

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No. 17270 of 1996
Date of Decision: 07.07.2015

The Gram Panchayat of village Kapial, Tehsil and District Sangrur
..Petitioner
versus

Additional Director, Consolidation, Punjab, Mohali and others
..Respondents

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

Present: Mr. Abhishek Singla, Advocate,
and Mr. J.S.Bhandowal, Advocate, for the petitioner.

Mr. P.S.Bajwa, Addl. Advocate General, Punjab
for respondent no.1.

Mr. A.P.Kaushal, Advocate,
for respondent nos. 2 to 9, 11 and 12.

RAJIVE BHALLA, J. (ORAL)

The Gram Panchayat of village Kapial, Tehsil and District Sangrur is before us praying for issuance of a writ of certiorari quashing, order dated 24.9.1996, passed by Additional Director, Consolidation, Punjab.

Counsel for the petitioner submits that the impugned order, passed by the Additional Director, Consolidation, in the exercise of power under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "Consolidation Act"), holding that the land does not vest in the Gram Panchayat and depriving the Gram Panchayat of its land, is without jurisdiction. A Full Bench of this Court has held in Ajit Singh versus Smt. Shubhagan and others,

AIR 1970 (P&H) 93, that consolidation authorities are not empowered to decide a question of title. This apart, the Supreme Court has held in Gram Panchayat Sidh versus Additional Director Consolidation of Holdings, 1997(3) RCR (Civil) 491 (SC) and Gram Panchayat Nurpur versus State of Punjab and others, 1997(1) PLJ 268 that the Director, Consolidation, exercising power under Section 42 of the Consolidation Act, has no jurisdiction to decide whether a parcel of land vests or does not vest in a Gram Panchayat as jurisdiction to decide such a dispute, rests in the Collector, exercising power under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”).

Counsel for the private respondents submits that the Additional Director, Consolidation, has merely rectified an error in consolidation proceedings, allotted land to the rightful owner and cannot be said to have determined a question of title, much less assumed jurisdiction, vested in the Collector, under Section 11 of the 1961 Act. The impugned order, is legal and valid as rights with respect to the land in dispute, were conferred upon the private respondents by order, dated 14.2.1907, passed by the Commissioner, Patiala, which has only been implemented, in the revenue record, by the Additional Director, Consolidation.

We have heard counsel for the parties and perused the impugned order.

After more than three decades of conclusion of consolidation proceedings, the private respondents, filed a petition, under section 42 of the Consolidation Act, praying that as the land in

dispute was allotted to them in 1907, it does not vest in the Gram Panchayat. The error committed during consolidation proceedings, in recording a mutation in the name of the Nagar Panchayat, may, therefore, be rectified. The Additional Director, Consolidation, issued notice. The Gram Panchayat put in appearance, pleaded a delay of more than three decades, challenged the jurisdiction of the Additional Director, Consolidation, to determine whether the land in dispute vests or does not vest in the Gram Panchayat and prayed for dismissal of the petition.

The Additional Director, Consolidation, disregarded the delay of three decades, the fact that he has no jurisdiction to determine, whether a parcel of land vests or does not vest in a Gram Panchayat, the fact that jurisdiction to determine such a dispute, rests with the Collector, exercising the power under Section 11 of the 1961 Act and proceeded to examine the merits. After holding that the land in dispute vests in the proprietors and not in the Gram Panchayat, the Additional Director, Consolidation, ordered that the land be reflected as the ownership of the private respondents. The Additional Director, Consolidation, was apparently oblivious of the inherent lack of jurisdiction in consolidation authorities, to decide a question of title or determine whether land is or is not “shamilat deh”. The Additional Director, Consolidation, was also oblivious of a Full Bench judgment of this Court Ajit Singh versus Smt. Shubhagan and others AIR 1970 (P&H) 93, holding that consolidation authorities are not empowered to decide a question of title and that the Supreme Court has held in Gram Panchayat Sidh versus Additional Director

Consolidation of Holdings, 1997(3) RCR (Civil) 491 (SC) and Gram Panchayat Nurpur versus State of Punjab and others, 1997(1) PLJ 268, that the Director, Consolidation, exercising power under Section 42 of the Consolidation Act, is prohibited from determining, whether a parcel of land vests or does not vest in the Gram Panchayat, as the power to answer such a question, rests with the Collector, exercising power under Section 11 of the 1961 Act.

Accepting that Section 42 of the Consolidation Act empowers the Director to rectify errors committed during consolidation but the power, so conferred, does not extend to usurping the power of a Collector, under Section 11 of the 1961 Act to decide a question whether land vests or does not vest in a Gram Panchayat.

Consequently, we have no hesitation in holding that the Additional Director, Consolidation, had no jurisdiction to entertain the petition filed by the private respondents more than thirty years after conclusion of consolidation proceedings to hold that the land in dispute does not vest in the Gram Panchayat and allot the land to the private respondents, whether on the basis of order dated 14.2.2007 or otherwise.

The writ petition is, therefore, allowed, the impugned order is set aside but with liberty to private respondents to plead and prove their title, by filing of an appropriate petition under Section 11 of the 1961 Act. In case, a petition under Section 11 of the 1961 Act, is filed, the private respondents shall be at liberty to approach the Collector for interim relief. The parties shall maintain status quo

with respect to possession for a period of two months. The petition under Section 11 of the 1961 Act, if filed, shall be considered and decided, in accordance with law, within six months of its filing. No order as to costs.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

7.7.2015
VK