

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 12442 of 1998 (O&M)

Reserved on : 18.1.2024

Date of Decision: 31.1.2024

Didar Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Argued by: Mr. Kanwaljit Singh, Senior Advocate with
Mr. K.S.Brar, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. M.L.Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate
for respondent No. 3.

SURESHWAR THAKUR, J.

1. Initially the instant petition was dismissed as withdrawn, through an order made by this Court on 27.4.2000. However, a review application was filed, thus for recalling of the said order, but the said review application was dismissed on 2.8.2000. The aggrieved from the said order, filed an SLP before the Hon'ble Apex Court, and, the Hon'ble Apex Court through an order drawn on 3.5.2002, after quashing the said orders, made an order of remand to this Court, thus for deciding the writ petition on merits. Therefore, but obviously the lis has re-opened, and, is required to be decided on merits.

2. The order challenged before this Court is comprised in Annexure P-3. The said order is drawn on 22.10.1997, on a petition filed by the one Makhan Singh, cast under Section 42 of the East Punjab Holdings

(Consolidation and Prevention of Fragmentation) Act, 1948 (for short ‘the Act of 1948’) The operative part of the said order is extracted hereinafter.

“After hearing the arguments of the learned counsels of both sides and after going through the record placed on the file the submissions of Shri S.P. Singh Multani and Shri B.S.Sarai that the land was reserved for Gram Panchayat cannot be accepted as per the judgment of the Hon'ble High Court 1967 PLR page 287 as the land could not be reserved for the common of the Gram Panchayat. Therefore the submissions made by the respondent is declined. Sarpanch, Gram Panchayat and other respondent has also admitted on his statement that the disputed land belongs to the proprietors and he shall have no objection if the same is partitioned and returned as in this manner only a correction is made of the mistake committed by the consolidation department access cut. So the consolidation scheme is accordingly amended and the petition is accepted by amending the same. The consolidation office challenged with directions that the land in Khata No.546 to 549, Khatoni No.327 be partitioned to the proprietors as per their shares as per Jamabandi for the year 1992-93. The consolidation officer is also directed if necessary to leave land for common purposes like hospital, schools etc. and is further directed that he should hear all the parties necessary before deciding the case and anybody should be disposed from any parcel of land without the legal means.”

3. Through the said operative part of the order (supra), the learned Director concerned, made a direction upon the consolidation officer concerned, to re-partition the lands to the estate holders concerned, thus in terms of their shares in the said lands.

4. In the petition (supra), the petitioner therein one Makhan Singh and others claimed, that the land, as enclosed in khatauni No. 327, khata No. 546-549, and, entered in the revenue records, as jumla mushtarka malkan, be

partitioned as per his share. In the petition (supra), it was contended, that the consolidation department had imposed an excessive cut, from his holdings, and, resultantly, an excess area was reserved for the village common purpose. It was further contended, that the total cut imposed, upon the respective estate of the estate holders concerned, was to the extent of 498 kanals 16 marlas, whereas, only 185 kanals 4 marlas land, rather became used for common purpose, and, that the remaining area of 313 kanals 12 marlas remained unutilized, and, thereby it is the bachat area. Therefore, the amendment was asked to be made in the consolidation scheme.

5. It appears, that the then Sarpanch of the Panchayat concerned, did not object to the said proposal, and, resultantly the Director, Consolidation, Punjab, Jalandhar, through the impugned annexure (supra) concluded, that the disputed lands are liable to be partitioned, besides concluded, that since through the impugned order there would be undoings of a mere clerical mistake, thus committed by the Consolidation Department, as arising from an excess cut being made. Consequently, through Annexure P-3, a direction was passed, upon the consolidation officer concerned, to make re-partition or re-distribution of the lands to the estate holders concerned, but as per their shares.

Submissions of the learned senior counsel for the petitioner

6. The learned senior counsel for the petitioner has vehemently argued before this Court, that the foundation of the above order, becomes rested, upon a consenting statement to the petitioner's espousal, thus being made by the then Sarpanch, who also was a beneficiary of the said order. Therefore, he contended, that the impugned order is stained with the vice(s) of collusiveness, and, thereby it is required to be quashed, and, set aside.

7. Furthermore, the learned senior counsel has also vehemently argued before this Court, that though, it has been stated in the order, that thereby a clerical mistake, became undone, but he stated, that the contentions (supra), as raised in the petition by one Makhan Singh did yet devolve, upon the legitimacy of the pro rata cuts, being imposed by the consolidation officer concerned, besides devolved, upon whether the said cuts were imposed from the lawful estates of the estate holders concerned. Moreover, he submits, that the said contentions also devolved upon whether such cuts were a sequel to measurements, and, surveys being made of the disputed lands, and, theirs revealing that the respective estate holders had assumed possession there-overs, but in excess of their legitimate possession there-overs, thus in terms of the pre consolidation records.

Submissions of the learned senior counsel for respondent No. 3.

8. The learned senior counsel for respondent No. 3, has submitted, that since the petitioner, filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), wherein he has prayed that the subject matter lands be declared to be jumla mushtarkan, and, thus theirs being declared to become vested in the Gram Panchayat concerned. Therefore, it is contended, that thereby the petitioner is abusing the process of law, inasmuch as, he has indulged in multiplicity of litigations, before different forums.

9. The learned senior counsel has also contended, that as aptly concluded in the impugned order, the relevant omission was a mere clerical error, and, thus thereby the decision made by the Director, Consolidation, Punjab, on a petition cast under Section 42 of the Act of 1948, was made after a well assumed jurisdiction being made thereons.

Analysis of the above submissions, and, reasons for accepting the submissions made by the learned senior counsel for the petitioner, and, for rejecting the submissions made by the learned senior counsel for respondent No. 3.

10. Though, at this stage, it is not known whether the order of remand has been complied with or not by the remandee authority concerned.

11. Be that as it may, since this Court deems it fit to quash the impugned order, whereby remand was made to the consolidation officer concerned, thus thereby ipso facto, and, irrespective of the outcome of the remanded lis, rather being unknown to this Court, thereby the order on the remanded list, would but capsize.

12. Though, it has been stated in the impugned order, that the said order is made only for undoing a clerical mistake, which became purportedly made by the consolidation officer concerned, thus thereby though, as stated (supra), the author of the impugned annexure, rather has attempted to purportedly assume a valid jurisdiction on the relevant lis. However, for the reasons to be recorded hereinafter, any purported error in the consolidation scheme, which became purportedly corrected, through the impugned order, rather was not any clerical error, as made by the consolidation officer concerned, contrarily the remand jurisdiction, as became assumed through Annexure P-3, thus by the Director concerned, rather was barred to be assumed thereons.

13. The reason for making the above conclusion, but thus strikingly emanates from the factum, that there was an acerbic dispute amongst the contesting litigants concerned, with respect to there being an excessive cut being made by the consolidation officer concerned, from the lawfully held estates of the estate holders concerned, and/or whether the reservations, as

measurements of the areas tilled by the cultivators concerned, and, the said measurements revealing, that the cultivators concerned, were holding possession over their respective cultivated ares, thus in excess of their lawful entitlements, as declared in the pre-consolidation records.

14. The above contested facts, did ultimately devolve, upon, the question of title, being raised in respect of the relevant cuts. Necessarily thereby the jurisdiction to make an adjudication in respect of the above acerbic contest, which emerged amongst the contesting litigants concerned, rather in terms of a judgment rendered by a Full Bench of this Court in case titled as '**Parkash Singh and others versus Joint Development Commissioner, Punjab**', reported in **2014(2) RCR (Civil) 721**, did not become vested in the authority concerned, but became vested in the learned jurisdictionally competent Civil Court. The relevant para of the judgment (supra) stands extracted hereinafter.

"We, therefore, have no hesitation in recording that it is beyond debate that, if a question arises, before an officer exercising power under the Consolidation Act, regarding any right, title or interest in "Shamlat Deh" "vested" or deemed to have vested in a Gram Panchayat, a Consolidation Officer, the State or its delegate exercising plenary power under Section 42 of the Act, are not empowered, while examining the correctness of any scheme prepared during consolidation or order passed thereunder to record a finding on such a question of title or to hold that land is or is not "Shamlat Deh" and as a consequence whether any right, title or interest vests or does not vest in the Gram Panchayat. The only authority empowered to answer such a question is the Collector, exercising power under Section 11 of the 1961 Act. As a necessary corollary an order passed under Section 42 of the Consolidation Act, holding that the land vests or does not vest in a Gram Panchayat would be illegal and nonest for assumption of

jurisdiction where there is none, as opposed to a mere erroneous exercise of jurisdiction or may, at best be construed to be an order passed by a tribunal of limited jurisdiction, in the exercise of its limited powers to correct errors in the scheme or orders passed during consolidation and nothing more. The latter conclusion would require a degree of explanation.”

15. If so, the assumption of jurisdiction by the Director concerned, on a petition cast under Section 42 of the Act of 1948, merely on a mislaid conclusion, that thereby he was undoing a mere purported clerical error, is but erroneous or a flawed assumption of jurisdiction on the relevant lis, which but obviously transgresses the mandate (supra), as occurs in Parkash Singh's case (supra).

16. Furthermore, the aggrieved concerned have misavailed the jurisdiction cast under Section 21 of the Act of 1948, provisions whereof become extracted hereinafter.

“21. Repartition.- (1) The Consolidation Officer shall, after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed under section 20, and the boundaries of the holdings as demarcated shall be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objector pass such orders as he considers proper confirming or modifying the repartition.

(3) Any person aggrieved by the order of the Consolidation Officer under sub-section (2) may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the appellant pass such order as he considers proper.

(4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3), whether made before or after the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, may within sixty days of that order, appeal to the Assistant Director of Consolidation.

(5) Any appeal against an order of the Settlement Officer (Consolidation), pending under sub-section (4) immediately before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, either before the State Government or any officer to whom the powers of the State Government in this behalf have been delegated shall be decided by the Assistant Director of Consolidation.

(6) The appellate authority may entertain an appeal under sub-section (3) or sub-section (4) after the expiry of the period of limitation prescribed therein if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(7) The State Government may by notification appoint any person to be an Assistant Director of Consolidation to exercise the powers under this section in respect of such area as may be specified in such notification.”

17. From a reading of the above extracted provisions, it emerges that the jurisdiction invested in the consolidation officer concerned, to re-partition the lands amongst the estate holders concerned, is restricted to in his proceeding to do so, thus his not travelling beyond the consolidation scheme, as confirmed under Section 20 of the Act of 1948. Therefore, but obviously, there is no leverage in the estate holders concerned, to either re-open the consolidation scheme, as confirmed under Section 20 of the Act of 1948 or also there is any leverage in the estate holders concerned, to disturb or tinker with the consolidation scheme, as confirmed under Section 20 of the Act of 1948.

18. The above provisions is for a solemn besides holistic purpose, that if there are as such any errors in the confirmed consolidation scheme, that such errors do not travel in the record of right which are to be reflected

in terms of Section 22 of the Act of 1948. In other words, if any such errors

occur in the naksha kharpatwar or in the naksha istemal, as become prepared by the consolidation officer concerned, inasmuch as, the said documents, being incongruous to the consolidation scheme concerned, thereupon unless the said inter se congruity becomes erased, resultantly the updation of records, as made in terms of Section 22 of the Act of 1948, but also would carry the relevant errors, thus to the detriment of the estate holders. Resultantly there is but no jurisdiction conferred under Section 21 of the Act of 1948 in the consolidation officer concerned, to excepting the above, thus proceed to re-open the entire consolidation scheme, as done through his invoking the mandate of Section 20 of the Act of 1948. More especially, when the finalized consolidation scheme, has undergone the rigour of prior thereto recommendations of the mushawra committee rather becoming accepted by the estate holders concerned, especially when no objection to the draft consolidation scheme, as drawn under Section 19 of the Act of 1948, become raised by the estate holders concerned. The effect of the no objections, to the published draft consolidation scheme, thus being raised by the aggrieved therefrom estate holders concerned, but is deemed to work as their respective acquiescences thereto. Moreover, it did also estop, thus challenges being made both to the draft consolidation scheme, and, to the finalized consolidation scheme, as drawn in terms of Section 20 of the Act of 1948. In summa, except for the above limited purpose, thus for scoring off, any purported inter se discrepancy inter se naksha kharpatwar and naksha istemal vis-a-vis, the finalized consolidation scheme, there is but thus a restricted jurisdiction conferred under Section 21 of the Act of 1948, in the consolidation officer concerned, and, nothing beyond that is conferred in the consolidation officer, so as to reorient or refashion the entire consolidation

19. In addition, the jurisdiction conferred under Section 42 of Act of 1948, is also limited to corrections being made of any clerical error, in the finalized consolidation scheme, and/or to create a consolidation rasta, if the same became not earlier created. The above jurisdiction is also is not expandable so as re-open or tinker with the finalized consolidation scheme.

Final order

20. Consequently, this Court finds merit in the instant petition, and, is constrained to allow it. Accordingly, the instant petition is allowed. The impugned order is quashed, and, set aside. However, liberty is reserved to the litigants concerned, to access the Civil Court of competent jurisdiction, thus to join the petition, as, filed by the petitioner under Section 11 of the Act of 1961, if it has not been already decided, and, if decided, to join the appeal proceedings.

21. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

January 31st, 2024

Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No