
(1974) 04 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 913 of 1973

Surian Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 17-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1975 P&H 16

Hon'ble Judges : Bhopinder Singh Dhillon, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : N.L. Dhingra, for the Appellant; K.T.S. Tuli, for N.K. Sodhi, for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—The dispute concerning consolidation of holdings arose amongst three landowners of village Dhipanwali, namely, Surjan Singh, petitioner, Sohan Singh predeceessor-in-interest of respondents 3 to 7 and Kundan Singh respondent. 8. Surjan Singh filed a petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, (hereinafter referred to as The Act"), before the Director, Consolidation of Holdings, which was accepted on October 22, 1963. Against that order, Civil Writ No. 2647 of 1964 was filed in this Court which was accepted by Narula J., on March 30, 1967. The learned Judge-directed the Additional Director to first decide whether there was sufficient cause for entertaining the time-barred application within the four corners of the second proviso to Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949. After remand, the Additional Director dismissed the petition of the petitioner u/s 42 of the Act on October 21, 1970. holding it to be barred by time. Against that order, the petitioner filed Civil Writ No. 3955 of 1970 in this Court which came up for hearing before a Division Bench and was decided on April 11, 1972. During the interval, on October 19, 1970, a Division Bench of this Court in Puran Singh v.

the State of Punjab 1971 PLJ 59 , decided that Rule 18 of the said Rules was ultra vires and that the petition u/s 42 of the Act could be made at any time. In view of that judgment, the Division Bench accepted the writ petition and remanded the case to the Additional Director to decide the same on merits. This order clearly meant that the plea that the petition u/s 42 of the Act was barred by time was no more available to the respondents. Puran Singh's case was reviewed by the same Division Bench and on July 28 1972, it was reversed and the judgment is reported as Puran Singh Vs. The State of Punjab and Others, The Additional Director, in view of that decision, did not decide the petition u/s 42 of the Act on merits, as directed by the Division Bench in its order, but dismissed it as barred by time on January 30, 1973, relying on the judgment in Puran Singh Vs. The State of Punjab and Others, . The present petition is directed against that order.

2. The short point urged by the learned counsel for the petitioner is that even if the order of the Division Bench dated April 11, 1972, was erroneous, the parties were bound by that order inasmuch as the respondents did not go up in appeal against that order nor got it set aside in review proceedings. In these circumstances, the order passed by the Division Bench on April 11, 1972, became final between the parties and operated as res judicata. The plea of limitation could not be taken before the Additional Director either by the respondents or by the Additional Director suo motu, on the ground that the change in law had occurred as a result of the later decision of the Division Bench in Puran Singh Vs. The State of Punjab and Others, The Additional Director, thus, could not arrogate to himself the power not to decide the case in accordance with the mandate of this Court. In support of this submission, the learned counsel has placed reliance on a judgment of the Supreme Court in State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, . wherein the following observations occur in paragraph 14 of the report:--

"Before proceeding with these arguments in detail, we can dispose of the second contention very shortly. This argument proceeds on a fundamental misconception, as it seeks to equate an incorrect decision with a decision rendered without jurisdiction. A wrong decision by a Court having jurisdiction is as such binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. The learned Judges of the High Court, who rendered the decision on April 4, 1952, had ample jurisdiction to decide the case and the fact that their decision was on the merits erroneous, as seen from the later judgment of this Court, does not render it any the less final and binding between the parties before the Court. There is, thus, no substance in this contention. The decision of the High Court dated April 4, 1952, bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not."

3. These observations in full aptly apply to the facts of this case. The order passed by the Division Bench on April 11, 1972, cannot be said to have been

passed without jurisdiction and that order, even if erroneous, could be set aside by having resort to appeal or review proceedings. That order, as stated above, became final and operated as res judicata at the time when the Additional Director decided the matter on January 30, 1973. It was not open to the Additional Director to suo motu take cognisance of the law later declared by this Court and to hold that the petition u/s 42 of the Act, filed by the petitioner, which he was directed to decide on merits, was barred by time. The Tribunals situate within the jurisdiction of this Court must understand that they have to carry out the directions and the mandates issued by the High Court and they cannot arrogate to themselves the function of deciding that such directions or mandates are erroneous or contrary to law and to ignore the same. That matter rests with the High Court and it is open to the parties to apply for the review of any order in accordance with the procedure prescribed by law. This writ petition is accordingly accented the impugned order of the Additional Director dated January 30, 1973, is quashed and he is directed to decide the petition u/s 42 of the Act on merits without going into the matter whether it was barred by time when originally filed. Since the respondents are not to blame for the erroneous order of the Additional Director, we make no order as to costs.

Bhopinder Singh Dhillon, J.

4. I agree.