

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil writ Petition No.14137 of 1993
Date of Decision: 9.4.2015

Dharam Chand and another ..Petitioners

versus

The State of Haryana and others ..Respondents

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

Present: Mr. C.B.Goel, Advocate, for the petitioners

Mr. D.Khanna, Addl.A.G.,Haryana,
for respondent no.1.

Mr. B.R.Gupta, Advocate,
for respondent no.2.

Mr. V.D.Sharma, Advocate,
for respondent no.3.

RAJIVE BHALLA, J. (ORAL)

By way of this order, we shall decide Civil Writ Petition
No.14137 of 1993 and 14544 of 1993 as they pertain to the same
dispute and pray for setting aside the same orders.

The petitioners pray for issuance of a writ of certiorari
quashing orders dated 8.6.1993 and 5.11.1993, passed by the
Assistant Director Consolidation, Haryana, and the Director
Consolidation, Haryana, respectively.

Counsel for the petitioners submits that order dated
8.6.1993 divesting the petitioners, of plot No.1196 and directing that
it shall be used as a path and in return, allotting plot no.558
belonging to the Gram Panchayat, is illegal and void, as it has been

passed without impleading the petitioners or the Gram Panchayat. The fact the petitioners' brother Bhagwana was impleaded as a party or that Bhagwana filed a petition before the Director, Consolidation, is irrelevant as neither the petitioners nor the Gram Panchayat were impleaded as parties. The petitioners are, admittedly, co-sharers in plot no.1196 and the Gram Panchayat is owner of plot no.558. The impugned orders have adversely affected the rights of the petitioners and the Gram Panchayat without affording them an opportunity of hearing. Counsel for the petitioners also submits that the matter stood decided by order dated 28.1.1962, passed in a petition filed by respondent no.2's father, but the impugned order has been passed by ignoring this order.

Counsel for respondent no.2 submits that the dispute pertains to a path, which was sanctioned for 02 karams during consolidation but on account of an error during re-partition, the path was confined to 01 karam. The Assistant Director, Consolidation, rightly set aside the order passed by the Consolidation Officer, retrieved land from the petitioner's and allotted them alternative land, thereby suitably compensating the petitioners. Counsel for respondent no.2 further submits that Bhagwana son of Hari Singh, the petitioner's brother and co-sharer was, admittedly, impleaded as a party and also filed a petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act"). The petitioners are, therefore, deemed to have been represented, before the Assistant Director and the Director, Consolidation.

Counsel for the Gram Panchayat submits that as the Gram Panchayat was not impleaded as a party, the Assistant Director, Consolidation, had no jurisdiction to appropriate land allotted to the Gram Panchayat during consolidation and allot it to the petitioners or any other person.

We have heard counsel for the parties.

The Director, Consolidation, remitted a dispute, pertaining to a path between plots, allotted to the petitioners and respondent no.2. The Consolidation Officer, after examining the record, held, vide order dated 14.4.2003, that though a path of 02 karams was sanctioned during consolidation but at the spot, it is 01 karam wide. The Consolidation Officer, however, declined the prayer for increasing the width of the path by holding that it would lead to retrieving a major part of plot no.1196.

Aggrieved by this order, respondent no.2 filed an appeal before the Assistant Director, Consolidation. The Assistant Director, vide order dated 8.6.1993, directed that 07 Marlas of land, be retrieved from Bhagwana, from plot no.1196 and in return, Bhagwana be allotted 12 Marlas from plot no.558, belonging to the Gram Panchayat. A perusal of this order reveals that though plot no.1196, was owned by Bhagwana and the petitioners as co-sharers and plot no.558 was owned by the Gram Panchayat, the order has been passed without impleading the petitioners or the Gram Panchayat, thereby rendering the order illegal for failure to comply with the principles of natural justice. The petition filed by Bhagwana under Section 42 of the Consolidation Act, before the Director,

Consolidation, was dismissed on 5.11.1993 by disregarding this fundamental error in the order passed by the Assistant Director, Consolidation. It would be appropriate to record that though, during consolidation proceedings, a co-sharer may represent the interest of other co-sharers but if after Consolidation, an allotment is sought to be modified or altered, a notice must necessarily be served upon all co-sharers or persons likely to be adversely affected.

Consequently, without expressing any opinion on the necessity of providing a 02 karam passage or the rights of the petitioners as co-sharers, the writ petitions are allowed, the impugned orders are set aside and the matter is remitted to the Commissioner, Hisar Division, Hisar, conferred with power under Section 42 of the Consolidation Act, to consider the matter afresh, in accordance with law, after affording an opportunity of hearing to the parties.

Parties are directed to appear before the Commissioner, Hisar Division, Hisar, on 27.7.2015 .

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

09.4.2015
VK