

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 6126 of 1997 (O&M)

Reserved on : 20.11.2023

Date of Decision: 05.12.2023

Gram Panchayat, Sri Nagar

.....Petitioner

Versus

Director, Consolidation of Holdings, Punjab
and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Harkirat Singh Sandhu, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant writ petition is directed against the order dated 19.9.1996 (Annexure P-1), whereby the Director, Consolidation of Holdings, Punjab, after allowing the petition filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948'), proceeded to remand the case to the Consolidation Officer (Tehsildar), Nabha, District Patiala, for the latter working out the requirements of land, for common purposes, as per provisions of the Consolidation Act of the 1948, and, the Rules framed thereunder, and, also made a direction upon the consolidation officer concerned, to re-partition, and, re-distribute the lands amongst the proprietors, thus according to their entitlements.

2. Though, the above impugned annexure, is a simpliciter order of remand to the Tehsildar concerned, yet it is argued by the learned counsel for the petitioner, that since thereby there is re-opening of the finalized consolidation scheme, besides when through the impugned annexure, the

authority concerned, has made a *prima facie* conclusion, thus in respect of the *prima facie* entitlements of the proprietors concerned, to seek re-partition or re-distribution of the lands, which became earlier earmarked rather for the common purpose of the village proprietary body concerned. Therefore, it is argued, that since, in the wake of a judgment rendered by a Full Bench of this Court in case titled as '***Parkash Singh and others versus Joint Development Commissioner, Punjab***, reported in ***2014(2) RCR (Civil) 721***, especially when in paragraph 46 thereof, para whereof stands extracted hereinafter, rather it becomes expostulated, that the limited scope of the jurisdiction invested under Section 42 of the Act of 1948, thus in the contemplated therein authority, is but confined, and, severely trammelled rather to only correct the clerical errors in the scheme or in the orders passed during the consolidation, and, nothing more.

“We, therefore, have no hesitation in recording that it is beyond debate that, if a question arises, before an officer exercising power under the Consolidation Act, regarding any right, title or interest in "Shamilat Deh" "vested" or deemed to have vested in a Gram Panchayat, a Consolidation Officer, the State or its delegate exercising plenary power under Section 42 of the Act, are not empowered, while examining the correctness of any scheme prepared during consolidation or order passed thereunder to record a finding on such a question of title or to hold that land is or is not "Shamilat Deh" and as a consequence whether any right, title or interest vests or does not vest in the Gram Panchayat. The only authority empowered to answer such a question is the Collector, exercising power under Section 11 of the 1961 Act. As a necessary corollary an order passed under Section 42 of the Consolidation Act, holding that the land vests or does not vest in a Gram Panchayat would be illegal and nonest for assumption of jurisdiction where there is none, as opposed to a mere erroneous exercise of jurisdiction

or may, at best be construed to be an order passed by a tribunal of limited jurisdiction, in the exercise of its limited powers to correct errors in the scheme or orders passed during consolidation and nothing more. The latter conclusion would require a degree of explanation.”

3. Therefore, it is argued, that there is but a restriction caused therein, viz-a-viz the competent authority to in its exercising jurisdiction, under Section 42 of the Act of 1948, thus either enter into or to adjudicate, any lis, thus involving any disputed question of title. Thus, the impugned annexure prima facie making a conclusion, that the proprietors concerned, are entitled to re-distribution or re-partition of the lands, despite the disputed lands, becoming allotted in the finalized consolidation scheme, thus for the common purposes of the village proprietary body, or the same being earmarked, as shamilat deh lands. Consequently, he has argued, that thereby through, the impugned annexure, the authority concerned has traveled beyond the limited frontiers of the jurisdiction invested in its, thus has breached the mandate of this Court, recorded in *Parkash Singh's* case (supra), and, thereby the impugned order is required to be quashed and set aside.

4. Though the above made arguments, deserve becoming accepted by this Court, as apparently on a reading of the impugned annexure, it is candidly revealed, that thereby the authority concerned, has made a prima facie conclusion, with respect to the entitlements of the proprietors concerned, to seek re-distribution, and, re-partition of the lands, irrespective of the same, but becoming assigned to the Gram Panchayat concerned.

5. Nonetheless, it is also necessary to cull out the facts necessary, for determining the said issue. The evident facts, which thus emerge, are

that, the land measuring 334 kanals, became designated in the finalized

consolidation scheme, as shamlaqt deh hasab rasad rakba khewat. From the amongst, the above area of disputed lands, land measuring 294-11 kanals was designated as Banjar Kadim, and, the land measuring 39-9 kanals was designated as gair mumkin. Evidently in proportion to the entitlements of the proprietors, thus in terms of their rights, as declared in the pre-consolidation records, thus assignments (supra) were made to them in the finalized consolidation scheme. However, the consolidation officer concerned, after making a pro rata cut from the lawfully held estates of the proprietors concerned, thus proceeded to earmark the disputed lands for the village common purposes. The said cut, as became imposed vide resolution No. 17, became asked to be declared illegal, as thereby an excessive pro rata cut(s), became imposed by the consolidation officer concerned, besides the said imposed cut, being not in commensuration, with the requirement(s) of the village proprietary body concerned.

6. In consequence, the dispute, as became agitated before the authority concerned, related to the excessive or disproportionates pro rata cuts, as became made by the consolidation officer concerned, thus from the lawfully held estates of the estate holders concerned, and, that thereby the finalized consolidation scheme, rather is required to be rescinded or cancelled. Subsequently, after relaxing or the easing of the said imposed cuts, the lands were asked to become restored or redistributed to the estate holders concerned. Therefore, but essentially the said raised dispute, did necessarily relate to the validity of the preparation of consolidation scheme or related to the validity of the imposition of the pro rata cuts, as became imposed by the consolidation officer concerned, from the lawful estates of the proprietors concerned.

7. In sequel, the said claims, did involve a disputed question of title, and, thereby the legal interdiction cast, in *Parkash Singh's* case (supra), against the said dispute, becoming either raised or becoming adjudicated, upon, by the authorities contemplated under the Act of 1948, thus did become evidently sparked.

8. However, despite the legal interdiction, as, cast in *Parkash Singh's* case (supra), rather emerging to the forefront, yet through the impugned order, the authority concerned, not only prima facie made a declaration viz-a-viz, the entitlements of the proprietors concerned, to seek re-distribution, and, re-partition of the lands, as became assigned in the finalized consolidation scheme, thus for the common purposes of the village proprietary body concerned, but also has thereby proceeded to make an adjudication on the disputed question of title, which did emerge inter se the Gram Panchayat concerned, and, the village proprietary body concerned. The breach of the said legal interdiction has, thus resulted in a legally fallible order, rather becoming drawn by the authority concerned.

9. In nutshell, since the authority concerned, who drew the impugned order, has transgressed the limits of the jurisdiction invested in it, under Section 42 of the Act of 1948, therefore, the impugned order is required to be quashed and set aside.

Final order

10. Consequently, this Court finds merit in the instant petition, and, is constrained to allow it.

11. Accordingly, the instant petition is allowed. The impugned order is quashed and set aside, leaving liberty to the aggrieved to access the legally permissible remedies in terms of *Parkash Singh's* case (supra).

12. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 05, 2023
Gurpreet

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