

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 13001 of 2005 (O&M)

Reserved on : 1.2.2024

Date of Decision: 19.2.2024

Bishan Singh (since deceased) through LRs

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Rakesh Nehra, Senior Advocate with
Mr. Hitesh Malik, Advocate and
Mr. Vikalp Hooda, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vishal Pundir, Advocate
for respondent No. 5.

SURESHWAR THAKUR, J.

1. In the instant petition, the petitioner has sought the quashing of the concurrently made orders, enclosed in Annexures P-3 to P-6.

2. In a suit bearing No. 8/DC of 1999-2000, instituted by the Block Development and Panchayat Officer, Gharaunda, against the defendants therein, claiming thereby the rendition of a declaratory decree vis-a-vis the disputed lands, thus the said espoused decree became assigned to the plaintiff-BDPO concerned, through an order made thereon, on 20.2.2002 (Annexure P-3). In the said suit became arrayed, thus as the respondents, apart from the State of Haryana, The Director, Consolidation, Haryana, Chandigarh, The Settlement Officer, Consolidation of Holdings, Rohtak, The Tehsildar, Consolidation, Karnal, The Tehsildar, Revenue, and,

also the private respondents, one of whom was the petitioner-Bishan Singh (since deceased). The said suit was primarily resisted by the private respondents, on the premise that respectively through Annexure P-1, and, Annexure P-2, as became drawn by the authorities contemplated under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948'), their entitlement to the suit land became impliedly accepted, and, thereby the said implied acceptance of the entitlement over the disputed lands of the private respondents, rather deprived the plaintiff to espouse for the assigning of the declaratory decree rather against them. It was also contended, that with the said annexures rather making an implied conferment of title, upon the private respondents vis-a-vis the suit land, which was also the subject matter of the suit (supra), instituted by the BDPO concerned, thereby they were binding upon the plaintiff. Resultantly, the assigning of a declaratory decree to the BDPO concerned, through the making of Annexure P-3, is a flawed or an erroneously made declaration vis-a-vis the plaintiff.

3. Being aggrieved from the order (supra), as enclosed in Annexure P-3, the petitioner Bishan Singh (since deceased) filed thereagainst an appeal bearing No. 96 of 22.3.2022, before the statutory appellate authority concerned, appeal whereof became dismissed through (Annexure P-4). The aggrieved therefrom the petitioner Bishan Singh (since deceased) preferred thereagainst a revision petition, before the Financial Commissioner and Principal Secretary to Government, Haryana, who through (Annexure P-5), dismissed the said revision petition.

4. However, for the reasons to be assigned hereinafter, the above ground, as raised by the present petitioner in his defence, to the plaintiff's

suit, is completely rudderless, and, is required to be rejected, as aptly done

through the impugned annexures.

5. The reason for making the above inference emanates from the factum, that on the declaratory suit (supra), the learned Collector concerned, on the contentious pleadings of the litigants concerned, thus formulated the hereinafter extracted issues.

- “1. Whether the suit property had rightly vested in Gram Panchayat and that whether the defendants No. 6 to 9 are not entitled to any share of land in view of their possession as alleged before 26 January 1950 in view of the exemptions laid down under the provisions of Punjab Village Common Lands Act ? OPP*
- 2. Whether the alleged orders passed by the Director, Consolidation and Consolidation Officer are passed without jurisdiction ? If so, to what effect ? OPP*
- 3. Whether the suit is bad in view of Section 44 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ? OPD*
- 4. Whether the suit is bad for misjoinder and non-joinder of necessary parties ? OPD*
- 5. Whether the suit is bad for want of service under Section 80 CPC? OPD.*
- 6. Relief.”*

6. The learned Collector concerned, after making a well appraisal of the evidence, as became adduced thereons by the litigants concerned, whereupon whom the evidence discharging onus became cast, returned thereons rather findings adversarial to the private respondents therein, and, in favour of the plaintiff in the suit (supra).

7. Since the above formulated issues by the learned Collector concerned, on the contentious pleadings of the litigants concerned, besides his thereafter casting the evidence adducing discharge onus, on the litigants concerned, is an aptly recoured procedure, as the same is akin to the one to

be adopted by the Civil Court of competent jurisdiction, upon, the latter trying a civil suit, especially when the provisions engrafted in the CPC, relating to the trial of a civil suit by Civil Court, are also applicable to proceedings drawn before the statutory authorities, contemplated under the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'). Significantly also since in the special statute (*supra*), no non-obstante clause exists thereby ousting the workability of the provisions of the CPC nor when therein exist a special procedure for making the trial of a suit, as laid in terms of statutory provisions, as engrafted therein. Therefore, the apposite provisions of the CPC are applicable to the trial of suits by the statutory authority concerned.

8. Be that as it may, the learned authorities below, after making a well appraisal of the entire consolidation record, had concluded, that the disputed lands had been assigned for the benefit of the village proprietary body, and, thus thereby they were assigned the description of shamlat deh land(s). Though, it was open for the private respondents to adduce such evidence rather making vivid echoings, that since the reservations of the land(s) for the benefit of the village proprietary body, were so made after an excessive pro rata cut(s) being made from their legitimate holdings, for therebys theirs well contending, that they are yet entitled for re-distribution, and, re-partitioning to them of the said assigned lands rather for the benefit of the village proprietary body. However, a keen discernment of the revenue records, does not unveil that any of the said contentions became raised, nor any unfolding emanates from the records, suggestive that the said evidence became adduced, whereby the private respondents could well espouse, that either the cuts, as became imposed, upon their legitimate holdings, rather

after making a pro-rata cut therefrom, yet the said reserved lands not being utilizable, nor theirs ever becoming used for the village common purpose. Therefore, the omission of evidence (*supra*), rather capitalizes an inference, that the reservations, as were made for the village common purpose, were so made by the consolidation officer concerned, but only after his making measurements, and, surveys of the lands of the estate holders concerned, and, such surveys, and, measurements revealing, that the estate holders concerned, were holding possession of the lands, much beyond their entitlements, thus as declared in the pre-consolidation records. Therefore, the reservations made in the above manner, for the village common purpose, but obviously did not entitle the respondents concerned, to seek any purported re-partition or re-allotment to them of the shamlat deh lands, as became made rather through Annexures P-1, and, P-2, nor the above annexures carried any jurisdictional vigour. Therefore, non assigning of jurisdictional vigour to Annexures P-1, and, P-2, respectively by the authorities, who drew the impugned annexure Annexure P-3, is liable to be vindicated. The reason for making the above inference stems, from the factum, that excepting for the makings of corrections of clerical errors, or mistakes, or excepting the making of a consolidation rasta, if such a consolidation rasta is not carved by the consolidation officer concerned, thus no further vestige of jurisdiction is vested in the authorities contemplated under Section 42 of the Act of 1948, much less to make an adjudication, on the disputed question of title, relating to shamlat deh lands, especially when the estate holders concerned make a claim for re-partition or re-allotments to them of the lands, designated in the revenue records, as shamlat deh lands.

9. The effect of the above, is that, no valid reliance could be placed by the private respondents, upon Annexures P-1, and, P-2, as became

drawn by the authorities contemplated under the Act of 1948, for theirs therebys thus non suiting the plaintiff.

10. Moreover, when in 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***, especially when in paragraph 46 thereof, para whereof stands extracted hereinafter, rather it becomes expostulated, that the limited scope of the jurisdiction invested under Section 42 of the Act of 1948, thus in the contemplated therein authority, is but confined, and, severely trammelled rather to only correct the clerical errors in the scheme or in the orders passed during the consolidation, and, nothing more.

“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 "Shamilat 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 "Shamilat 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.”

Final order

11. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned orders are maintained, and, affirmed.
12. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

February 19, 2024
Gurpreet

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