

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

CWP No.7737 of 1991 (O&M)

Date of Decision: 08.01.2015

Mara Singh (through LRs)

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE RAJ MOHAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr. SS Khaira, Advocate
Mr. AP Kaushal, Advocate and
Mr. RKS Brar, Advocate for the petitioner

Mr. Rajender Goyal, Addl. AG Punjab

Mr. Amarjit Markan, Advocate for Gram Panchayat

SURYA KANT, J. (Oral)

(1) There is a commonality of point in CWP Nos.7737 of 1991 & 15534 of 1992 as both the cases pertain to the scope of powers exercisable by the Additional Director/Director, Consolidation under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and in both the cases, Gram Panchayat of village Khadial, Tehsil Sunam, District Sangrur is the contesting respondent. We thus proceed to decide both the cases by way of a common order.

(2) In CWP No.7737 of 1991, the petitioner, namely, Mara Singh (since deceased) moved a petition under Section 42 of the Act alleging unfair allotment of land to him at the time of

Consolidation and consequently to make good the deficiency. It is undeniable that the Gram Panchayat was proceeded against *ex parte* as according to the petitioner, the Sarpanch refused to accept the notice. The Gram Panchayat was said to have been served but by way of questionable substituted service. The Additional Director, Consolidation passed the order dated 29.12.1982 (Annexure P1) allotting 23 kanal 9 marla of land to the petitioner after withdrawing that area from the Gram Panchayat.

(3) Subsequently, the Gram Panchayat filed a petition seeking recall of the above-stated order and to decide the petitioner's petition on merit. Accepting that petition, the Director, Consolidation passed the impugned order dated 24.01.1991 (Annexure P2) holding that the order dated 29.12.1982 which adversely affected the Gram Panchayat, was an *ex parte* order and passed without giving any opportunity of hearing to the Gram Panchayat. The original petition filed by the petitioner (Mara Singh) was thus restored and listed for afresh adjudication. The said order is under challenge in the instant writ petition.

(4) Having given our thoughtful consideration and keeping in view the fact that the Gram Panchayat was admittedly proceeded against *ex parte* and it has been deprived of a valuable part of its land-holding which is detrimental to the interest of village community as well, we are not inclined to interfere with the remand order. This, however, does not mean that the

petitioner would not be entitled to seek that the deficiency in his land-holdings be made good in accordance with the law. Suffice it to observe that if the law so permits, the Authority under the Act would do the needful in this regard.

(5) Consequently, the writ petition is dismissed but with liberty afore-mentioned given to the petitioner and without affecting his right to seek allotment of additional land to make good the alleged deficiency provided that such a recourse is permissible in law. The respondent-Gram Panchayat shall be at liberty to contend that the petitioner's deficiency cannot be made good out of Panchayat land and the Authority shall have to decide such a plea in accordance with law.

CWP No.15534 of 1992

(6) In this case also, the order dated 29.12.1982 was passed by Additional Director, Consolidation giving additional land measuring 1 kanal 17 marla to the petitioners out of the alleged *Bachat* land of the village so as to make good the deficiency in their land-holdings. The said order has been recalled and set aside by the Director, Consolidation vide subsequent impugned order dated 13.12.1990 (Annexure P2) on the premise that the earlier order dated 29.12.1982 was passed *ex parte* behind the back of the Gram Panchayat for it obviously affects its rights.

(7) There is a bone of contention between the parties as to whether the Gram Panchayat was proceeded against *ex parte* or

was it duly represented by its Panch or Sarpanch. We, however, do not deem it necessary to go into this question. Since in the first case (CWP No.7737 of 1991), we have upheld the remand order, it appears, in conformity with the principle of natural justice and fair trial, that the Gram Panchayat as well as the petitioners or any other person(s) who, in the event of acceptance of the petitioners' claim, is/are likely to be affected, are heard before any order is passed.

(8) For the afore-stated purpose, we set aside the order dated 13.12.1990 with a direction to the Competent Authority to not only hear the petitioners and the Gram Panchayat but to issue notice to the other persons also who are likely to be affected and thereafter only determine whether petitioners are entitled to allotment of land out of the khasra No.137 and/or they can be permitted to make good deficiency, if any, out of any other land.

(9) Let the parties in both the cases appear before the authorities on 16.02.2015.

(10) Disposed of.

(Surya Kant)
Judge

08.01.2015
vishal shonkar

(Raj Mohan Singh)
Judge