
(1964) 07 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 538 of 1963

Udmi and Others

APPELLANT

Vs

Mani ram and Others

RESPONDENT

Date of Decision : 23-07-1964

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21(1)

Citation : (1964) 07 P&H CK 0035

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : Narinder Singh, for the Appellant; B.S. Bindra and Shri N.N. Goswami, for the Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Shamsheer Bahadur, J.—This is a petition of Udmi Ram and his relations directed against the order passed by the Additional Director, Consolidation of Holdings, respondent No. 4, on 13th February, 1963, taking away rectangle No. 91 and allotting it to the tenants Indraj and Hira respondents Nos. 2 and 3.

2. The consolidation operations in village Kharian Sureran, Tehsil Sirsa, took place somewhere in 1960 and the repartition under sub-section (1) of section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act) was effectuated on 9th of March 1961. On 17th of June, 1961, this repartition was confirmed under subsection (2) of section 21 of the Act.

It appears that the second and third respondents felt aggrieved by the repartition and made an allegation that they had been tricked by the landlords. The allegation was that they were tenants under the petitioner Udmi Ram in respect of land which was of the value of twelve annas. They had, however, been allotted land of the value of ten annas. A request was made for re-allotment to conform with twelve annas value. The Director of Consolidation accordingly made some

changes. The one which is being objected to is that the rectangle No. 111 which had been allotted to the tenants was taken away from them and in its stead; rectangle No. 91 in the ownership and possession of the petitioners was re-allotted to Indraaj and Hira respondents.

3. On behalf of the petitioners it was submitted that the petitioners and first respondent Mani Ram were co-owners of a joint khata and under a compromise (annexure "C") of 28th August, 1962, rectangle No. 111 had fallen to the share of the first respondent Mani Ram by way of partition between the co-owners and rectangle No. 91 had fallen to the lot of the petitioners. Respondents Nos. 2 and 3 were tenants under these co owners. The petitioners alone have been affected by the impugned order of the Additional Director of Consolidation inasmuch as rectangle No. 91 had been taken away from them.

4. On behalf of the State it is contended by Mr. Goswami that this compromise had never been brought to the notice of the Additional Director while for the tenants it is submitted by Mr. Bindra that the compromise, if any, does not affect the board principle that the tenants had to be allotted land from the khata of the joint owners under whom they were working. In my opinion the proper course for the Director is to reconsider the matter if he is moved by the petitioners to take note of the compromise and if he feels satisfied that in his previous order it had not been taken account of.

5. The other objection that the petition of the tenants could not have been entertained by the Additional Director u/s 42 of the Act, seems to me to be without any substance. u/s 42 of the Act as it stands after the amendment introduced by Punjab Act No. 27 of 1960, 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 call for and examine the record of any case pending before or disposed of ". It is futile to urge, as has been submitted by Mr. Narinder Singh, that the authority functioning u/s 42 can act only during the course of consolidation proceedings. The statute clearly envisages an order passed on repartition and the analogy of section 3 cannot be pressed into service. The Full Bench decision in Bhikan and others v. The Punjab State (1953) 65 P.L.R. 308 (F.B.) on which reliance has been placed by the petitioners" counsel also makes it clear that the limitation of the order to be passed during the consolidation proceedings refers only to section 36 of the Act. It is pointed out by the Full Bench at paragraph 22 at page 380 that section 42 of the Act which is broad based enables the Government to satisfy itself as to the legality or propriety of "any order passed, scheme prepared or confirmed or repartition made by any officer under this Act." Thus the order which has been set aside may be passed even after the consolidation proceedings are over and repartition effected.

6. There is no force in the point with regard to limitation under rule 18 of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949. An application u/s 42 has to be made within six months of the date of the order

against which it is filed and under the second proviso it may be admitted after the period of limitation prescribed has expired if the applicant "satisfies the authority competent to take action u/s 42 that he had sufficient cause for not making the application within such period." The final order of repartition was made on 17th June, 1961, while the petition u/s 42 was presented before the Additional Director of Consolidation on 18th September 1961. The petition was made within the prescribed period of six months and it cannot acceptably be urged that the Additional Director entertained a time-barred petition.

7. I would accordingly dismiss this petition repeating my observations that the Additional Director may reconsider the matter if he is moved by the petitioners or other right holders that proper effect has not been given to some compromise to which they were parties. There will be no order as to costs of this petition.