

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

CWP-9363-1993

Decided on : 14.07.2015

Sahab Singh

.... Petitioner

VERSUS

**Additional Director Consolidation,
Haryana, Rohtak and others**

..... Respondents

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

Present: **Mr.Chander Shekhar, Advocate, for**
 Mr.G.S.Hooda, Advocate, for the petitioner.

Mr.G.S.Gandhi, Advocate, for respondent No.3.

RAJIVE BHALLA, J. (ORAL)

The petitioner prays for issuance of a writ of certiorari, quashing order dated 23.12.1992, passed by the Additional Director, Consolidation, Haryana, Rohtak, directing the Consolidation Officer to re-examine the entire dispute.

Counsel for the petitioner submits that as similar applications filed by respondent No.3 were dismissed on 21.06.1986 and 04.02.1992, the third application filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the “Consolidation Act”), was not maintainable. The Additional Director Consolidation, has ignored the dismissal of these applications and passed an order, remitting the matter to the Consolidation Officer, for a fresh adjudication.

Counsel for the private respondents submits that as the land allotted to the petitioner, was in possession of respondent No.3, the order passed by the Additional Director Consolidation, remitting the matter to the Consolidation Officer, is justified. The earlier orders do not relate to the land, in dispute, but relate to a Gair Mumkin Johar and are, therefore, irrelevant.

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

A perusal of the facts reveals that the Consolidation Officer allotted a parcel of land out of Shamilat Thola Khora, to the petitioner's father. Sardara son of Harde (respondent No.3) and other villagers filed a petition under Section 42 of the Consolidation Act, before the Additional Director, Consolidation, on 26.07.1985, challenging the allotment. The petition was dismissed on 21.06.1986. The petitioner's father filed objections under Section 21 (2) of the Consolidation Act, before the Consolidation Officer, praying that as he has been allotted less ordinary area etc., the error may be rectified. The Consolidation Officer rejected the objections. The petitioner's father filed an appeal under Section 21(3) of the Consolidation Act. The Settlement Officer, Rohtak, set aside the order passed by the Consolidation Officer and remitted the matter. The Consolidation Officer, Dadri, after hearing both parties, allotted 5 kanals and 15 marlas, standard area and though the allotment was less than the 5 kanals and 18 marlas demanded, the petitioner's father

accepted order dated 21.09.1989.

Aggrieved by this order, Sardara, respondent No.3 (now represented by his LRs) and one Khema, son of Phullu, filed a petition under Section 42 of the Consolidation Act, which was dismissed by the Additional Director, Consolidation, on 04.02.1992. A perusal of this order reveals that respondent No.3 raised a plea that the land be not allotted from Shamilat Thola Khora as the land forms part of a pond. The contention was rejected by holding that as two other ponds have already been carved out during consolidation, this land can be used to make good shortfall in the land to be allotted to land owners. The Additional Director, Consolidation, also held that if the land of the Johar is retrieved, it would effect the rights of many other land owners. The order specifically records that the applicants (respondent No.3 and his co-applicant) have concealed the fact that another similar petition filed on the same cause of action, under Section 42 of the Consolidation Act, was dismissed on 21.03.1986.

During pendency of the above application, Sardara alongwith respondent No.4, filed another application under Section 42 of the Consolidation Act, on 20.08.1991. The Additional Director Consolidation, called for a report from the Consolidation Officer, to verify the pleas raised by respondents No.3 and 4 that a tubewell and a garden belonging to respondents No.3 and 4 exist on the land, in dispute. The Consolidation Officer forwarded a report that there is no tubewell or garden on the land, in dispute, but there is a bore in

Khasra No.81//24/1 which is in the petitioner's exclusive possession. The Additional Director, Consolidation, ignored the report and the dismissal of earlier applications filed by respondent No.3 by holding that they pertain to different matters and by holding that the Consolidation Officer had no jurisdiction to decide the question of ownership etc., remitted the matter to the Consolidation Officer for a fresh adjudication of the entire dispute.

A perusal of the impugned order as well as earlier orders, reveal that the dispute though couched in different words and purporting to raise different pleas, in essence, remains the same i.e. challenge to the allotment of the land, in dispute, made to the petitioner's father out of a Gair Mumkin Johar to make good his entitlement, this time on the ground that there exists a garden and a tubewell, both found to be false by the report submitted by the Consolidation Officer. The finding that the dispute raised and rejected by earlier orders, was different, is contrary to the report prepared by the Consolidation Officer. The plea raised by Sardara that the land, in dispute, should not be allotted to the petitioner's father, having already been rejected twice, the Additional Director, Consolidation, was bound by these orders. The Additional Director, Consolidation, has while remitting the matter, in essence, reopened the entire controversy, thereby exercising the power of review by ignoring that the Consolidation Act, does not contain any provision, conferring the power of a review upon any authority much less the

authority exercising power under Section 42 of the Consolidation Act. Thus, as the matter stood concluded by orders dated 21.09.1986 and 04.02.1992, the Additional Director Consolidation, had no jurisdiction to reopen the controversy by disregarding the earlier orders.

Consequently, the writ petition is allowed and impugned order dated 23.12.1992, passed by the Additional Director, Consolidation, Haryana, Rohtak, is set aside but with no order as to costs.

[RAJIVE BHALLA]
JUDGE

14.07.2015
Shamsher S.Sabharwal

[AMOL RATTAN SINGH]
JUDGE