additional Director agreeing with the contention of respondent Nos. 2 to 4 allotted them land to make it equal to 0.15 Annas i.e. the deficiency in the value left by the earlier Additional Director was made good. The Order of Additional Director dated 13.11.1981 has been attached as Annexure P/3 with this petition. It is this order that has been impugned.

5. Learned counsel for the petitioners has raised the following points :

1. The Additional Director who passed the order dated 13.11.1981 had no jurisdiction to pass the said order as it amounted to reviewing the earlier order of the Additional Director dated 10.10.1978 and there is no power of review with the Additional Director.

2. That the order dated 10.10.1978 was challenged by the respondent No. 2 by

way of a writ petition in this Court and said order was upheld by dismissing the writ petition of respondent No. 2. Under these circumstances the Additional Director had no jurisdiction to reopen the matter at the instance of respondent No. 2 and his brothers.

In support of the above points, learned counsel for the petitioners submitted that the Additional Director while passing the order dated 10.10.1978 (Annexure P/1) was conscious of the fact that the area which was then being allotted to respondent No. 2 was lesser in value in case the value of the land is taken which was fixed at the time of consolidation of Holdings. In spite of that the Additional Director took the view that since by the time the order dated 10.10.1978 was being passed, the value of the land had increased, therefore, by allotting equivalent ordinary area would meet the ends of justice and, therefore, in lieu of 1 kanal 9 marlas (ordinary), he allotted 1 kanal 9 marlas (ordinary) in khasra No. 160/15 and 159/11. If, according to the learned counsel a conscious decision is taken by the Additional Director, it will be deemed that a scheme to that extent was being modified. In any case, learned counsel submitted that the order dated 10.10.1978 (Annexure P/1) was upheld by this Court while dismissing the writ petition on 7.9.1979 (order of this court has already been reproduced above). According to the learned counsel, the dismissal of the writ petition filed by respondent No. 2 meant that whatever the area had been allotted to respondent No. 2 by order dated 10.10.1978 of the Additional Director, was being held to be good. He went on to submit that once the order dated 10.10.1978 had been upheld, the question of reviewing that order at the instance of respondent Nos. 2 to 4 did not arise and the Additional Director had no jurisdiction to override the order dated 10.10.1978 and of this Court dated 7.9.1979.

6. On the other hand, learned counsel for the respondent submitted that the impugned order dated 13.11.1981 did not amount to reviewing the order of Additional Director, Consolidation of Holdings dated 10.10.1978. He further submitted that the dismissal of the writ petition of respondent No. 2 did not come in the way because this Court had only upheld the finding of fact concerning the valuation of the particular field and khasra numbers and had not dealt with the question of shortage of land of respondent No. 2 as far as the area in value was concerned. He further submitted, that order of this Court would not amount to res judicata as the writ petition was dismissed in limine.

7. After hearing counsel for the parties, I am of the view that there is considerable force in the arguments of learned counsel for the petitioners. The Additional Director while deciding the matter on 10.10.1978 was conscious of the fact that in terms of valuation, lesser area was being given. However, it was duly observed by him that by the time the order was being passed, the valuation of the land as fixed during the consolidation had increased, meaning thereby that even if there was any shortfall in valuation that would not matter, as the value of the land by the time the order was being passed, had increased. In other words, even as regards valuation there was no shortage because the value of the land

was being taken to have increased. This order was challenged by respondent No. 2 and this Court upheld the valuation of the land as determined or as taken by the Additional Director of Consolidation of Holdings. In this view of the matter, there was no jurisdiction with the Additional Director to reopen the matter at the instance of respondent Nos. 2 to 4. In view of the order dated 10.10.1978 there remained no deficiency of land which was sought to be made up. I do not agree with the learned counsel for the respondents that the order of this Court would not amount to res judicata as the writ petition was dismissed in limine. By the dismissal of the writ petition, the order of the Additional Director merged in the order of the High Court and consequently that Additional Director had no jurisdiction to reopen the matter again.

8. For the foregoing reasons, this writ petition is. allowed, and the order of the Additional Director dated 13.11.1981 (Annexure P/3) is hereby quashed. There will be no order as to costs.