(1965) 05 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1469 of 1964

Sawan Singh and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 14-05-1965

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 14(1)

Citation : (1965) 05 P&H CK 0010

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

Bench : Single Bench

Advocate : H.S. Wasu with Mr. L.S. Wasu, for the Appellant; K.S. Kawatra, Assistant Advocate-General, for Respondents Nos. 1 to 3 and Mr. T.S. Mangat, for Respondents No. 4 to 27, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—The petitioners (with the exception of Pt. Amar Nath, petitioner No. 11 who being a right-holder is disputed) are admittedly right-holders of village Sehon Majra, Tehsil Rupar, District Ambala, hereinafter called the village.

2. Consolidation proceedings in the village under the old Consolidation Act were conducted in 1945. According to the respondents, considerable fragmentation of holdings took place after 1945 on account of cases of inheritance, alienations and other transactions. According to the petitioners there has net been any splitting up of the tuks of the land-holders since the said previous consolidation in the village.

3. After the coming into force of the East Puniab Holdings (Consolidation and Prevention of Fragmentation) Act, L of 1948, as amended from time to time (hereinafter referred to as the Act) the village was notified u/s 14(1) of the Act on 12th July, 1963. The scheme of Consolidation of the village was. prepared by the Consolidation Officer and published by him on 14th January, 1964. The scheme of consolidation was confirmed by the Settlement Officer, Consolidation

of Holdings on 6th March, 1964 after hearing objections of the right -holders. Repartition proceedings u/s 21(1) of the Act were then taken out. Certain objections u/s 21(2) of the Act were filed and are stated to be pending with the Consolidation Officer.

4. There is some dispute between the parties on the question whether actual possession according to the scheme was or was not delivered. In the petition it has been alleged that the Consolidation authorities were compelling the land-holders of the village including the petitioners to change their possession and to give up their old holdings. The respondents have, however, averred in the written statement that possessions were actually transferred according to the provisions of the scheme on 16th May, 1964 after the repartition proceedings u/s 21(1) of the Act. The difference between the parties on this point is not material for deciding the questions raised at the bar.

5. In July, 1994 this writ petition was filed by 15 admitted (and one disputed) right-holders of the village under Article 223 of the Constitution praying that the amending Punjab Act, 39 of 1963 and rule 4 framed under the Act be declared ultra vires and unconstitutional and the scheme framed under the Act may be set aside At the time of the filing of the petition it appears to have been mainly based on an attack on the vires of Punjab Act 39 of 1963. Law relating to most of the matters originally involved in the writ petition has, however, been admittedly settled by a series of decisions culminating in the Full Bench judgment of this Court in Jit Singh v. State of Punjab (1964) 66 P.L.R. 792, and in the pronouncement of their Lordships of the Supreme Court in Ranjit Singh v. State of Punjab AIR 1966 S.C. 632.

6. At the hearing of the writ petition Mr. Harnam Singh Wasu, the learned Advocate for the petitioners fairly and frankly conceded that in view of the binding pronouncements of the Supreme Court and this Court he could no more question the vires of the amending Punjab Act, 39 of 1963 or of rule 4 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, (hereinafter referred to as the Consolidation Rules). He raised two points in support of the writ petition. In order to appreciate the first point it is necessary to set out the provisions of section 14(2) of the Act and rule 4 of the Consolidation Rules.

7. Section 14 of the Act reads as follows:

14. (1) With the object of consolidating holdings in any estate or group of estates or any part thereof for the purpose of better cultivation of lands therein, the State Government may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified.

(2) On such publication in the estate concerned the State Government may appoint a Consolidation Officer who shall after obtaining in the prescribed

manner the advice of the landowners of the estate or estates concerned, and of the non proprietors and the Gram Panchayat, if any, constituted in such estate or estates under the Gram Panchayat Act, No. IV of 1953, prepare a scheme for the consolidation of holdings in such estate or estates or part thereof as the case may be:

(3) * * * * *

Rule 4 of the Consolidation Rules in the following words:

4. Preparation of Scheme of consolidation. - After the notification and Publication by the State Government, of its intention to make a scheme for the Consolidation of Holdings under sub section (1) of section 14, the Consolidation Officer shall visit each of the estates concerned after giving reasonable notice of his visit to the landowners and non-proprietors thereof and shall, in consultation with the village committee constituted by him for this purpose, put up a scheme for the consolidation of holdings. The total number of members of the said committee shall not be less than three and it shall include:

(i) members of the Gram Panchayat, if any, constituted under the Punjab Gram Panchayat Act, 1952 (No. IV of 1953) and representatives of landowners;

(ii) a representative each of Harijans and other not-proprietors if not already included in the Panchayat;

(iii) a representative each of the Co-operative Farming Societies, if any.

8. The first argument of Mr. Harnam Singh Wasu is this. He says that according to section 14(2) of the Act the Consolidation Officer gets jurisdiction to prepare a scheme for the consolidation of holdings in the relevant estate or estates only after "obtaining in the prescribed manner the advice of the landowners of the estate or estates concerned". He urges that the Consolidation Officer must conform to the prescribed manner for obtaining the advice of the landowners. According to him it is not only the obtaining of the advice but it is the obtaining of it in the prescribed manner which is a condition precedent to the framing of the scheme by the Consolidation Officer. For ascertaining "prescribed manner" Mr. Wasu refers to rule 4 ibid. He says, the requirements of that rule would be satisfied if the scheme for consolidation of holdings is put up by the Consolidation Officer "in consultation with the village committee constituted by him for this purpose". The argument is that the village committee of which the the total membership is not to be less than three must include in it-

(i) (a) members of the Gram Panchayat, if any; and

(b) representatives of landowners;

(ii) if in the Panchayat no representative of Harijans and other non-proprietors has been included, then-

(a) a representative of Harijans; and

(b) a representative of other non-proprietors;

(iii) a representative each of the Co-operative Farming Societies, if any.

9. According to Mr. Wasu the requirement of inclusion of "representatives of landowners" is imperative and cannot be dispensed with in spite of such representatives being already in the village committee on account of their being members of the Gram Panchayat, if any. The learned counsel states that "representatives of landowners" is not the same thing as "persons representation the interest of landowners". He says that the phraseology used in rule 4(i) of the Consolidation Rules envisages some kind of elective process by which representatives of land owners should be got elected by the Consolidation Officer. In this view says he, there is.no procedure prescribed in the rules for such representatives being elected. In the alternative Mr. Wasu contends that if on a proper interpretation of the rule, it is held that it is for the Consolidation Officer to pick up any landowner of the village and call him a rep-representative of the landowners, this part of the rule is not consistent with the rule of law and is hit by Article 14 of the Constitution as giving to the Consolidation Officer unfettered and unguided discretion to arbitrarily choose any landowaer as a representative of the landowners even though he may in fact be on bad terms with all other landowners of the village and may not be a representative of theirs in true sense of the word. Mr. Wasu then states that if either of his two contentions prevails, there was no proper village committee constituted as required by mandatory provisions of the rule referred to above as no process of electing the representative of the landowners had been prescribed and no such representative had been elected by the landowners and consequently in the absence of a proper village committee the Consolidation Officer could not have consulted any such validly constituted committee and any such scheme prepared without such consultation is ultra vires section 14(2) of the Act and rule 4 of the Consolidation Rules. This, the learned counsel states, hits at the root of the scheme which should be struck down on this short ground.

10. Mr. Wasu further emphasises that the village committee had a very important role to play in the preparation of the scheme and that its proper constitution was a matter of life and blood for the villagers and was not of a mere academic value. Any alleged representative of the landowners, who may not really be their true representative and may not have the interest of the general body of land-holders of the village at heart, would be capable of harming the general body of landowners either for his own benefit or to the detriment of other persons by tendering incorrect or dishonest advice as a member of the village committee in the matter of fixation of market value of different pieces of land, etc. The learned counsel for the petitioners then adds that fundamental proprietary rights of the petitioners are affected by the scheme of consolidation and that if a scheme not prepared strictly in accordance with law is allowed to be enforced, this would result in the petitioners being deprived of their property save by authority of law. In support of this contention, Mr. Wasu relies on certain observations of this

Court (Falshaw C. J. and Grover J.) in Harke v. Giani Ram 1962. 64 P.L.R. 213. In that case the vires of section 8(2) (a) of the Punjab Gram Panchayat Act, 1952 were questioned. Section 8 of the Panchayat Act as at that time read as follows:

8 (1) Any member of the Sabha may on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing against the election of any person as a Sarpanch or Panch.

(2) The prescribed authority may-

(a) if it finds, after such inquiry as it may deem necessary, that a failure of justice has occurred, set aside the said election and a fresh election shall thereupon be held;

(b) if it tinds that the petition is false, frivolous, or vaxatious, dismiss the petition and order the security to be forfeited in the manner prescribed.

(3) Except as provided in this section, the election of a Sarpanch or Panch shall not be called in question before any authority or in any Court.

Grover, J. who wrote the judgment of the Court in that case, while dealing with the question of vires of section 8(2) (a), ibid held as follows:

In this situation it cannot but be held that the legislature has not declared its policy and purpose so as to guide the prescribed authority constituted under the Act with regard to the grounds on which it would come to the conclusion that there has been a failure of justice. No appeal has been provided against the decision of the prescribed authority with the result that there is no machinery by which its decision setting aside an election on the ground of failure of justice can be challenged before any superior Tribunal which would serve as a check or curb on us acting arbitrarily. It is true that it cannot be presumed that the prescribed authority will not act in a reasonable way and will set aside an election in an arbitrary manner but the whole difficulty that arises is that the prescribed authority itself will not know in what set of circumstances it must hold that a failure of justice has occurred in the matter of an election. As has been mentioned before, even the procedure for enquiry has been left by sub-section (2) of section 8 to be regulated by the prescribed authority according to whatever it considers to be necessary. This again introduces an element which can well bring about discrimination. One prescribed authority may consider that evidence may be examined on affidavits. Another prescribed authority may be of the view that only some of the witnesses out of those tendered by either of the parties should be examined and the statements of others need not be recorded. Discretion has thus been vested in the prescribed authority clothing it with unguided powers which may well enable it to discriminate.

11. The learned counsel for the petitioners says that applying the ratio of the Division Bench judgment in the above case I should strike down rule 4(2) (i) as

giving unguided and arbitrary power to the Consolidation Officer to discriminate in the matter of choosing and appointing at his sweet uncontrolled will, possibly in an arbitrary manner, any landowner of the village as a supposed representative of the landowners. Mr. Wasu admits that it is correct that it cannot be presumed that the Consolidation Officer will not act in a reasonable way and there is no reason to presume that he will act in an arbitrary manner. The learned counsel, however, says that the real difficulty is that the Consolidation Officer himself would not know how to choose the representative of the landowners. No tests or criteria are laid down. No procedure; for electing a representative of the landowners is prescribed by the Consolidation Rules; No appeal or revision against any arbitrary appointment is provided either by the Act or by the Rules and rub 4 introduces an element of vagueness and uncertainty which can well bring about discrimination.

12. As against this, Mr. Kartar Singh Kwatra, the learned Assistant Advocate-General, urges at the outset that this question, which has now been raised by Mr. Wasu at the hearing, has not been specifically raised in the writ petition itself. This appears to be so to the extent that though detailed reference to rule 4 of the Consolidation Rules is made in the writ petition and the scheme which was prepared as a result of the alleged consultation has been impugned and attacked, the objection has not been taken precisely in the. terms in which it is being pressed before me now. The learned counsel for the petitioners states that the point now urged by him raises a pure question of law and can be decided without being specifically taken in the writ petition. This aspect of the matter is being dealt with by me after considering the merits of the contention.

13. Mr. Kwatra then urges that the machinery for objecting to an arbitrary appointment of a representative of the landowners in the village committee is provided by section 19 of the Act and that further safeguards are provided by sections 36 and 42 thereof. Section 19 of the Act reads as follows:

19 (1) When the draft scheme of consolidation is ready for publication the Consolidation Officer shall publish it in the prescribed manner in the estate or estates concerned. Any person likely to be affected by "such scheme shall, within thirty days of the date of such publication, communicate in.writing to the Consolidation Officer any objections relating to the scheme. The Consolidation Officer, shall, after considering the objections, if any, received, submit the scheme with such amendments as he considers to be necessary, together with his remarks on the objections, to the Settlement Officer (Consolidation).

(2) The Consolidation Officer shall also publish in the prescribed manner the scheme as amended by him.

14. The counsel for the petitioners says that objections against an arbitrary or discriminatory appointment of a person as a representative of the landowners on the village committee cannot be raised u/s 19 of the Act as that provision of law can be invoked only at a stage after the scheme has already been framed and

that something which preceded the framing of the scheme cannot be made the subject matter of objection u/s 19. I do not agree with this contention of the learned counsel for the petitioners. I am inclined to hold that the words "objections relating to the scheme" in section 19 of the Act include within their scope and purview objections relating to all stages of the preparation of the scheme including its pre-natal stage envisaged u/s 14(2) of the Act. Once it is held that such an objection can be taken u/s 19 of the Act, it cannot be denied that the matter can be further agitated before the State Government u/s 42 of the Act also.

15. I, therefore, hold that there is a sufficient safeguard provided by the Act for checking the exercise of the power of the Consolidation Officer in this behalf in an arbitrary or illegal manner. It is the specific illegal exercise of power in each case that will have to be struck down in such an eventuality but this does not justify the striking down of the rule itself.

16. Mr. Kwatra next contends that the question raised by Mr. Wasu is merely academic as it is not necessary to have any representative of the landowners on the village committee in this case as such representatives are already on the committee by virtue of their being members of the Gram Panchayat constituted under the Punjab Gram Panchayat Act, 1952. This contention of the learned Assistant Advocate General is wholly misconceived. Mr. Kwatra seems to be reading he distinctive wordings "if not already included in the Panchayat which are only in clause (ii) of rule 4, into clause (i) of the said rule also. There is no warrant for adopting such a course. I hold that the Consolidation Officer has no choice in the matter of appointing or not appointing a representative of the landowners on the village committee. The provisions of clause (i) of rule 4 are mandatory and the Consolidation Officer must always appoint a representative of the land-holders on the village committee irrespective of whether any member or members of the Gram Panchayat of the village already have on it such a representative or representatives. The case is however, different in the case of representative of Harijans and other non-proprietors, i.e., in the case of the categories covered by clause (ii) of rule 4. In the case of those two categories, it is specifically provided by the rule that no representative of the arijans or other non-proprietors need be appointed by the Consolidation Officer on the village committee if their representative is already included in the Panchayat of the village constituted under Punjab Act 4 of 1953.

17. The learned Assistant Advocate General next contended that the guiding principle for appointment of a representative of the landowners is provided in the rule itself in as much as the necessary qualification of such a person is that he must be a representative of the landowners i.e., the persons appointed by the Consolidation Officer should be capable of representing other landowners of the village. This argument begs the question and does not answer it. Mr. T.S. Mangat, the learned counsel appearing for the contesting landowners, respondents Nos 4 on wards has referred me to para 6(i) and para 6(iv) of the

written statement dated 28th September, 1934 filed by him on behalf of those respondents which sub-paragraphs read as follows:

6 (i). The committee was constituted after consulting the landowners and was not constituted in an arbitrary manner.

6 (iv). A reply to this Sub-para is that the consultative committee was selected by the villagers and was not exclusively selected by the Consolidation Authorities. It was done so with the consent of the land owner of the village including the petitioners.

The averment of the petitioner in para 6(iv) of the writ petition is In the following terms:

(iv) The Consultative Committee contemplated by section 14(2) read with Rule 4 in the village has been constituted exclusively by the Consolidation Officer and he has taken such persons on the Committee in whose appointment the landowners including the petitioners had no voice.

Whether the petitioners were or were not consulted in the appointment of the representative of the landowners on the village committee is a disputed question of fact and cannot be gone into in these proceedings. Moreover in the written statement of respondents Nos. 1 to 3 no such allegation has been made as is made by respondents Nos. 4 onwards in this respect.

18. Mr. Mangat then invites my attention to the following finding of a Division Bench of this Court in Jit Singh''s case (supra) :

the purposes for which provision has been made by section 18(c) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act will promote the common good in every sense of the people living in the villages. Thus by virtue of Article 31-A(l)(a) of the Constitution of India the legislation is immune from attack on the ground of its being ultra vires of the Constitution.

Reference has also been made by Mr. Mangat to the judgment of the Supreme Court in Ranjit Singh''s case (supra).

19. There is still another valid consideration in this case. Repartition proceedings pursuant to the scheme are already stated to have been completed u/s 21(1) of the Act. No objection in connection with the appointment of the representative of the landowners was raised by or on behalf of the petitioners or any one of them at any stage before filling the writ petition. It is not even alleged by the petitioners that the representative of the landowners appointed in this case by the Consolidation Officer was not a proper representative. Nor was this point specifically taken in the writ petition. In order to invoke extraordinary remedy under Article 226 of the Constitution a petitioner to this Court must in order to entitle himself to get any relief show that manifest injustice has resulted to him as a result of the impugned order or action. The action of the Consolidation Officer in appointing the representative of the landowners in this case has not

been directly impugned.. Nothing has been stated to show that any injustice, much less manifest injustice has occurred to any of the petitioners as a result of the appointment made by the Consolidation Officer in this case. I have also to bear in mind the result of giving effect to such an academic contention at this stage so as to undo the entire work of consolidation which has been carried out in the village for more, than 18 months including repartition proceedings. Though there does appear to be same kind of lacuna in rule 4(i) of the Consolidation Rules in as much as the Rules do not provide for any specific machinery or mode of election of a representative of the landowners for being appointed on the village committee it appears to me that this neither invalidates nor makes the rule unworkable. In any case the question has not been directly raised in this case and it is, therefore, not necessary to express any final opinion, on it. If in any particular case the Consolidation Officer acts malafide or arbitrarily in appointing a representative of the landowners and the objection of the aggrieved landowners in that respect is illegally turned down in proceedings u/s 19 and/or section 42 of the Act, it would be for this Court to consider in an appropriate case whether to uphold or strike down the particular appointment. The question will have to be decided on the facts and in the circumstances of each case. No such facts or circumstances have been alleged or shown in this case as to justify interference with the order of the Consolidation Officer in this behalf. In fact no reference to the particular order of appointment of the landowner''s representative, has been made either in the writ petition or at the hearing before me I, therefore, feel no hesitation in repelling the first contention of the learned counsel for the petitioners.

20. The second point raised by Mr. H.S. Wasu is that the scheme is ultra vires the proviso to Article 31-A(1) of the Constitution as amended by the Seventeenth Amendment Act. Article 31-A(1) of the Constitution before its amendment In June, 1964 (by the Seventeenth Amendment Act) used to read as follows:

31-A (1) Notwithstanding anything contained in article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries, and treasurers managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; Provided that where such law is a law made by the Legislature of a. State, the prov;sions of this article shall not apply thereto unless such law having been reserved for the consideration of the President, has received his assent.

By section 2 of the Constitution (Seventeenth Amendment) Act, 1964 the following proviso was added to the above-quoted sub-article (1) of Article 31-A of the Constitution:

Provided further that where any law mikes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

Mr. Wasu states:

(i) that land is held by the petitioners in their personal cultivation;

(ii) that the Act makes provision for the acquisition by the State of such land;

(iii) that portions of land of which the petitioners are being deprived are within the ceiling limit applicable to them;

(iv) that the Act which provides for such acquisition does not provide for payment of any compensation at all to the petitioners, and that therefore the relevant provisions of the Act are ultra vires the second proviso to Article 31-A(1) of the Constitution reproduced above.

21. The learned counsel for all the respondents have vehemently objected to this question being allowed to be raised by the petitioners at this stage when it is admitted that no such point was mentioned in the writ petition. This petition was filed in July, 1964 and was admitted on 20th July, 1964. It appears that till then the provisions of the Constitution (Seventeenth Amendment) Act were not well known and that accounts for this objection to the scheme not having been raised in the writ petition. It also appears to me from the trend of the judgment of the Supreme Court in Ranjit Singh''s case2, that Their Lordships were inclined to allow this question being raised and being heard even after the conclusion of the hearing of those appeals and when judgment had been reserved by their Lordships and the case was ordered to be relisted for hearing before a different Bench of the Supreme Court simply in order to provide the counsel for the parties in that case an opportunity to urge anything they wanted in connection with the Seventeenth Constitution Amendment. There is, however, a more

fundamental difficulty in this case. In order to find out whether the question arises at all in this case or not it would be necessary for Mr. Wasu to prove at least the first three allegations out of four made by him (reproduced above) at the hearing of this case. No such material exists on the record of this case. On the contrary, the learned counsel for the respondents have urged that in this case the petitioners have not been deprived of any land at all and therefore the instant scheme being hit by second proviso to Article 31-A(l) of the Constitution does not arise. Reference is invited in this connection to para 8 of the written statement of respondents 1 to 3 which reads as follows:

(8) Para 8 of the petition is denied. All the reservations mentioned by the petitioners, are valid. No new path has been proposed & aligned during the Consolidation Operations. It fact, all the paths mentioned by the petitioners, are old,and their ownership has been kept in tact and no loss has, thus, been caused to the petitioners. The question of payment of compensation to the petitioners, therefore, does not arise, at all.

If this is correct the second question may not arise in this case. In a case where the landowners are not being deprived of any land by the quasi acquisition proceedings under the Act this question can hardly be allowed to be raised. In a case where the landowners are being deprived of their land under a scheme but the deprivation is to an extent beyond the celling fixed by the Punjab Act the question would not again arise.

In order to sustain an action under Article 226 of the Constitution the petitioners must prove that they have a right and then allege and prove the infringement thereof. In the absence of a claim of any such right and a complaint of its infringement and resultant manifest injustice to the petitioners this Court is not bound to pronounce on such a question as is now being raised before me merely for academic purposes. If and when this question is raised in an appropriate case where proper data and material is available it would have to be decided. It is possible that the Punjab Legislature may even choose to amend the relevant provisions of the Act in the meantime so as to make them consistent with the poviso to Article 31-A(1) added by the Constitution (Seventeenth Amendment) Act after the provisions of the Punjab Act 39 of 1963 had been held to be intra vires by this Court and by the Supreme Court of India.

22. No of her question has been raised before me by either of the parties. This petition, therefore, fails and is dismissed. But no order is made as to costs.

