
(2000) 09 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11627 of 2000

Savitri Devi

APPELLANT

Vs

Additional Director, Consolidation of Holdings, Punjab

RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

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

Citation : (2000) 09 P&H CK 0055

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. M.S. Kang, for the Appellant;

Judgement

Jawahar Lal Gupta, J.—The petitioners challenge the orders dated April 28, 1997 and February 28, 2000, passed by respondent Nos. 1 and 2, respectively. By the first order, a copy of which has been produced as Annexure P5, the Additional Director, Consolidation of Holdings, had accepted an application u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948, filed by respondent No. 4. He had after consideration of the matter, directed the Consolidation Officer to examine the case and to see if the fields of respondent No. 4 had been "carved according to Scheme. If not, then necessary changes be made after hearing all the concerned parties." On remand the Consolidation Officer had passed an order dated May 21, 1998. By this order the claim of respondent No. 4 was rejected. He filed an appeal before the Settlement Officer. Vide order dated February 28, 2000 the Settlement Officer found that the Consolidation Officer had not examined the matter according to the directions given by the Additional Director in his order of April 28, 1997. He further noticed that "the C.O. in his order dated 21.5.98 has spoken of his spot visit, but he has based his order on the statement of the respondents only vide which the area has been under their possession. He has not expressed his observation as to the possession. He has not recorded any statements nor has he referred to

the depositions made by other villagers regarding possession." On this basis he concluded that "it was not proper for the C.O. to base his observation on the statement of the respondents only." He further found "force in the argument advanced by the counsel for the appellant (now respondent No. 4) that the remarks made by the C.O. regarding "Rasta" and "Reservation" of the area are not in consonance with the Scheme." Thus, he re-mitted the matter to the Consolidation Officer "to decide it afresh in the light of the directions of the Addl. Director C/H Punjab dated 28.4.97 and strictly as per provisions of law."

2. The petitioners pray that the order dated April 28, 1997 passed by the Additional Director, by which he had forwarded the case to the Consolidation Officer, and the order dated February 28, 2000 passed by the Settlement Officer, be quashed.

3. Mr. M.S. Kang, learned counsel for the petitioners, contends that the order dated April 28, 1997 (copy at Annexure P5) is vitiated as it was passed without hearing all concerned. He further submits that the order does not conform to the requirements of Section 42 of the aforesaid Act, inasmuch as the competent authority had not examined the entire record. He further submits that the Settlement Officer had no jurisdiction to remit the matter to the Consolidation Officer as the order passed by the Consolidation Officer was, in fact, a continuation of the order passed by the Additional Director.

4. Admittedly, the Additional Director had passed the order on a petition submitted by respondent No. 4 as far back as April 28, 1997. The petitioners had not raised their little finger against this order till August 30, 2000, when they approached this Court through the present writ petition. There was, thus, a lapse of four years and four months. Despite being asked, learned counsel for the petitioners has not been able to give any explanation for the failure of the petitioners to challenge the order passed by the Additional Director on April 28, 1997. The petition deserves to be dismissed on the short ground of delay.

5. Irrespective of the above, we have considered the case on merits. We find that the Additional Director had committed no illegality in accepting the petition filed by respondent No. 4.

6. Mr. Kang submits that the order was passed without hearing all concerned.

7. Admittedly, the petitioners were heard. They were parties. Thus, the petitioners cannot have the grievance that the order was passed without hearing them. They cannot plead for others regarding whom there are no facts on the record. The petitioners having been given full opportunity by the Additional Director, they can have no grievance against the order on that account. Equally lacking in merit is the contention that the Additional Director had not examined the record. In fact, a perusal of the orders shows that all the relevant facts had been noticed and thereafter the Additional Director had observed that he had even "examined the record on the file." In our view there was complete compliance with the requirements of Section 42 of the aforesaid Act. The order

suffers from no infirmity. Thus, it calls for no interference.

8. It was then contended that the order passed by the Consolidation Officer on May 21, 1998 should be deemed to be an order passed by the Additional Director as the Consolidation Officer had examined the record and rejected the claim of respondent No. 4.

9. The contention is misconceived. The Additional Director had remitted the case to the Consolidation Officer to ensure that respondent No. 4 was allotted land in accordance with the Scheme. The Consolidation Officer had taken a view. He had rejected the claim of respondent No. 4 by the order dated May 21, 1998. The order passed by the Consolidation Officer, who is, admittedly, a subordinate of the Additional Director, cannot be deemed to be an order of the Additional Director. He was not a delegate of the State. He had no authority to pass any order u/s 42 of the aforesaid Act. The order passed by him was only in pursuance to the directions given by the higher authority. Thus, the order cannot be treated to be a continuation of the order passed by the Additional Director. It was, in fact, in execution of the direction given by the Additional Director.

10. The order of the Consolidation Officer was challenged by the fourth respondent before the Settlement Officer, who is, admittedly, a superior authority. The Settlement Officer has found for good reasons that the order of the Consolidation Officer did not conform to the directions given by the Additional Director. He has, thus, remitted the matter. There is no infirmity in the action of the Settlement Officer.

No other point has been raised.

In view of the above, we find no merit in this writ petition. It is wholly frivolous. It is, consequently, dismissed in limine.

11. Petition dismissed.