

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 36837 of 2019 (O&M)

Reserved on 25.1.2023

Date of Decision: 03.2.2023

Ishwar Dayal and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners claim relief for the rescinding of consolidation scheme, as carried in Annexure P-2, besides they also pray for the quashing of the order, drawn on 23.1.2019, as carried in Annexure P-4, whereby the petitioners' application for rescinding of consolidation scheme (supra), became dismissed.

Factual background

2. The consolidation department had started the consolidation operations in the village concerned, on the basis of jamabandi for the year 2001-2002. Thereafter, vide resolution dated 18.2.2005, equal value of the entire land was assessed. Ultimately on 31.3.2005, the draft consolidation scheme was published, and, whereafter it became finalized by the consolidation officer concerned. Aggrieved from the finalized consolidation scheme, the petitioners herein along with other land holders of the village concerned, preferred a petition under Section 42 of the Prevention from

Fragmentation of Land Holding and Consolidation Act, before the Commissioner, Ambala Division, Ambala Cantt hence seeking the setting aside of the finalized consolidation scheme, prepared on 31.3.2005, by the Consolidation Officer, Karnal, and, for preparing it fresh after giving a proper opportunity of hearing to the land holders of the village concerned. However, vide order dated 23.1.2019, the petition (supra) was dismissed by the authority concerned. Hence, the present petition.

Submissions of the learned counsel for the petitioners

3. The learned counsel for the petitioners, has contended with much vigour, before this Court that, at the time of consolidation operations, the consolidation authorities concerned, have not borne in mind, the relevant parameters appertaining to (a) parity or equivalence of monetary value(s) of the lands subjected to consolidation; (b) nor did bear in mind, the equivalence(s) of distribution of lands of all categories amongst the land owners concerned. He further submits, that prior to the finalization of the consolidation scheme, no notice became served, upon the petitioners. Therefore, the absence of an apposite prior notice becoming served, upon the petitioners concerned, has resulted in the petitioners rather becoming condemned unheard.

4. As above stated, through the drawing of the impugned order, the petitioners' claim was rejected. The reasons, as became set-forth in the impugned order, are carried in the relevant portion of paragraph 5 of the order (supra), paragraph whereof becomes extracted hereinafter.

“I have heard the argument of learned counsels for the parties and perused the facts available on the case file. In the present case the counsel for the petitioners and respondent No. 4 to 11 have mainly stated in their argument that the procedure of

consolidation has not completed as per rule in the village and the opportunity to submit their objection to the proprietors has not been granted. Although as per the facts available on the file the value of entire area in the village Gaganpur has been assessed with the consent of the proprietors of the village vide resolution No. 4 dated 14.1.2005 by the Consolidation Officer and the mustri munadi in the village for acceptance of the value assessed for the area was conducted vide resolution No. 6 dated 16.2.2005 and vide resolution No. 7 dated 18.2.2005 the value has been accepted with the consent of the proprietors. Prior to publication of consolidation scheme the mustri munadi got conducted in the village vide resolution No. 10 dated 22.3.2005. At the time of publication of scheme, assessment of value of the area and acceptance of value in the village no proprietor had raised any objection. The consolidation scheme has been prepared with the consent of the proprietors. 30 days time to submit the objection from 31.3.2005 was granted from the publication of consolidation scheme, which is clearly mentioned in the consolidation scheme. Thereafter, no person raised any objection on 9.6.2005 at the time of acceptance of the scheme. Thereafter vide resolution No. 30 dated 8.3.2005 the possession proceeding has completed. This fact has also available on the record that the present petitioner application has been filed by the 77 persons and the signatures of 45 persons who signed on the consolidation scheme, out of them 13 persons are at Serial No. 2,3, 9, 10, 14, 20, 25, 37, 41, 53, 55, 71 and 76. Accept this out of respondent No. 5 and 11 Rajbir Singh, Sandeep Singh, Baldeep Singh etc. have also put their signatures on the above said consolidation scheme. In this way it is totally wrong to write in para No. 7 of the application of the petitioners that the consolidation scheme is ex parte and they came to know about the above said consolidation on 11.8.2013. Keeping in view the above said facts in my opinion the consolidation scheme dated 31.3.2005 has been completed

as per rule and there is no justification to interfere with the same. So the application of the petitioners and the claim of respondents No. 4 to 11 is baseless. So the application of the petitioners and claim of the respondent No. 4 to 11 is being rejected.

5. Though, a reading of the above extracted relevant portion of the impugned order, does enable this Court to draw a conclusion, that the petitioners were not condemned unheard. However, even if assuming that some of the petitioners were purportedly condemned unheard, yet the above submission, does get faulted, on account of the fact, that the draft consolidation scheme, did evidently become published, and, the factum of evident publication of the draft consolidation scheme, did constitute a public notice thereof, to all the aggrieved concerned. The published draft consolidation scheme, assigned a period of 30 days, to the noticees concerned, to prefer objections against the draft consolidation scheme. However, the above granted period of time to the aggrieved, to prefer their objections, against the finalization of the draft consolidation scheme, did not become availed by them. Since the evident publication of the draft consolidation scheme, did evidently make such publication, to be a constructive or a public notice to all aggrieved. Therefore, but naturally there was no requirement, as such under law, that each of the aggrieved or each of the land owners concerned, was required to be personally served with a notice detailing therein, that he or she may within 30 days therefrom, prefer any objections against the acceptance of the draft consolidation scheme.

6. In short, the above made argument is completely meritless, and, is liable to be rejected.

before this Court, by the learned counsel for the petitioners, that there has been a complete breach of the principle governing the finalization of the consolidation scheme, inasmuch as, the consolidation officer, rather not bearing in mind, either the necessity of making proportionate allotments to all the land owners concerned, of lands of equal values, and, also his not bearing in mind the further principle, that even if the lands of lesser monetary value, is allotted to one of the co-owners, thereupon to make good the said deficit allotment(s), hence proportionate excess land, being required to be allotted to the land owner(s) concerned. He further submits, that the principle underlining the finalized consolidation, inasmuch as, to the major chunks of lands of the land owners rather the distanced therefrom apposite land(s) rather becoming consolidated with the major chunks, also not becoming borne in mind.

8. However, even the above argument is meritless, as a reading of the finalized consolidation scheme, as has been placed on record as Annexure P-2, reveals that prior to the preparation of the finalized consolidation scheme, the validly consolidated Maswarti Committee also becoming asked to make their participations in the preparation of the draft consolidation scheme. There is admittedly no attribution of any *mala fide* either to the members of the Maswarti Committee, nor to the consolidation officer concerned, who prepared both the draft consolidation scheme, and, ultimately prepared the finalized consolidation scheme. Therefore, there cannot be any interference either with the draft consolidation scheme or with the consequent therewith prepared finalized consolidation scheme.

9. At this stage, it is deemed important to refer to paragraphs 1 to 17, as occurring in the draft consolidation scheme (Annexure P-2), paras

whereof become extracted hereinafter.

- (1) *The value of entire area under the consolidation scheme in the village has been kept 16. Only one block has been made of the same.*
- (2) *The land shall be allotted to the proprietors where their major portion is situated. If the major portion of more than one proprietor is adjoining then it is not possible to allot the area to them at one place then the proprietor having more area is to be allotted and thereafter it shall be tried to allot area to the proprietor in next portion who is having less area. If the area could not allotted to such proprietor at II major portion of having less area then the area shall be allotted in the overflow area out of that block.*
- (3) *Overflow:- At the time of partition the area of proprietors such proprietor shall be given preference who was not in his possession in the area of joint khewat and left the out of partition. It shall be tried to allot the kurra in it.*
- (4) *For carving out major portion the area shall be taken whose boundary is attach with each other block or the corner to corner or the area in both side of the road shall be included in the major portion.*
- (5) *If the percentage of more than proprietor is equal and it is not possible to allot the area at that place then the area shall be allotted as per the shizra nasab.*
- (6) *What is the meaning of percentage = $100 \times \frac{\text{small area}}{\text{total area of concerned block}}$.*
- (7) *For making major portion the present jamabandi for the year 2001-2002, mutation entries and fard badars shall be included. In view of the min number if the entry is not made then the Assistant Consolidation Officer shall entered the same in the presence of proprietors and members of musverti committee after*

passing a resolution and verification on spot and the thumb impression and signature of the concerned proprietors shall be taken. On such verification the major portion shall be prepare.

- (8) If the major portion of any proprietors is equal at more than one place in such situation the first major portion shall be allotted to the khasra number which comes first.*
- (9) The kurra passage are road shall be tried to allot at one side but if the area is small then kura passage or road can be allotted at both sides. The same shall be considered one kura. The owners of other village land tried to be allotted towards their village of their residents. If by doing so the rights of the proprietor are effected then it shall not be done.*
- (10) The area of any small proprietor if false within the area of big proprietor then the area to the small owner shall be given towards the big proprietor. If the small proprietor is not agree then it shall not be done.*
- (11) Each kura shall be allotted the passage. In situation of one kura two karam and in situation of more than one kura 3 karam vide passage shall be allotted.*
- (12) At the time of completing the total area of the proprietors the shortage of 0.5 marla standard area shall be ignorable. There is one block in the village. So there is no need to enter the shortage block-wise.*
- (13) The area of minors and widows try to be allot alongwith the area of their guardian. If the rights of any person effected from the same then it shall not be done.*
- (14) It shall be tried to allot the land at one place whose mother- father, son daughter, Grad father and grandson -wife if the rights of any person effected from the same then it shall not be done.*

- (15) *Every proprietors shall be allotted the area at their first major portion if the area of any proprietor is situated at two places then it shall be tried to allot the land with his first major portion if it is not possible to do so then the area shall be allotted at his second major portion.*
- (16) *If the 8 kanal standard area of any proprietor is separate from his major portion then it shall be tried to allot the area alongwith first major portion of the proprietor. If the area is not available on that place and if the rights of any person effected from the same then it shall not be done.*
- (17) *At the time of partition of joint khewat if the share of owners is equal and the percentage of shortage in the area shall be considered equal.*

10. A reading of the above extracted paragraphs, as carried in the draft consolidation scheme, which became ultimately converted into the apt finalized consolidation scheme, does unravel, that the parameters appertaining to all the relevant equivalences or proportionate distributions, being made of all the lands, as brought to consolidation, rather becoming borne in mind by the consolidation officer. The above occurred, but in consultation with the Maswarti Committee concerned. Since the members of the Maswarti Committee concerned, are drawn from the mohal concerned, therefore, since elaborate discussions do occur amongst all concerned, at the stage relating to the preparation of the draft consolidation scheme. Resultantly the petitioners concerned, who became represented by the members of the Maswarti Committee concerned, could well elicit, an intimation for them, about the proposals qua manner(s) of distribution of the lands, by the Maswarti Committee concerned, and, in case the petitioners became aggrieved, thereupon, they could well through their representative

in the Maswarti Committee concerned, claim that the distribution be done in the manner, so as to accord with the principle of proportionality, and, parity not only with respect to the monetary values of the lands, but also in respect of equal distribution of the lands, being made to the land owners concerned. However, the petitioners throughout avoiding theirs submitting their objections to the drawings of the draft consolidation scheme rather permitted the preparation of the draft consolidation scheme, containing therein the above proposals, and, also it appears that the petitioners did not, through their representatives, in the Maswarti Committee concerned, make any protest against the preparation of the draft consolidation scheme, despite the fact, that they were in the know of the consolidation operations being underway in the *mohal* concerned. Therefore, at this stage, the petitioners are estopped from contending that the draft consolidation scheme was not prepared in accordance with law, nor they can contend that the finalized consolidation scheme as became prepared in consequence thereto, rather was flawed.

Summarization of Principle

- (1) Any objection or protest with respect to the monetary values of the land or in respect of equal distribution of the lands of all categories, being required to be equitably made to all the land owners concerned, has to be raised initially through their representatives in Maswarti Committee concerned, at the time of preparation of draft consolidation scheme. Any subsequent claim, that the draft consolidation scheme was not prepared in accordance with law, is, barred

by the principle of estoppel and waiver.

- (2) However, the above rule may get whittled down, only if the records of the consolidation authorities, reveal that all parameters (supra) were not evidently borne in mind by the consolidation officer concerned, otherwise not.

Final order of this Court

11. There is no merit in the appeal, and, the same is hereby dismissed.
12. All the pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 3rd, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes