
(1964) 11 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1 (sic) 01 of 1964

Rattan and another	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 12-11-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 11 P&H CK 0047

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : Anand Sarup, for the Appellant; Raj Kumar Aggarwal for Advocate-General for the State and Mr. U.D. Gour for Respondents 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This is petition under Article 226 of the Constitution filed by Rattan and Risal Singh challenging the validity of the order dated 10th January, 1963 passed by the Additional Director, Consolidation of Holdings, respondent No. 2, u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act).

2. According to the allegations of the petitioners, they were joint landowners in village Saidpur, tehsil Sonapat, District Rohtak. The Consolidation proceedings were completed in this village in June, 1955 and all the rightholders were given the possession of their newplots. The khewats of both the petitioners remained joint even after consolidation and they were given their plot in Block B at Rectangle No. 21, killas Nos. 6/2, 14, 15, 17/1 and 16 and Rectangle No. 22, killa No. 20 measuring 11 kanals and 5 marlas. This plot had been rightly given to them in accordance with the scheme because the petitioners had their previous major portion adjoining this plot, that is. at Rectangle No. 21 kil a Nos. 24, 25 and Rectangle No- 35, killa Nos. 3, 4, 7 and 8. Kali Ram, Chhottu Mange and Rattan, respondents 4 to 7, neither filed any objections against the

repartition before the Consolidation Officer nor did they file any appeal before the Settlement Officer against any of his orders. As a matter of fact, they had chosen their own plots and agreed to the plots allotted to them in Blocks A and B. Respondents 4 to 7 were big landholders owning about 15 acres, while the petitioners were small land holders having only 7 acres. These respondents had their major portion of Block B at Rectangle No. 22 killa Nos. 9, 10, 11 and 12 measuring about 10 bigha and in Rectangle No. 21, killa No. 15 they had only one bigha. A path intervened between Rectangle No. 22. killa Nos. 9, 10, 11 and 12 on the one side and Rectangle No. 21 killa No. 15 on the other. The original land of respondents 4 to 7 at Rectangle No 22 was of very inferior quality and therefore, they themselves chose their plot in Block "B" at Rectangle, Nos. 58 and 59, measuring about 18 standard kanals. Out of the plot at Rectangles Nos. 58 and 59, respondents 4 to 7 had about 12 bighas of their original land. After the allotment of the plot at Rectangle No. 21, the petitioners constructed a well there at a cost of about Rs. 2,500 and also spent another Rs. 4,800 in levelling and manuring the land and raising its quality. Respondents 4 to 7 then in collusion and at the instigation of the Consolidation. Authorities straightway filed in application u/s 42 of the Consolidation Act and respondent No. 2 then passed the impugned order after 8 years of the completion of the consolidation operations in this village. He ordered that Rectangle No. 21 killa Nos. 6/2, 14, 15, 16, 17/1 and Rectangle No 22 killa No. 20 be withdrawn from the petitioners and given to respondents 4 to 7 and in lieu thereof the petitioners be given Rectangle No. 59 killa Nos. 11/2, 12/2 and Rectangle No. 58 killa Nos. 6/1, 6/2, 7/1, 14 and 15 which were withdrawn from respondents 4 to 7 and which land was of a very inferior quality. No notice of the hearing of the application u/s 42 had been given to Rattan petitioner and an order adversely affecting his rights was passed without giving him an opportunity of being heard. The petitioners had not got their original land at or near the plot consisting of Rectangle Nos. 58 and 59. Thereupon, they filed a review application and on 14th July, 1963, the Director Consolidation of Holdings held that it was a fit case to be reopened and redecided. This review application was then entrusted to Sardar Ajit Singh Additional Director of Consolidation of Holdings, Punjab who had passed the impugned order and he vide his order dated 16th May, 1964 rejected the review application on the ground that this court in a Full Bench decision in Civil Writ No. 1302 of 1961 Deep Chand v. Additional Director Jutland (1964) 66 P.L.R. 318 (F.B.) had decided on 19th December, 1963 that the Director had no power of review. This led to the filing of the present writ petition in June 1964.

3. Learned counsel for the petitioners has raised the following four contentions before me :

(1) that respondents 4 to 7 had not filed any objections or appeal under sections 21(2) or 21(3) of the Act. Consequently, the Additional Director had no jurisdiction to entertain an application straight away u/s 42 of the Act.

(2) that the Additional Director had no jurisdiction to entertain the application

after the completion of the consolidation operations in the village and then to pass the impugned order u/s 42, 8 years thereafter;

(3) that the Additional Director had acted without jurisdiction in passing the order adversely affected the rights of Rattan, petitioner, without giving him an opportunity of being heard; and

(4) that the order of the Additional Director was against the provisions of para 2 of the scheme of consolidation which reads thus -

If the passage leading to village or the canal passed through the bigger field of any right holder, and divides it into two parts, then the quarrah shall be formed on the side of the passage or canal where there is more area.

Therefore, the impugned order deserved to be quashed.

4. In order to dispose of the first contention, it would be convenient to set down the provisions of section 42 of the Act.

S. 42. The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit;

Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration." A perusal of this section would show that the State Government, in order to examine the legality or propriety of the repartition made by any officer under this Act, is authorised at any time to call for and examine the record and pass such orders as it thinks fit. The only limitation placed by the Legislature on its power is mentioned in the proviso to this section, which says that no repartition shall be varied or reversed without giving the parties interested therein an opportunity to be heard, except, or course in those cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration. Action under this section can be taken both suo motu by the Government or at the instance of some interested party. The language of this section, however, does not show that the party concerned must, in the first place, file objections or appeals u/s 21(2), 21(3) and 21(4) of the Act, before moving the State Government. The intention of the Legislature it seems was to confer special power on the State Government in suitable cases to take action under this section only where it finds that there was some illegality or impropriety. Shamsheer Bahadur J. in Civil Writ No. 7 of 1963 Sulhedi v. Additional Director Consolidation of Holdings Punjab C.W. No. 7 to 1963 decided on 24th September, 1964 has also observed that there was nothing to prevent the State Government from acting u/s 42 without the aggrieved party first filing objections or appeal under sub-sections (2) and (3) of section 21 of the Act. Learned

counsel for the petitioners, in support of his contention, had placed reliance on a decision of A.N. Bhandari, C.J. and Mehar Singh, J. in Letters Patent Appeal No. 163 of 1957 Charan Singh v. Arbail Singh etc L.P.A. No. 163 of 1957. decided on 22nd July 1959. This authority, however, is of no assistance to them, because section 42 of the Act at that time was differently worded and later on the same was amended and the present case is covered by the amended section. There is thus no force in this contention.

5. Now coming to the second contention it is common ground that the repartition of this village was published u/s 21(1) of the Action on 15th October, 19(sic)5 and the same was confirmed u/s 21(1) on 22nd March, 1956. Respondents 4 to 7 filed an application u/s 42 on 11th June, 1956, that is within six months, which is the limitation prescribed for filing such applications under Rule 18 of the Rules framed under the Act. The final order on this application was, however, made on 10th January. 1963. No doubt the Department took More than 7 years in deciding his case, but respondents 4 to 7 were not to be blamed for that. There is no limitation for the Department-to decide these matters. It would depend upon the circumstances of each case. The objections of the learned counsel is that the State Government should not have passed the impugned order long after the consolidation proceedings had been consigned to the Record Room. Reliance in this connection was placed on a Full Bench decision of this Court in Bikhani Lal v. Punjab State (1963) 65 P.L.R. 368, where considering the provisions of section 36 of the Act, it was held that the power to vary or revoke the scheme "at any time" must be read to mean during the consolidation proceedings. The second decision relied on by the learned counsel was that of Mahajan J. in Partap Singh v. Additional Director Consolidation of Holdings C.W. No. 1886 of 1964. Civil Writ No. 1886 of 1963, decided on 26th February, 1963, where in the learned Judge, while dealing with a case u/s 42 followed Bikhani Lal's case (supra), referred to above. Bikhani Lal's case 4 is of no assistance to the petitioner, because it dealt with section 36 of the Act and a Division Bench of This Court consisting of Falshaw C.J. and Grover J. in State of Punjab v. Shri Mohan Lal L.P.A. 200 of 1960 Letters Patent Appeal No. 200 of 1950, considered this Full Bench decision and observed thus-

Learned counsel for the respondents has tried to persuade us that since the words "at any time" have been interpreted in this way in relation to section 36, they should be interpreted on somewhat similar lines in connection partly because with the utmost respect for the views of Tek Chand J. I agree with those of the dissenting Judge in that case and partly because it is quite clear from the discussion in the judgment of Tek Chand J. that he was considering section 36 only and not section 42, which he conceded was a much broader based section than section 36.

Following this Division Bench decision, I hold that there is no force in the contention raised by the learned counsel for the petitioners.

6. So far as the third contention is concerned, the reply of the Department is that

prior to the decision of the case on 10th January, 1963, notice of hearing was issued to both Rattan and Risal Singh, petitioners. The service of this notice was accepted by Risal Singh both for himself and Rattan. Both of them were joint landowners in this village and their khewat also remained joint even after consolidation. Under these circumstances, in my opinion, the presence of Risal Singh, petitioner was an effective representation even on behalf of Rattan, petitioner (see in this connection *Curram Singh v. The State Punjab L.P.A. 198 of 1961 Letters Patent Appeal No. 198 of 1961*; decided by *Falshaw C.J. and Grover J.* on 21st December, 1961; *Lakha Singh etc. v. State of Punjab C.W. No. 743 of 1958, Civil Writ No. 743 of 1958* decided by *Chopra J.* on 1st April, 1959 and *Madan Singh etc. v. State of Punjab C.W. No. 832 of 1962 Civil Writ No. 832 of 1962* decided by *Dua J.* on 23rd January, 1964. Therefore, there is no merit in this contention as well.

7. As regards the last contention that also is without any substance. No such plea was taken by the petitioners in their writ petition. What was actually stated under this head was given in para. 1(sic)(d), which runs as under-

That the order of the Additional Director is against the provisions of the scheme of consolidation inasmuch as Kali Ram etc. respondents have been given their present plot at a place where they had only 1 killa of their original land and not at the places where they had their major portion and also inasmuch as the petitioners have now been shifted to a place where they had not even a single Biswa of their original land and not fitted at or near their original major portion as pointed out by the Director of Consolidation in his order dated 14th July, 1963.

A reading of this para, would show that it was not the case of the petitioner that the repartition had in any way infringed the provisions of para 2 of the scheme. In case they had taken up this point in the writ petition, then the Government would have got an opportunity to clarify its position in this regard. Since the petitioners had not taken this point, they cannot be permitted to raise it for the first time at the time of arguments especially when questions of fact are involved therein. Moreover, no material has been brought on the record by the petitioners to show that the impugned order in any way contravened the provisions of para. 2 of the scheme.

The result is this petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.