

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.10671 of 1993
Date of Decision:4th September,2015

Chhajju Ram (deceased) through his LRs. ..Petitioners

versus

Director Consolidation, Haryana and others. ..Respondents

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

Present: Mr. D.S.Bali, Senior Advocate, with
Mr. Parveen Jain, Advocate, for the
petitioners

Mr. Gaurav Chopra, Advocate,
for respondent no.2.

RAJIVE BHALLA, J.

The petitioner (since deceased), now represented by his legal representatives, prays for issuance of a writ to seek quashing of the order dated 24.2.1993 passed by the Director, Consolidation, Haryana.

Counsel for the petitioners submits that a perusal of the record reveals that aggrieved by order dated 02.8.1990, passed by the Consolidation Officer, respondent no.2 filed an appeal under Section 21(3) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "Consolidation Act") before the Settlement Officer. During pendency of the appeal, respondent no.2 filed a petition under

Section 42 of the Consolidation Act, before the Director Consolidation, which was dismissed on 31.7.1992 as pre-mature, by holding that respondent no.2 should first pursue his appeal before the Settlement Officer. Despite this order, the petitioner filed another petition under Section 42 of the Consolidation Act before the Director, Consolidation, who, surprisingly, ignored his predecessor's order dated 31.7.1992, disregarded the pendency of the appeal before the Settlement Officer and allowed the petition in favour of respondent no.2.

Counsel for the petitioners further submits that whatever be the nature of the dispute, or legality of the order passed by the Consolidation Officer, as a statutory appeal filed by respondent no.2 was pending consideration before the Settlement Officer and a petition filed by respondent no.2 praying that the matter be directly taken up by the Director, Consolidation, had already been rejected, the Director, Consolidation had no jurisdiction to ignore, order dated 31.7.1992, passed by his predecessor, ignore the pendency of the appeal before the Settlement Officer and decide the petition under Section 42 of the Act, particularly when the Consolidation Act, does not confer the power of review. Counsel for the petitioners relies upon a Full Bench judgment of this Court in Deep Chand and another versus Additional Director Consolidation, Punjab, 1964 PLR 318 and a judgment of the Supreme Court in Harbhajan Singh versus Karam Singh and others, AIR 1966 Supreme Court 641.

Counsel for respondent no.2, on the other hand, submits that

Section 42 of the Consolidation Act confers plenary power on the

State, to examine any order passed or scheme, prepared during consolidation and rectify an error. The Director, Consolidation, while passing the impugned order dated 24.2.1993, has considered order dated 31.7.1992 passed by his predecessors, considered that the appeal under Section 21(2) of the Consolidation Act, was pending before the Settlement Officer but as respondent no.2 made a statement that he withdraws his appeal, rightly examined the matter on merits and decided the petition in favour of the petitioners by directing the Consolidation Officer, Bhiwani, to allot an area of 3K-4M to respondent no.2. The impugned order can be construed as an order passed by ignoring order dated 31.7.1992 or by exercising the power of review. The Director, Consolidation, has plenary power to call for any order passed during consolidation and rectify any error. The mere pendency of the appeal before the Settlement Officer, which was, even otherwise, withdrawn by respondent no.2, did not prohibit the Director, Consolidation, from examining the merits of the controversy and passing an order on merits.

We have heard counsel for the parties, perused the impugned order, the paper-book and other orders appended with the writ petition.

The question that calls for an answer is whether the Director Consolidation, Haryana, was prohibited for want of the power of review from passing order dated 24.2.1993?

Before we examine the order on merits, it would be necessary to point out that the Consolidation Act does not contain

any provision conferring the power of review upon any officer, much less an officer exercising the plenary power of the State under Section 42 of the Act. We draw support for our conclusion from a judgment of the Supreme Court in Harbhajan Singh's case (supra) and a Full Bench of this Court in Deep Chand's case (supra).

A perusal of the facts reveals that on a petition filed under Section 42 of the Consolidation Act, the Director, Consolidation, vide order dated 9.3.1988, directed the Consolidation Officer to visit the spot and after hearing all parties concerned, ascertain whether there is any deficiency in land allotted to respondent no.2. The Consolidation Officer ordered, vide order dated 13.5.1988, that 13 Marlas of land be allotted to respondent no.2. Aggrieved by this order, the petitioner filed an appeal before the Assistant Director Consolidation, which was dismissed. The petitioner, thereafter, approached the Director Consolidation, under Section 42 of the Consolidation Act. The Director, Consolidation, Haryana, vide order dated 25.9.1989 set aside orders passed by Assistant, Director, Consolidation and the Consolidation Officer and remanded the matter for a decision afresh.

The Consolidation Officer, vide order dated 02.8.1990, dismissed the claim of respondent no.2. Aggrieved by this order, respondent no.2 filed an appeal before the Settlement Officer, Rohtak. During pendency of this appeal, respondent no.2 filed a petition under Section 42 of the Consolidation Act before the Director, Consolidation, which was dismissed on 31.7.1992 by holding as

follows:-

“10 Keeping in view the aforesaid facts I have reached to this conclusion that the applicant should first get the appeal decided under Section 21(3) of the Consolidation Act and in case he feels aggrieved from that order he will be at liberty to file a petition under section 42 of the Act. Petition filed by the applicant under Section 42 of the Act is pre-mature and the same is dismissed.”

The petitioner, instead of getting his appeal decided by the Settlement Officer, filed another petition under Section 42 of the Consolidation Act, which was decided by the Director, Consolidation, in favour of respondent no.2 by directing allotment of 3K-4M, to respondent no.2. A relevant extract from the order reads as follows:-

“ My predecessor Roshan Lal, Director /Consolidation, vide his order dated 31.7.92 had decided that the application of Sehju Ram under Section 21(3) is pending before the Settlement Officer/Consolidation, Rohtak, be decided first and in case he is aggrieved he can file a petition under section 42 of the Act. The application of Sehju Ram under section 42 was dismissed as pre-mature. Against this Sehju Ram filed application dated 20.10.1992 before me u/s 42 of the Act in which it was stated that it is a question of demarcation of the road and amendment of the scheme through Settlement Officer Consolidation was not competent to decide, therefore, he does not want to get the matter settled by the Settlement

Officer and get the matter decided by the Director. Sehju Ram on 18.12.92 made a statement that he withdraws his appeal before the Settlement Officer/consolidation, Rohtak and the matter be decided u/s 42 of the Consolidation Act. The reason given was that he is entitled to 4 Kanals 5 Marlas and that there is necessity to amend the scheme which power is not vested in the Settlement Officer. Thereafter on 18.12.92 I passed an interim order that this case be sent back to the Settlement Officer/chakbandi, Rohtak. After passing of the aforesaid order Sehju Ram gave his above statement and this case was adjourned to 1.2.93 for further proceedings. On 1.2.93 the interim order was maintained. After this order it was found that u/s 42 the Director can decide the case by calling for the file of a pending case. In view of the statement of Sehju Ram, file of the case which was pending with the Settlement Officer, Rohtak, is not necessary to send it back. The facts of the case have been detailed above. After perusing the file and the report of the Consolidation Officer, Bhiwani dated 6.12.1991 which has been reproduced above I find that Sehju Ram was entitled to 8 Kanals 5 Marlas which matter was decided by my predecessor Sh. P.P.Chhabra, Director/Consolidation on 2.3.1988 but the Consolidation Officer, Bhiwani, in his report dated 6.12.1991 it has been stated that only 3 Kanals 4 marlas area is available and

there is no Bachat area. In view of the aforesaid situation I accept the report of Consolidation Officer, Bhiwani and direct that area of 3 Kanals 4 Marlas be given to Sehju Ram applicant and to that extent permission is granted to amend the scheme. Since both the parties are not present today, therefore, copy of the decision be sent by post.”

A perusal of the aforesaid extract reveals that the Director, Consolidation departed from order dated 31.7.1992, passed by his predecessor, under Section 42 of the Consolidation Act, directing respondent no.2 to get his appeal decided first. The mere fact that respondent no.2 made a statement that he does not wish to pursue his appeal or that he withdraws his appeal, did not empower the Director, Consolidation, to ignore the order passed by his predecessor. It is true that jurisdiction under Section 42 of the Consolidation Act, is plenary in nature and confers power to call for any scheme or order passed during Consolidation, but once a party had availed the statutory remedy, provided by Section 21(3) of the Consolidation Act and his predecessor had already rejected a prayer for invoking plenary jurisdiction under Section 42 of the Consolidation Act, the Director Consolidation was not justified in entertaining a fresh petition on the same cause. The Director, Consolidation misconstrued his power under Section 42 of the Consolidation Act as while entertaining the petition, he has held that the Director, Consolidation, exercising the power under Section 42 of the

Consolidation Act, can call for a file of any pending case. If power under Section 42 of the Consolidation Act were to be construed to confer power to examine the correctness of an order pending challenge in an appeal, it would render the provision of appeals, provided by Section 21(2) of the Consolidation Act, meaningless. Consequently, we hold that as the Director, Consolidation, while exercising the power under Section 42 of the Consolidation Act, had already declined to entertain a petition under Section 42 of the Consolidation Act and directed respondent no.2 to get his appeal decided, his predecessor had no jurisdiction to disregard the order and on a statement made by respondent no.2 that he withdraws his appeal, entertain and decide the petition, filed under Section 42 of the Consolidation Act.

In view of what has been recorded hereinabove, the writ petition is allowed, order dated 24.2.1993, passed by Director, Consolidation, Haryana, is set aside and appeal filed by respondent no.2 before the Settlement Officer is restored with a direction to the Settlement Officer, Rohtak, to decide the appeal, within three months of the receipt of a certified copy of this order.

Parties are directed to appear before the Settlement Officer, Rohtak, on 01-10-2015.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

4th September, 2015
VK