

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

CWP No.5828 of 1993 (O&M)

Date of Decision: 02.02.2015

Har minder Singh

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Present: Mr. MS Khaira, Senior Advocate with
Mr. SS Khaira, Advocate for the petitioner

Mr. Rajender Goyal, Addl. AG Punjab

None for Gram Panchayat

SURYA KANT, J. (Oral)

(1) The petitioner impugns the order dated 18.04.1991 (Annexure P2) passed by the Director Consolidation, Punjab whereby the alleged *ex parte* order dated 09.06.1981 (Annexure P1) passed by the Additional Director, Consolidation, Punjab has been set aside and the file of the main case was ordered to be put up for fresh decision on merits.

(2) The case of the petitioner is that during consolidation, the land of his village was categorized as 'ABCDEFGH' in gradings and at the time of allotment, he was given less area in a grading to which he was claiming entitlement. The petitioner then filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 on 23.04.1981 which was accepted by the Additional Director,

Consolidation vide order dated 09.06.1981 (Annexure P1) holding that the petitioner was entitled to allotment of additional land of 'G' grade and in this manner a part of the land in 'D' grade earlier allotted to him was liable to be re-allocated to the Gram Panchayat from whom 'G' grade land was ordered to be withdrawn. The order recites that Sarpanch of Gram Panchayat, who was present, agreed to the above-stated change.

(3) After eight years, the Gram Panchayat through one of its Panches, filed an application under Section 42 for the recall of the above-stated order dated 09.06.1991. That application was allowed vide impugned order dated 18.04.1991 as according to the Director, the Gram Panchayat was not served at the time of passing of the order dated 09.06.1981 and the report made by the Process Server was not worth acceptance.

(4) The aggrieved petitioner came to this Court, *inter alia*, alleging that the order dated 09.06.1981 had already been given effect after delivery of possession and mutations were duly sanctioned. He asserted that Gram Panchayat could not have sought review/recall of that order after eight years.

(5) This Court vide order dated 02.06.1993 directed the parties to maintain *status quo re.* possession.

(6) We have heard learned counsel for the parties and gone through the record.

(7) Since the petitioner or the Gram Panchayat have not disputed the categorization of land in different gradings, there can indeed be no quarrel that the land was required to be allotted to the petitioner or other shareholders proportionately as per those different gradings.

(8) The petitioner has specifically averred that he was allotted less land in 'G' grade and excess in 'D' grade, i.e., poor quality. That balancing exercising was purportedly done by the Director vide order dated 09.06.1981.

(9) Since the impugned order dated 18.04.1991 does not question the gradings and/or imbalance in the matter of allotment of land, it appears that the said order is liable to be set aside and the matter requires re-consideration by the Director Consolidation on the following issues:-

- i. Whether it was a case where the petitioner was actually allotted less land in 'G' grade and excess in 'D' grade?
- ii. If so, is he not entitled for allotment of additional land of 'G' grade in lieu of excess land given to him in 'D'grade?
- iii. If question No.(ii) is also answered in affirmative, is it not correct that the re-allocation of land done vide previous order dated 09.06.1981 is fair, equitable and just?

(10) While answering these questions, the Director Consolidation will also consider as to whether the application to recall the previous order was maintainable and could be entertained at the instance of Gram Panchayat after a period of eight years?

(11) For the reasons afore-stated, the writ petition is allowed to the extent that the order dated 18.04.1991 (Annexure P2) is set aside and the matter is remitted to be re-examined by the Director Consolidation in the light of the above-formulated questions.

(12) *Status quo* shall continue till the matter is decided by the Director afresh.

(13) Parties are directed to appear before the Director Consolidation on 23.03.2015.

(Surya Kant)
Judge

02.02.2015
vishal shonkar

(Raj Mohan Singh)
Judge