
(2005) 02 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2085 of 1983

Sohan Singh and Another	Vs	APPELLANT
The Additional Director Consolidation of Holdings and Another		RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

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

Citation : (2005) 140 PLR 412 : (2005) 2 RCR(Civil) 840

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : Vaishnav Amba, for the Appellant; B.P. Singla, A.A.G. and D.S. Chahal, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—Petitioners have filed this writ petition with a prayer that writ of ceriorari be issued to quash order, Annexure P/3, having been passed contrary to the factual position existing at the spot.

2. It is case of the petitioners that consolidation proceedings in the village were concluded in the year 1951-1952. Keeping in view the situation at the spot, passage shown "AB" in the coloured site plan was allotted to the land of the petitioners. Land of respondents is shown in green colour in the site plan, referred to above. It is further case of the petitioners that in the year 1981, without giving any explanation for such a huge delay, respondent No. 2 moved an application before respondent No. 1, simply by stating that he came to know now that path No. 81 (AB) had wrongly been aligned to the land of the petitioners. It was further stated that since land of the petitioners was aligned with a separate passage shown as "CDEFG" in the coloured site plan, the first passage, being inconvenient to her, be ordered to be withdrawn from the petitioners. That application was allowed on 17.9.1982 (Annexure P/3).

3. Counsel for the petitioners has vehemently contended that respondent No. 1

had wrongly entertained application of respondent No. 2 after about more than three decades of conclusion of consolidation proceedings in the village, no explanation was furnishing by respondent No. 2 to move that application after such a long delay. Counsel further submitted that powers of respondent No. 1, u/s 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1949 (in short, "the Act"), are very limited. Unless there existed any defect in the preparation of the scheme, its confirmation and defect in repartition, respondent No. 1 had no power whatsoever to pass any order u/s 42 of the Act. He prayed that order under challenge, having been passed without condonation of delay and also contrary to the provisions of Section 42 of the Act, be quashed.

4. Prayer made has vehemently been opposed by counsel appearing for respondent No. 2. He, by referring to contents of application, Annexure P/2, contends that since there existed alternative passage to the land of the petitioners, passage "AB", under dispute, could not have been provided to the petitioners. It being unnecessary and inconvenient to respondent No. 2, has rightly been ordered to be withdrawn by the competent authority. He prayed that writ petition, having no substance, be dismissed.

5. Shri Singla, appearing for the State has supported the order passed by respondent No. 1.

6. After hearing counsel for the parties, this Court is of the opinion that writ petition deserves to be allowed.

7. It is apparent from the records that consolidation proceedings came to an end in the village in the year 1951-1952. At the time of effecting repartition, passage shown as "AB" was provided to the land of the petitioners. While withdrawing that passage, no defect had been indicated by respondent No. 1 in the preparation of scheme, its confirmation and implementation of repartition. Powers of respondent No. 1, u/s 42 of the Act, which reads as under, are very limited:-

42. Power of State Government to call for proceedings: 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 Act, call for and examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto thinks fit:

Provided that no order or 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.

8. A reading of the said provision clearly indicates that unless there is some defect in i preparation of scheme, its confirmation and implementation of repartition, it does not lie | within the jurisdiction of respondent No. 1 to pass

any order to withdraw or allot passage. Furthermore, it is apparent from the records that in the application, Annexure P/2, no reason whatsoever, was given for moving the application after a period of about three decades of conclusion of consolidation proceedings. Respondent No. 1 has also not discussed even the factum of delay in moving the application. Otherwise also, from the coloured site plan, it is evident that passage shown as "AB" is most convenient approach to the land of the petitioners.

9. This Court is of the opinion that by withdrawing the same injustice had been done to the petitioners, which requires rectification. Accordingly, this writ petition is a Mowed and order, Annexure P /3, under challenge, is set aside.