

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 8320 of 1996 (O&M)

Reserved on : 18.1.2024

Date of Decision: 31.1.2024

Parkash Singh

.....Petitioner

Versus

State of Punjab and another

.....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. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. The dispute involved amongst the contesting litigants in the instant lis, relates to whether the consolidation officer concerned, had in the relevant consolidation scheme, thus made allotments to them whereby, the disjunct plots of the estate holders concerned became, tenably or not, thus added onto their respective major portions.

2. Initially one Parkash Singh had instituted an application before the consolidation officer concerned, whereby he claimed that the allotment made to him in the consolidation scheme, rather did not result in the said allotment, being added onto his major portion. However, vide order passed thereons by the consolidation officer concerned, on 5.6.1985, the said application was dismissed. The aggrieved therefrom, preferred an appeal, which became also dismissed through an order made thereons on 28.4.1986.

Aggrieved therefrom one Sant Ram-respondent No. 2 preferred an appeal under Section 21(4) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948'), which was allowed vide an order made thereons on 30.3.1987 (Annexure P-2). The author of Annexure P-2, after making an appraisal of the relevant records, concluded in paragraph 3 thereof, para whereof becomes extracted hereinafter, that the allotment, as made to one Sant Ram was not correctly made, besides concluded, that there was a shortfall in the allotment made to him.

“3. I have heard the parties at length and find that the objections taken up by the appellant have been explained to my entire satisfaction and I am convinced that the land has not been correctly allotted in favour of the appellant and he is suffering a shortfall as well. The request is genuine and correct.”

3. Therefore, after accepting the appeal through Annexure P-2, he set aside the order dated 29.4.1986, and, the order dated 5.6.1985, and, made an order of remand of the lis to the Consolidation Officer, Hoshiarpur, for undoing the purported mis-allotments of the land(s), as became made to one Sant Ram.

4. In pursuance to the making of Annexure P-2, the remandee authority concerned, through an order made on 7.8.1989 (Annexure P-3) concluded, that the major portion of one Sant Ram at B-1 beyond cho (khal) is qilla No. 314-384-312-313-315-316-378/1-380-381-382-383-473 measuring 37 kanals 18 marlas, and, that the said land is in one tak, besides the major portion of the applicant concerned, adjoins the same. He further concluded, that the said Sant Ram merely for getting rid of the cho area, and, to seek its allotment to the opposite party, has made an objection to the said

cho area, becoming adjoined to his major portion. Furthermore, it was also concluded, that the applicant Sant Ram has come from outside, and, is not prepared to take any alternative land. Consequently, through Annexure P-3 the remandee authority concerned, concluded, that the case under Section 21(2) of the Act of 1948, is required to be dismissed.

5. An appeal against the said order dated 7.8.1989 (Annexure P-3), became preferred by aggrieved Sant Ram before the Consolidation Officer, Punjab, who through an order made thereons, on 8.3.1991 (Annexure P-5), concluded, that the appellant one Sant Ram rather was entitled to area 33 kanals 7 marlas in lieu of that he has been given 33 kanals 12 marlas, thus the Consolidation Officer concerned, concluded, that the appellant Sant Ram rather has been given an excess area of 5 marlas, and, thereby he is not entitled to any further allotment being made to him. In consequence, through Annexure P-5, the order enclosed in Annexure P-3, became affirmed.

6. Remaining yet aggrieved, a challenge was made to Annexure P-5 by one Milkha Singh, and, Parkash Singh (the petitioner herein), through theirs filing an appeal bearing No. H-12/91 before the Assistant Director Consolidation of Holdings, Punjab, Jalandhar. However, the ground raised by the said appellants in their appeal, as became laid before the Assistant Director Consolidation of Holdings, Punjab, Jalandhar, became rested on the ground that the settlement officer concerned, has illegally withdrawn the area from them out of khasra No. 18//8/4, 14/1, 10 kanals 4 marlas on the premise, that the said area is comprised in the major part of the respondent, which in fact is wrong. Contrarily, they contended, that the major portion of the respondent one Sant Ram falls in khasra No. 18//3,7, 8, whereas, the area

which the appellants are entitled. Moreover, a challenge was also made to the standard valuation of the relevant assigned areas. In addition, the earmarking of the path on the eastern side of khasra No. 18/17 for the appellants, for which no compensation was awarded, became also challenged. However, the Assistant Director, Consolidation of Holdings, Punjab, Jalandhar, through an order drawn on 21.5.1993 (Annexure P-6), after perusing all the relevant record concluded, that the grounds raised therein were erroneously raised, and, thereby concluded, that there was no illegality or impropriety in the order, which became challenged before him, and, thereby dismissed the appeal (supra).

7. The petitioner one Parkash Singh also preferred a petition cast under Section 42 of the Act of 1948 before the Director, Consolidation of Holdings, Punjab Jalandhar for setting aside the order dated 8.3.1991 (Annexure P-3). However, through an order made thereons, on 19.9.1995 (Annexure P-7), the said petition was also dismissed.

8. Therefore, the petitioner has made a challenge to the orders made by the authorities concerned, respectively on 8.3.1991, 21.5.1993, 19.9.1995.

9. From a perusal of the verdicts (supra), it is manifestative, that the orders challenged before this Court are based, upon sound appreciation of the relevant records, besides they are founded upon well made reasons. As stated (supra), initially, the dispute which emerged amongst the contesting litigants was squarely confined to the apposite allotments being not made onto the major portion of the estate holders concerned.

10. 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.”

11. 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.

12. 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

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 scheme.

13. 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.

14. Be that as it may, it is but clearly discernible, from a reading of the verdicts challenged before this Court, that only after an incisive, and, a

circumspect perusal of the relevant records, and, theirs revealing, that there

was neither any shortfall in the allotments made to the estate holders concerned, besides there being also no infirmity, as, but divulged, thus from the consolidation officer concerned, but purportedly erroneously making allotments to the estate holders concerned, thus in derogation of the solemn principle, that the lands allotted, to the estate holders concerned, were hence to become so allotted so as to thereby ensure, that such additions rather are onto the respective major portions of the allottees concerned.

15. Therefore, since the above made conclusions in the orders challenged before this Court, are not demonstrated by any tangible documentary evidence, qua theirs being either misfounded or ill-informed.

16. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is hereby dismissed. The impugned orders are upheld but reserving liberty to the petitioner to qua the disputed lands, raise a title dispute before the jurisdictionally competent Civil Court concerned.

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

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

January 31, 2024
Gurpreet

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