

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

CWP No.12147 of 2016

Date of Decision : 18.10.2016

Surjit Singh and others

....Petitioners

Versus

The Director, Land Records, Punjab
and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

Present: Mr. Jatinder Singla, Advocate
for the petitioners.

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MAHESH GROVER, J.

The petitioners filed the instant petition impugning the order dated 20.01.2016.

According to the petitioners, the Consolidation Officer in the year 1964 took away some land from the Shamlat area while effecting consolidation. This order dated 11.03.1964 is pleaded to be ex-parte passed behind the back of the petitioners.

It has been averred in the petition that in the jamabandi for the year 1946-47 the land in question belonged to the father of the petitioners, namely, Prem Singh and in the subsequent jamabandi for the year 1950-51 the entries continued unchanged. The damage was done in the year 1954-55 when consolidation took place and new Khatauni Murababandi was prepared in

accordance with the scheme.

One Chhajja Singh, father of respondent No.2, along with one Amar Singh filed an application on 27.05.1958 against Sujan Singh highlighting some inadequacies and irregularities in the implementation of the scheme. On 08.08.1958, the Consolidation Officer prepared a report which was acted upon by the Additional Director, Consolidation to send the matter back to the Settlement Officer. In short, the Flying Squal had noticed the wrong entries in the jamabandies on the basis of mutation prior to consolidation to warrant interference in the record. This application, according to the petitioners has remained undecided so far since 29.01.1960.

Chhajja Singh filed another application under Section 42 of the Consolidation Act the date of which is not known. However, the father of the petitioners was aware of the proceedings as he made an application on 29.09.1962 making a request for adjournment on the ground pleaded therein. On 11.03.1964 an order was passed by the then Additional Director, Consolidation accepting the application of Chhahha Singh.

It is this order that the petitioners have sought to reverse by making an application under Section 42 of the Consolidation Act by making a prayer in this regard in the year 2012 which has resulted in the impugned order dated 20.01.2016.

In this interregnum the petitioners also filed an application under Section 11 of the Punjab Village Common Lands Act which has been conceded to be an ill-advised course.

The grievance of the petitioners is that on 11.03.1964 an ex-parte order was passed behind the back of the petitioners which would not bind them particularly when on an earlier occasion the Additional Director, Consolidation had remanded the matter back to the Settlement Officer which has never been decided so far. It is thus contended that on both counts the order of the Additiinal Director Consolidation dated 11.03.1964 in which interference has been refused by virtue of the impugned order is erroneous and contrary to law as firstly the land belonging to Gram Panchayat and recorded as Shamlat could not be interfered with at the time of consolidation and secondly, the order was passed behind the back of the petitioners' father.

We have heard the learned counsel for the petitioners and are of the opinion that the instant petition is bad to deserve dismissal. Evidently, the father of the petitioners was prosecuting the proceedings which is reflected from the application moved by him in the year 1962 seeking an adjournment. An order adverse to him was passed on 11.03.1964 against which he did not agitate in his entire life time. The petitioners now plead that the said order was ex-parte but in our opinion this cannot be construed to

be an ex-parte order since the father of the petitioners chose to waive off his rights by not raising grievance against the order which is now perceived by the petitioners to be adverse to them and in violation of the principles of natural justice. If a person is a party in the proceedings and has chosen not to persist with the same and does not question an order affecting his rights for more than three decades, then such a silence obviously would work to the detriment of the person concerned. Such an order cannot be presumed to be in violation of the principle of natural justice and rule of *audi alteram partem* as the incumbent has waived off his right to question the same. The issue of the order of Settlement Officer remaining in limbo for such a long time is inconsequential in the wake of the order dated 11.03.1964 which remained intact for all these years for want of action on the part of the father of the petitioners. Similarly, petitioners application moved under Section 11 of the Punjab Village Common Lands Act cannot by any stretch of imagination be said to be a redeeming feature to warrant interference in the writ proceedings.

Dismissed.

(MAHESH GROVER)
JUDGE

18.10.2016
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No