
(1994) 07 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10228 of 1990

Ram Kishan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-07-1994

Acts Referred:

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

Citation : (1995) 109 PLR 414

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Arun Jain and Raman Sharma, for the Appellant; P.S. Kadian, Dy
A.G. and Atul Lakhanpal, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Petitioners Ram Kishan and another through present petition filed by them under Article 226 of the Constitution of India seek writ in the nature of certiorari so as to quash orders. Annexures P-4 and P-5 and to further direct respondent-authorities to partition the joint Khata in accordance with law. Further, declaration is sought to the effect that any provision contained in the scheme or in the impugned decisions barring such partition, would be illegal, arbitrary, mala-fide and in violation of the earlier orders passed by this Court. The reliefs, as indicated above, are sought to stand on the facts which need a necessary mention.

2. Petitioners are co-sharers by virtue of purchase of land in Khewat No. 8 to the extent of 2277/415895 shares in land measuring 30317 kanals situate in village Mohabbatpur, Tehsil & District Hissar. Vide notification dated September 15, 1952, the village aforesaid was brought under consolidation as per the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be mentioned as the 1948 Act) and a scheme under the Act was prepared in which, inter-alia, it was provided that joint Khatas would be

partitioned between the parties and separate khata of each holder would be prepared and that the rights of tenants would be protected and their possession would be maintained on the area allotted to their respective land-owners. Some co-sharers, it is stated, who were in actual possession and wanted to retain their possession on the whole area, represented that there should be no partition of the joint khata. This led to the filing of representations and counter-representations by the co-owners and ultimately the Director. Consolidation exercising powers u/s 42 of the 1948 Act directed that joint khewat could not be partitioned without the consent of all share-holders. Aggrieved, some of the co-owners filed Civil Writ Petition (No. 1641 of 1960) which was allowed on October 18, 1963 by the Division Bench. Operative part of the judgment reads as under:-

" In view of the above, therefore, we accept this petition and make the rule absolute and quash the impugned order directing the non-partition of the joint khatas and direct that further proceedings will be taken in accordance with law. There will be no order as to costs."

Copy of the judgment aforesaid has been placed on records as Annexure P-1. It is pleaded that the authorities under the Act did not implement the judgment, referred to above, and efforts were made to nullify its effect. This again led to the filing of Civil Writ Petition (No. 2167 of 1965) by some co-sharers. The petition was allowed and impugned orders passed by the Additional Director of Consolidation and the Settlement Officer were quashed except to the extent that insofar as those orders set aside new paragraph 7-B in the Scheme of the Consolidation, the same was to remain untouched. The authorities were directed to amend, alter and change the Scheme of Consolidation to bring it in conformity with the observations of the learned Judges of the Division Bench in their judgment dated October 18, 1963 and while doing so it was also directed that for the purposes of partition and consolidation of holdings, the basis on which the authorities were to proceed, would be jamabandi for the year 1950-51.

3. When even the orders aforesaid brought no tangible results, some of the co-owners were constrained to file yet another writ petition bearing No. 1209 of 1969 which was disposed of vide orders dated September 18, 1969, operative part of which runs thus:-

"Both the writ petitions are, therefore, disposed of accordingly. As the consolidation proceedings have been pending since a very long time, the authorities are directed to expeditiously proceed to conclude the same. The parties are, however, left to bear their own costs in this Court."

The Government, with a view to nullify the decisions referred to above, denotified the consolidation scheme itself. In the year 1980 on the application of some land-owners, the State Government again issued notification u/s 14(1) on December 1, 1980 and draft scheme dated August 5, 1987, was prepared and objections were invited. Petitioners submitted objections wherein they questioned the provision in the scheme and pleaded that their rights should be

determined on the basis of Jamabandi for the year 1950-51 and that the area be partitioned. These objections were ignored and the authorities concerned proceeded to approve the scheme. The Settlement Officer, however, heard the objections of petitioners and others on December 29, 1987 resulting into direction issued by him that the partition would be effected in the khewat and a list should be prepared of the persons who were in possession of more than their share or who were tenants on the land. For further proceedings the matter was fixed for February 3, 1988. However, the hearing was postponed to February 4, 1988, on which date the Settlement Officer dismissed the objections stating that partition could not be carried out. Aggrieved, petitioners preferred petition u/s 42 of the Act before the Director, Consolidation but with no success. It is these orders i.e. one passed by the Settlement Officer and the other passed by the Director, Consolidation, that have been challenged in the present petition.

4. It is pleaded and so argued by learned counsel appearing on behalf of the petitioners that respondents have clearly erred in ignoring the directions issued by this Court in decision, Annexure P-1 and orders subsequent thereto. Even legal position has been mis-interpreted and mis-construed. In case a co-sharer is in possession of area in excess to his share in the joint holding he is entitled to keep possession only till such time there is partition of the land. He cannot be treated as tenant at will of the excess area in his possession and that the view of the authorities that there could not be partition of such land as question of title was involved, is incorrect and, thus, cannot sustain. It is further contended that the view of the Authorities that the earlier scheme having been revoked, the directions issued by this Court would stand nullified, is incorrect. The present scheme, for all intent and purposes would be deemed to be a substitute for earlier scheme.

5. The cause of petitioners has been opposed in two identical written statements, one filed by respondents 2 and 3 and the other filed by respondents 1 to 19, 21 to 28 and 30 to 32. By way of preliminary objections it is pleaded that petitioners have no locus-standi to file the present writ and no cause of action has accrued in their favour. It is also stated that the writ is not maintainable for non-joinder of necessary parties because at least 113 share-holders had filed civil suit in the Court of Additional Senior Sub Judge, Hissar in December, 1988, praying just contrary to what the petitioners have demanded through this writ. On merits, whereas ownership of petitioners to the extent of their share is admitted, their possession on the land is denied. It is further admitted that vide notification dated September 15, 1952, the village was brought under the 1948 Act but the notification was denotified and fresh notification was published in the Haryana Government Gazette dated January 6, 1981 and that being so, the proceedings, results and orders made during the currency of earlier notification would cease to hold the field after revocation of the (sic) landowners and the tenants and there was almost complete non-cooperation to the consolidation proceedings by both the parties i.e. landlords and tenants as both the lobbies were pulling in different directions which ultimately resulted in denotification dated January 6, 1981. It is

also pleaded that when draft scheme was prepared and published on August 5, 1987, objections were invited and dealt with as per law. It is further pleaded that the rights of parties were to be determined in accordance with the latest jamabandi and the Consolidation staff was only competent to go by the latest jamabandi. Objections of petitioners were rejected because they were not in physical possession of the land and the actual share-holders were in physical possession thereof. The orders passed by the Settlement Officer and the Director Consolidation are stated to be perfectly valid calling for no interference by this Court.

6. Before the matter is proceeded any further, it may be noted here that vide orders passed on 3.10.1990 in Civil Misc. No. 7890 of 1990 moved by the petitioners under Order 1 Rule 10 of the Code of Civil Procedure. 32 share holders of the joint khewat were impleaded as party-respondents in the present petition. Notice was given to the said respondents and it is only by respondents mentioned at Sr.Nos71 to 19, 21 to 28, 30 to 32 in the list of Co-sharers given in the application aforesaid that written statement has been filed.

7. This litigation has its roots dating back to year 1946. The Division Bench while disposing of Civil Writ Petition No. 1641 of 1960 noticed certain facts which need a brief mention. Revenue Estate of village Mohabatpur, Tehsil and District Hissar, which comprised of 12000 pucca bighas, originally belonged to Lieutenant James Skinner. Out of the total land, 235085/415895 shares comprised in one joint khewat were purchased by 76 persons for a sum of Rs. 2.4 lacs in the year 1946. The area so purchased was about 3100 acres, out of which 2000 acres were in cultivating possession of certain tenants at will, who were amongst the 76 persons, who purchased the land and had joined with the petitioners for that purpose. The cultivators, who were respondents in the said case, were originally entered as tenants at will but after the purchase they were shown in the ownership column alongwith petitioners as co-owners and in the column of cultivation, they were shown in possession as co-sharers and tenants. However, in the column of rent, it was specifically mentioned that with regard to the additional area in possession, they were not paying any rent on account of their being owners. Immediately after the purchase, petitioners, who were out of possession, filed an application for partition under the Punjab Land Revenue Act which remained pending for four years and when the mode of partition was settled and lots were also prepared, final partition was stayed because by notification dated September 15, 1952, the said village was brought under Consolidation under 1948 Act. A scheme was prepared under the Act wherein it was provided that (a) joint khatas will be partitioned and separate khata of each holder will be prepared and (b) that rights of tenants-at-will would be protected and their possession shall be maintained on the area allotted to their respective landlords. Later, the co-sharers, who were in actual possession, raised hue and cry and wanted to maintain their possession on the whole area. They represented that there should be no partition of joint khata in dispute. The representations and counter-representations made by the co-owners, who were

not in possession, were considered by the authorities and ultimately there came into existence report dated April 3, 1959 by the Flying Squad which reads as follows:-

"Under the present law, joint khatas cannot be partitioned without the consent of all the share-holders."

The Minister incharge also visited the spot and ultimately the Director, Consolidation exercising powers u/s 42 of the Act, superseded the provisions of the scheme as confirmed by the Settlement Officer requiring the partition of joint khatas. It is this order which was challenged in the aforesaid writ petition by mainly pleading that the petitioners alongwith others had paid over two lac of rupees as price of the land as far back as in 1946 and if the consolidation proceedings had not commenced, the partition proceedings taken by them before the revenue authorities under the ordinary law would have been finalised and they would have been able to get separate possession of their respective shares. The partition proceedings could not be completed as under the Act, the entire land in the village had to be put in hotch-potch and had then to be partitioned. It was stated on behalf of the petitioners of the said case that this process had resulted in depriving them of their right of seeking partition and the orders impugned holding the land to be impartible were wholly illegal and without jurisdiction. The objections taken by the State were also noticed by the Division Bench and, particularly, the objection that the partition of the joint khewat would result into serious detriment to the interests of those who had been cultivating larger part of the land as tenants than their ownership since long and that regular procedure regarding the partition of the joint khata is always available to the parties under the Land Revenue Act after the completion of consolidation operations in the village. The State also took objection that the consolidation authorities were not bound to partition the joint khewat. The stand of the State, as reflected above, was repelled and it was observed thus:-

"As is provided in the Scheme of Consolidation of this village - and is always provided - the rights of the tenants are in no way to be affected by the consolidation proceedings or by the partition of a joint khata. The very idea of the Consolidation Act is that a landowner has small bits of land scattered all over the village, in lieu of all those scattered pieces he should be allotted after consolidation one plot so that the holding may be economical and easily manageable. At the same time the rights of the tenants-at-will cultivating these various bits of land are not disturbed by this and the tenant is given possession of the piece of land which has been allotted to the landlord after consolidation in lieu of the bit which the particular tenant was cultivating prior to consolidation. Thus, if there are three tenants-at-will, A, B and C, each cultivating different pieces of land each measuring 1 acre and after consolidation the landlord is allotted only 2-1/4 acres at the rate of 3/4 acre out of 2-1/4 acres allotted to his landlord. Thus, the partition of the joint khata can in no way result in any detriment whatsoever to the interests of those who are cultivating the land as

tenants-at-will. However, if a co-sharer is in possession of an area in "excess of his due share in the joint holding, he is entitled to keep the possession of the entire land till such time as there is a partition. If he is holding the land merely as a co-sharer, then on partition he is entitled to get possession of only that area of land which falls to his share and the excess has to go to his other-co-sharers entitled to get possession of only that area of land which falls to his share and the excess has to go to his other-co-sharers entitled to the same. On the other hand, if he is cultivating the land of his co-sharer as a tenant at will, then on partition, he will get possession of the land falling to his own share in his capacity as an owner and he will get possession of the land falling to the share of his co-owner in his capacity as a tenant-at-will. Thus, the partition of the joint khata can cause no detriment to the co-sharers who are in actual possession of the land comprised in the khata and the learned counsel for the State and the other respondents could not explain how and what detriment can possibly result. On the other hand, the non-partition of the khata would result in grave injustice so far as the co-sharers who are out of possession are concerned. As is clear from the entries in the jamabandi and it is not denied before us, the co-sharers, who are in possession of the land far in excess of their share, are not paying any lagan or rent to the other-co-sharers and at the same time they are resisting the partition of the khata, thus, depriving the co-sharers of the benefit of their purchase."

The objection of respondents that there could be no partition unless the same was consented to by all the co-sharers, was also repelled after noticing the provisions of Section 16-A(1) of the Act. It was further observed that by cancelling the provision for the partition of the joint Khata in the scheme, the Director of Consolidation had tried to do something which is opposed to the fundamental principles underlying the Consolidation Act and there does appear to be some substance in the suggestion vehemently put forward on behalf of the petitioners that the order of the Director of Consolidation cancelling the provision or partition of the joint khata is not bona-fide. Further, the objection of respondents with regard to question of title being involved and, therefore, holding of joint khata to be impartible, was also noticed and repelled by the Division Bench. The pendency of civil suits said to be involving the question of title was also noticed and the objection in that regard was also repelled. With regard to suits, it was observed that "the Court would not like to express any opinion on the merits of the case, yet it. could not help remarking that these suits appear to be merely an afterthought to create some sort of defence against the prayer made in the writ petition. In any case, so far as the consolidation authorities are concerned, they have to proceed in accordance with the entries in the jamabandis and they are not to take notice of any proceedings that may be pending unless the authorities receive a stay order or injunction from a competent Court preventing them from proceeding in any particular manner." The impugned orders, as mentioned above, were quashed and directions were issued to take further proceedings in accordance with law.

8. In a subsequent petition filed on behalf of co-owners bearing No. 1209 of 1969, which was decided on December 18, 1969, it was directed that rights of the parties shall be decided on the basis of entries in the jamabandi for the year 1950-51. The short order that was passed in the writ aforesaid runs thus:-

"It is conceded by the counsel for all the parties in these cases (Civil Writs No. 1209 and 2240 of 1969) that the consolidation in their village Muhabbatpura, District Hissar, would take place on the basis of the entries in the jamabandi of the year 1950-51 only. If khatauni Pamaish Qillabandi of 1952-53 was prepared on the basis of the entries in the jamabandi of 1950-51 only without having considered any other revenue records, the same could be acted upon. The idea is that the rights of the parties have to be determined only in accordance with the entries in the jamabandi of 1950-51 and those rights have not to be altered in any manner whatsoever. It is undisputed that the land in the Jamabandi of 1950-51 and those rights have not to be altered in any manner whatsoever. It is undisputed that the land in the jamabandi of 1950-51 was described in khasra numbers and its area was given in ordinary acres. In consolidation, the said khasra numbers would be converted into quilla numbers and the ordinary acres into standard acres. This would be done in accordance with the prevalent rules without any way changing the rights of the parties based on the entries in the jamabandi of 1950-51.

"Both the writ petitions are, therefore, disposed of accordingly. As the consolidation, proceedings have been pending since a very long time, the authorities are directed to expeditiously proceed to conclude the same. The parties are, however, left to bear their own costs in this Court."

Despite orders, referred to above, after de-notifying the scheme and again notifying it by hearing objections of petitioners, the Settlement Officer vide order dated February 4, 1988 held that the land would not be partitioned. The Director Consolidation on an application preferred by the petitioners u/s 42 of the Act held likewise. The Director in the impugned orders dated September 21, 1988, after noticing brief facts of the case as also result of C.W.P. No. 1641 of 1960 as also that the Khewat No. 6 which was subject matter of litigation, had changed to Khewat No. 8 as per jamabandi for the year 1978-79, held as follows:-

"A perusal of the record show that khewat No. 8 which is sought to be partitioned between many gair-marugi and in the record the applicants are not in possession. The Consolidation Officer on 4.2.1988 visited the village and heard all gair inarusi proprietors and took the decision that the Khewat No. 8 could not be partitioned because in this khewat the share-holders are in possession of area in excess of their share and there are number of gair marusi in possession. Such khewats cannot be partitioned by the Consolidation Department. In case there is dispute between the share-holders, inter-se, the matter relates to civil court.

So far as compliance of the orders of Hon'ble High Court is concerned, in this regard reference may be made to 1970 PLJ 264 and 1970 RLR 15 wherein at

page 26 it is directed that in case the consolidation scheme of any village stands revoked then all orders passed on the basis of the scheme stand nullified. Since the first consolidation scheme of the village has been cancelled, and the same has been prepared again, therefore, I feel that there is no violation of the orders passed by the Hon"ble Court in CWP No. 1641.

In the aforesaid circumstances, I reach to this conclusion that khewat No. 8 is not liable to be partitioned by the Consolidation Department because question of title is involved. Therefore, there is no force in the application and the same is hereby rejected. Orders be communicated to the parties."

9. The perusal of the impugned orders would unmistakably manifest that the same are in sharp contract to the orders passed by this Court in C.W.P. No. 1641 of 1960. A complete answer to the objection of those who are in possession in excess of their share, with regard to involvement of question of title and pendency of civil suits was available to the authorities from the judgment, extracts of which have been reproduced above and it is rather amazing the despite that a contrary decision was taken in the matter resulting into complete denial of justice. In considered view of this Court, the Consolidation Officer and the Director Consolidation were not even competent to go in these questions, the matter having been finally settled by this Court way back in October, 1963. The objection of respondents with regard to involvement of question of title and the land being impartible, could not be even entertained and yet the same were not only entertained but were up-held. Merely on account of the fact that some of the co-sharers were in possession of some land as tenants-at-will, it could not even be remotely suggested that question of title was involved. Obviously, on partition of land, they were to continue to be in possession of land in excess of their shares which, even the learned counsel for the petitioners accepts, could be secured by the co-sharers though remedy available to them under the provisions of Punjab Security of Land Tenures Act or any other enactment conferring right of rejectment on co-sharers. Those, who are not co-sharers and were in possession being tenants-at-will, also could not be disturbed and they were to continue to hold the land as tenants till such time they were ejected in accordance with law. The finding of the Director Consolidation that in view of the revocation of the earlier scheme the orders passed earlier had out-lifted their efficacy also cannot possibly be sustained. It is admitted position that after de-notification, fresh scheme for consolidation was prepared resulting into similar objections raised by the co-owners who are in possession in excess of their shares as also the tenants and further resulting into similar kind of disputes that were earlier involved in C.W.P. No. 1641 of 1960. In clear view of this Court, the authorities concerned have dealt with this matter in a very casual and perfunctory manner. Infact, by passing impugned orders, the authorities concerned have committed contempt of this Court. If the officers concerned were in service, this Court would have issued them notice to show cause as to why proceedings under the Contempt of Courts Act be not initiated against them but in view of the fact that they have retired, no serious view in the matter is taken.

10. The preliminary objection of the respondents that 113 co-owners who have filed civil suits have not been arrayed as party-respondents in the present petition, needs summary rejection on account of the fact that firstly, the petitioners have impleaded 32 co-owners as party-respondents in the present petition, who in law represent interest of all other share-holders as well, secondly because the challenge herein is to the orders passed by the Settlement Officer and Director Consolidation which came to be passed on the objections of the petitioners and other co-sharers.

11. For the reasons recorded above, this petition is allowed and orders passed by the Settlement Officer and Director Consolidation, Annexures P-4 and P-5 are quashed. A direction is issued that the respondent-authorities would partition the joint khewat in accordance with law and in view of the directions issued in C.W.P. Nos. 1641 of 1960 and 1209 of 1969. Let directions issued in this order be complied within three months from today positively. Petition is allowed with costs which are quantified at Rs. 3,000/-