

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-3302-1980 (O&M)

Pronounced on: 29th June, 2015

Har Parkash and others

..... Petitioners

VERSUS

**Additional Director Consolidation of
Holdings, Punjab, Chandigarh and others**

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
 HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: **Mr.P.C.Rakra, Advocate, for the petitioners.**

None for the respondents.

RAJIVE BHALLA, J.

The petitioners pray for issuance of a writ of certiorari, quashing orders dated 24.03.1979 (Annexure P-7) and 09.06.1980 (Annexure P-8), both passed by the Additional Director Consolidation of Holdings, Punjab, while exercising power under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the “Act”).

Counsel for the petitioners submits that the Act does not confer the power of review, upon any authority much less the authority exercising power under Section 42 of the Act. The order dated 24.03.1979, passed by the Additional Director, Consolidation, by ignoring an earlier order dated 08.11.1963, passed by his predecessor under Section 42 of the Act, on the same cause of action amounts to a review of order dated 08.11.1963 and is, therefore, a

nullity. Counsel for the petitioners relies upon a Full Bench judgment of this Court in “**Deep Chand V/s Additional Director Consolidation of Holdings, Punjab, Jullander and another**”, 1964 PLR 318, and a judgment of the Hon'ble Supreme Court in “**Harbhajan Singh Vs. Karam Singh and others**”, (1966) 1 SCR 817, in support of his arguments that the Act does not empower consolidation authorities to review their orders.

Counsel for the petitioners further submits that the order dated 24.03.1979, was an ex-parte order as the petitioners were not informed of the tour programme of the Additional Director, Consolidation. The petitioners, therefore, filed an application for setting aside of this order. The application has, however, been dismissed, by the Additional Director Consolidation, by holding that it is not necessary to serve all co-sharers and as some of the co-sharers were served and had put in appearance, order dated 24.03.1979, cannot be recalled.

No-one has put in appearance on behalf of the contesting respondent.

We have heard counsel for the petitioners, perused the impugned orders as well as an order passed by the Hon'ble Supreme Court while remitting the matter to this Court.

Before proceeding to answer the question posed, it would be appropriate to delimit the facts.

The land of village Kalitran, Tehsil Anandpur Sahib,

District Ropar, was taken up for consolidation in 1961. After determining the extent of land holdings and their valuation, consolidation authorities proposed repartition i.e. the final step in consolidation, that entails exchange of possessions. Nathu Ram (father of respondents No.2 and 3 and husband of respondent No.4) filed objections to the repartition, before the Consolidation Officer by pleading that Killa Nos.2, 3, 4, 7 etc. of Rectangle No.37, which belonged to Har Parkash and are proposed to be allotted to him, are of inferior quality. The Consolidation Officer dismissed the objections on 08.07.1962. Nathu Ram filed Appeal No.40 of 1962, before the Settlement Officer, Hoshiarpur, which was partly accepted by withdrawing Killa No.37/2, 3 ,4, 7 etc. from Nathu Ram and in return allotting Killa Nos.38/25 Min (E), 38/14/2, 15/2, 16,17,24, 25 Min (W). Nathu Ram, still dissatisfied, filed an appeal, before the Assistant Director Consolidation, under Section 21(4) of the Act, which was dismissed on 21.08.1963.

Aggrieved by these orders, Nathu Ram filed a petition under Section 42 of the Act, before the Additional Director Consolidation, which was dismissed on 08.11.1963. The matter, therefore, attained finality. A fresh record of rights was prepared for the revenue estate, possessions were exchanged and consolidation proceedings concluded.

Chetan Parkash, son of Nathu Ram, who was an employee in the office of the Financial Commissioner, Punjab, filed

an application before the Additional Director Consolidation, claiming that an appeal, dated 12.02.1964, filed by his father, late Nathu Ram has not been decided. The Additional Director Consolidation, took up the application and the appeal and issued notices. The petitioners and other co-sharers put in appearance but the case was adjourned to the next tour of the Additional Director Consolidation, by directing the Patwari to produce the record and the Assistant Consolidation Officer to submit a report. The Additional Director Consolidation, allowed the appeal on 24.03.1979, retrieved Killa Nos.37/2/2, 3, 4/1, 7/2, 8 and 9 which were allotted to the petitioners, while deciding objections, filed by Nathu Ram and allotted them to Chetan Parkash etc.

The petitioners filed a petition, under Section 42 of the Act, for setting aside ex-parte order dated 24.03.1979 but the petition was dismissed on 09.06.1980 by holding that all co-sharers need not be served. The petitioners thereafter filed the present writ petition which was dismissed in limine on 17.09.1980, by recording the following order:-

“The Additional Director, Consolidation of Holdings, vide his order dated the 24th of March, 1979, granted some relief to Chetan Parkash on a petition filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called 'the Act') in the year 1964. Har Parkash filed an application under Section 42 of the Act for a review of the order dated the 24th March, 1979 on the ground that the order had been passed at his back without hearing him. The Additional Director held that service in the earlier petition under Section 42 of the Act, decided on 24th March, 1979 had been effected on Mahesh Datt, Om Datt, Smt. Sita Devi and Smt. Ram Piari, co-sharers of the petitioners. It was not necessary to serve all the co-sharers. He thus dismissed the application for review.

Since the co-sharers of the petitioners had been served, the order dated 24th March, 1979, passed by the Additional Director is legal and valid. For this reason, the review application had been rightly dismissed.

Dismissed in limine.”

The petitioners filed Civil Appeal No.5994 of 1983 before the Hon'ble Supreme Court, which was allowed by setting aside the order passed by this Court on 17.09.1980 and remitting the matter for a fresh adjudication. The order, reads as follows: -

“It appears that it is the settled position in the Punjab & Haryana High Court that service of one co-sharer of a holding in such like proceedings is enough service for the purposes of all unless the co-sharers had an adverse interest against another co-sharer. On that score, the High Court cannot be faulted. But here hidden thereunder was the jurisdictional question as to whether the Additional Director had the power to review the decision of his predecessor given on merits. That question seemingly has been trampled over and not given its due attention. The question whether the State Government or its delegates has power to review his earlier order on merit has been settled in the negative by a Full Bench of the Punjab & Haryana High Court in Deep Chand and Anr. Vs. Additional Director, Consolidation of Holdings, Punjab, Jullundur & Anr. 1964 (vol.66) Punjab Law Reporter 318. This court also has decided likewise in Harbhajan Singh Vs. Karam Singh and Ors. 1966 (1 SCR 817).

It appears that the said point was specifically taken in the writ petition by the appellant in the High Court but the High Court does not seem to have noticed it. It would have been apposite for the High Court deciding to do so. We, therefore, are of the view that the impugned orders of the High Court should be upset and the case remanded back to it for consideration as to whether the order of Shri J.S.Minhas, Additional Director dated 24.3.1979 was valid in face of the orders of Shri Jaspal Singh, Additional Director dated 8.11.1963-copies of both the orders being available on the file of the writ petition. Order accordingly.

In the aforesaid reasons, the appeal is allowed. No costs.

Status-quo regarding possession be maintained till the hearing of the writ petition before the High Court.”

A perusal of the order remitting the matter for a fresh adjudication and a considered appraisal of the arguments advanced, reveals that the question that calls for an answer is whether the State or its delegate exercising power under Section 42 of the Act, are conferred with the power of review?

The question so framed, is no longer res-integra as it was answered by a Full Bench of this Court in Deep Chand's case (supra) and by the Hon'ble Supreme Court in Harbhajan's case (supra) by holding that the Act does not contain any provision conferring the

power of review on any officer/authority, much less the authority exercising power under Section 42 of the Act. A perusal of Section 42 of the Act, reveals that it confers the power, to call for and examine the legality of any order passed or proceedings taken during consolidation but does not confer the power of review. The Additional Director Consolidation, therefore, had no jurisdiction whether plenary or otherwise to pass the impugned orders particularly when on the same cause of action, his predecessor, also while exercising power under Section 42 of the Act, had already dismissed a similar petition filed by Nathu Ram on 08.11.1963.

Consequently, we have no hesitation in holding that order dated 24.03.1979, passed by the Additional Director, Consolidation, under Section 42 of the Act, is without jurisdiction as it amounts to a review of order dated 08.11.1963 and the re-opening of a cause that stood finally decided, under Section 42 of the Act, by order dated 08.11.1963. The order dated 09.06.1980, dismissing an application filed by the petitioners for recalling order dated 24.03.1979 would also have to be set aside.

In view of what has been recorded hereinabove, the writ petition is allowed, orders dated 24.03.1979 and 09.06.1980, are set aside, but with no order as to costs.

[RAJIVE BHALLA]
JUDGE

29th June, 2015

[AMOL RATTAN SINGH]
JUDGE