

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17641 of 1994

Date of Decision:-17.3.2016.

Gurdev Singh and others

.....Petitioners

Versus

The Additional Director of Consolidation of Holdings, Punjab,
Jalandhar and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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: None for the petitioners.

Mr. K.K. Gupta, Additional A.G., Punjab.

None for respondent Nos.3 to 8.

SURYA KANT, J. (ORAL)

1.) The petitioners have laid challenge to the order dated 7.2.1991 passed under Section 21 (2) of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (in short 'the 1948 Act') by the Consolidation Officer, SAS Nagar, Mohali, as well as the order dated 11.7.1994 of the Additional Director, Consolidation of Holdings passed in purported exercise of his powers under Section 42 of the 1948 Act.

2.) The Consolidation Officer had passed the first order pursuant to an application moved by the private respondents who

claimed that there was a deficiency in the allotment of their land at the time of consolidation which deserved to be made good. Their plea was accepted and additional *khasra* Nos.481 and 470/1 which were owned by *Mushtarkan Malkaan* i.e. the proprietary body of the village were ordered to be allotted to the private respondents.

3.) The proprietary body, namely, the right-holders of the village who were directly affected by such allocation of additional land were neither party nor were heard by the Consolidation Officer.

4.) The Gram Panchayat was also affected by the order of the Consolidation and it challenged the same before the Additional Director, Consolidation who dismissed the Gram Panchayat's petition holding that the earlier order of the Director, Consolidation dated 23.8.1990 as well as the order of the Consolidation Officer dated 7.2.1991 are legal and valid orders. The Additional Director, Consolidation of Land Holdings also did not hear the right-holders of the village.

5.) Some of the right-holders, namely, the petitioners have challenged the above-stated orders primarily alleging non-observance of the principles of natural justice. Petitioner No.1 has taken a plea that *khasra* No.481 has been in his possession since the time of allotment of land during consolidation as he is a co-sharer in *Mushtarkan Malkan*. No notice was given to him. Other right-holders have also not been heard.

6.) Counsel for the parties have not come forward to assist

the Court. We have gone through the impugned orders as also the averments made in the written statement. Though it is averred that *Mushtarkan Malkan* were heard by the parties but the impugned orders do not reveal that any such hearing was according to them. Since the rights of the proprietary body of the village have been adversely affected as its total land holding stands reduced and resultantly, the area under the 'management' and 'control' of the Gram Panchayat has also been adversely affected, we are satisfied that the impugned orders could not be passed without giving an effective opportunity of hearing to the Gram Panchayat as well as other right-holders of the village. For the reasons aforesaid, the writ petition is allowed; impugned orders dated 7.2.1991 and 11.7.1994 are set aside. The matter is sent to the Consolidation Officer at Barnala to decide the same afresh after giving advance notice to the Gram Panchayat, petitioners, residents and other right-holders of the village. It shall be appreciated if appropriate orders are passed in accordance with law within a period of six months.

7.) The parties are directed to appear before the Consolidation Officer, Barnala on 3.5.2016.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

March 17, 2016.

sandeep sethi