

(1992) 02 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Petition No. 173 of 1989

Ram Lal and Others

APPELLANT

Vs

Madan Jha and Others

RESPONDENT

Date of Decision : 19-02-1992

Acts Referred:

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

Citation : (1992) 23 DRJ 62 : (1992) RLR 170

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : Ramesh Chandra, Anand Yadav and B.S. Mathur, for the Appellant;

Judgement

S.C. Jain, J.

(1) The facts giving rise to this petition are that the consolidation proceedings took place in village Pindwala Khurd, in 1953-54. The petitioners along with other co-sharers were allotted kila No. 22/1 besides other land in the consolidation proceedings and were put in possession of the same. The consolidation proceedings were completed in 1956 and the scheme came into force in 1956 itself. On the application filed by the petitioners for partition of their holdings from other co-sharers, the partition of the land was allowed by the order of the Revenue Assistant dated 21.1.1987 and land measuring 50 bighas and I bids was including khasra No. 22/1 fell to the share of the petitioners. One Ranjit Singh Filed An application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 before The Financial Commissioner in April. 1987. claiming passage to his fields. The Financial accepted that application and remanded the case to the Settlement Officer (Consolidation) for providing passage to the fields of Ranjit Singh. The Settlement Officer (Consolidation) vide order dated 30/8/88 directed that "a rasta having width of 2 ghatha towards eastern side of kharra No. 22/10 be provided to the check of the petitioner and Sh. Bhartu etc. It is further ordered that the land equivalent to the

land of rasta of khasra No. 22/1 be taken out from khasra No. 22/15 towards north and same be given to Sh Bhartu etc in lieu of this equivalent land be withdrawn from these persons towards north side of the khasra No-22/10 and the same be included in the khata of Sh. Ram Lal etc. bhoomidars of khasra No.22/1."

(2) Both these orders passed by the The Financial Commissioner on 30.6.87 and passed by the Settlement Officer (Consolidation) dated 30.8.88 have been challenged by the petitioners in this writ cw petition.

(3) The main contention raised by the counsel for the petitioners is that the proceedings before the Financial Commissioner as well as before the Settlement Officer (Consolidation) were taken at the back of the petitioners without any notice to them and as such they are void, illegal and not binding on the petitioners. The consolidation proceedings had been completed long ago. The petitioners were declared Bhoomidars in 1954-55 under the Delhi Land Reforms Act. 1954. Bhumidars cannot be disturbed in this manner and the revenue authorities have no jurisdiction to make any change in the Bhumidari holding declared after the completion of the consolidation proceedings.

(4) Counsel for the respondent filed counter affidavit denying the allegations made by the petitioners and argued that the order of the Financial Commissioner and that of the Settlement Officer (Consolidation) has become final and that the petitioners had notice of the proceedings before the Financial Commissioner as well as before the Settlement Officer (Consolidation). The Settlement Officer (Consolidation) passed the order after inspection of the site in the presence of so many persons of the public and the parties concerned. According to the learned counsel Rasta was chalked out in the consolidation Mussavi in Khasra 22/1 But it was kept Muhazi Malik (ownership of the Rasta being that of the Bhoomidar of kila through which it passes) meaning thereby that the Rasta was aligned during consolidation but its equivalent land was not given to the owner of the kila from the common pool. This kila 22/1 and the adjoining chak was in the owner ship of mangat Ram, Ram Phal, Sube Singh and Rajinder and the petitioners jointly. After consolidation no obstacle was put by these owners in the user of the Rasta for a long time but during the year 1987-88 this joint holding was partitioned by them and kila 22/1 and the adjoining Chak fell to the share of the petitioners and they started blocking the Rasta after knowing during the partition proceedings that it was only Muhazi Malik. The respondents were worst affected by this blockade i.e. denial of the Rasta to their chaks lying next to those of the petitioners and hence the respondent moved an application u/s 42 of the the East Punjab Holdings (Consolidation and prevention of Fragmentation) Act, 1948 before the The Financial Commissioner in April, 1987. My attention has been drawn towards Aksh Shajra of the year 1953-54 showing that during the consolidation proceedings Rasta was carved out from Khasra 22/1/1. According to the learned counsel the version given by the petitioners is contrary to the factual position and is misleading. The petitioners have twisted their version in

such a way as to indicate that the passage under challenge is not in existence at all and is being carved out for the First time after 30 years of the consolidation in the village. My attention has also been drawn towards report of Patwari dated 22.7.87 mentioning therein that he inspected khasra No.22/15, 16,20,21/11,12, 13, 14, 15, 16, 17, 18, 19,20, 21,22,23,24,25 and 22/11. There is no passage for the above said chak on the spot. However Garmurnkin Rasta is entered in Khasra No. 22/1 in the field book and similar Garmunkin Rasta is also entered in khasra No. 31/1,2,3,8,9, 10, 11, and 32/5 6, and 13 in the field book. On the basis of these documents on record the counsel for the respondent stated that Garmumkin Rasta was in existence for going to their fields but after partition of the holdings amongst the petitioners and other co-sharers in 1987 the petitioners prevented the respondents from using that passage for going to their fields.

(5) If we take in to account the Aksh Shajra site plan) of village Pindwala Khurd, Tehsil Mahrauli of the year 1953-54 and the report of the Patwari dated 22.7.87 it becomes clear that there is no passage to the land comprising in khasra No. 22/15, 16,20,21/11,12, 13,14, 15, 16, 17, 18, 19,20,21,22,23,24,25, and 22/11. However, Garmumkin Rasta is there in khasra 22/1 as shown in the field book and similar garmumkin Rasta is there in khasra No. 3 I/I, 2,3,8,9,10,11, and 32/5 6, and 13 as shown in the field book. On the basis of these documents the impugned order passed by the Financial Commissioner dated 30.6.87 and the order dated 30.8.88 passed by the Settlement Officer (Consolidation) may be justified but both these authorities have violated the principles of natural justice while passing these orders. The petitioners being the Bhumidars of kila No. 22/1 through which Rasta is claimed were not made parties in the proceedings before them. From the record it is not apparent that any notice was sent to these petitions who are vitally interested in this matter as their land is being taken for this purpose. The observation of the Settlement officer (Consolidation) that he inspected the site in the presence of Patwari and bhumidars of khasra No. 22/10, 22/1, 22/11 including other bhumidars whose land is contiguous to these numbers does not seem to be correct. He has not mentioned the date of his inspection and the presence of the petitioners who were the interested parties has not been shown in those proceedings. Even the proceedings do not bear their signatures. The proceedings before the Financial Commissioner were ex parte inasmuch as the respondents made therein did not choose to appear and the petitioners having not been made parties did not appear as no notice was sent to them. The principles of natural justice have been violated in not making the petitioners as parties to those proceedings and not opportunity was granted to them to plead their case, and as the impugned order passed on by the Financial Commissioner and order dated passed by the Settlement Officer (Consolidation) set aside and the case remanded back to the Financial Commissioner concerned with the direction that he should decide the matter after giving opportunity of hearing to the petitioners in this writ petition, namely, Ral Lal s/o Umrao Singh, Sh. Gajraj s/o Umrao Singh resident of village Pindwala

Khurd, Delhi. I accept the writ petition and make the rule absolute to that extent. Parties shall bear there own costs.