

2023:PHHC:044062-DB
CWP-8192-2019 **1**
IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CWP-8192-2019 (O&M)

Date of Decision: 23.03.2023

AZAD SINGH AND ORS.

-Petitioners

Versus

COMMISSIONER ROHTAK DIVISION HARYANA AND ORS.

-Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ram Avtar Sheoran, Advocate
for the petitioners.

Mr. P.P. Chahar, DAG, Haryana.

Mr. Rajesh Khandelwal, Advocate
for the respondents No.2, 3 and 6.

SURESHWAR THAKUR, J.

1. The present petitioners become aggrieved, from an order drawn on 18.09.2018, appended as Annexure P-7 to the instant writ petition. Annexure P-7 has been drawn by the learned Commissioner, Rohtak Division, Rohtak, while exercising powers under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act of 1948' for short). Through the said order, the learned Commissioner, after noticing certain palpable irregularities, and, gross improprieties, in the finalized consolidation scheme, which became settled qua the Mohal concerned on 30.09.2016, proceeded to annul the apposite consolidation proceedings.

Furthermore, the allotments as became made in favour of the allottees concerned were also quashed and set aside, and, the competent officer concerned was directed to redraw consolidation operations in the Mohal concerned.

SUBMISSIONS

2. The learned counsel appearing for the petitioners, has made an attack on the said order, the same is premised on the ground, that the said order, is contrary to the order drawn by the consolidation officer, on 04.11.2015, and, as becomes appended as Annexure P-1 to the instant writ petition. He submits, that since therein(s), speaking(s) occur that the estate holders did not make any objections with respect to the proposals, as, made in the draft consolidation scheme. Therefore, the order, as enclosed therein, rather making speakings qua the consensual completion of the consolidation proceedings, in terms of Section 21(1) of the Act of 1948, but could not be subsequently annulled nor scuttled. In short, he submits that the consensually drawn finalized consolidation scheme rather was unamenable to be quashed and set aside, as untenably done through the impugned order, as enclosed in Annexure P-7.

3. The learned counsel appearing for the petitioners, has also submitted, that since in terms of Section 21 of the Act of 1948, provisions whereof stands extracted hereinafter, a statutory appeal was also unsuccessfully raised against the order finalizing the consolidation scheme, as became drawn by the consolidation officer concerned. Therefore, the learned Commissioner concerned could not exercise any valid jurisdiction, stretching to the extent of his proceeding to rip apart, the consensually drawn finalized consolidation scheme, by the

“21. Repartition –

(1) The Consolidation Officer shall, after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed under section 20, and the boundaries of the holdings as demarcated shall be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objection pass such order as he considers proper confirming or modifying the repartition.

(3) Any person aggrieved by the order of the Consolidation Officer under sub-section (2) may within the month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the appellant pass such order as he considers proper.

(4) Any person aggrieved by the order of Settlement Officer (Consolidation) under sub-section (3), whether made before or after the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, may within sixty days of that order, appeal to the Assistant Director of Consolidation.

(5) Any appeal against an order of the Settlement Officer (Consolidation), pending under sub-section (4) immediately before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, either before the State Government or any officer to whom the powers of the State Government in this behalf have been delegated shall be decided by the Assistant Director of Consolidation.

(6) The appellant authority may entertain an appeal under

sub-section (3) or sub-section (4) after the expiry of the period of limitation prescribed therein if it is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

(7) The State Government may by notification appoint any person to be an Assistant Director of Consolidation to exercise the powers under this section in respect of such area as may be specified in such notification.”

**ANALYSIS OF THE PROVISIONS OF SECTION 42 OF THE ACT
OF 1948**

4. For determining the width and amplitude of the jurisdiction vested in the officer empowered by the State Government, hence to ably exercise jurisdiction under Section 42 of the Act of 1948, it is but necessary to extract the provisions thereof, and, which become extracted hereinafter:-

42. Power of State Government to call for proceedings:- *The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under Act, call for and examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto thinks fit:*

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.”

5. A reading of the above extracted provisions of Section 42 of the Act of 1948, do unveil, that the jurisdiction conferred on the State Government hence to make an objective satisfaction as to the legality, or, propriety of any order passed, scheme prepared or conferred, or, repartition made by any officer under the Act, does enjoin, upon such an officer exercising jurisdiction, under the provision (supra), to call for the

records of the case, but for obviously determining whether there has been any material irregularity, or, material impropriety in the finalization of the consolidation scheme by the consolidation officer concerned.

CONCLUSIONS

6. Therefore, the jurisdiction of the widest plenitude is conferred upon the Government, and, as such, the plenitude of jurisdiction stretches to the competent officer making an endeavour to, from the records, make discernments whether any material illegality, or, gross impropriety rather has been committed by the consolidation officer concerned. The above vested jurisdiction, is irrespective of the fact, whether the remedy cast in Section 21 of the Act of 1948, becomes unsuccessfully availed, besides de hors rather prior thereto(s) hence a consensually drawn finalized consolidation scheme, hence becoming settled. Thus, the plenitude of jurisdiction, as vested in the competent officer, under Section 42 of the Act of 1948, extends to annulling, or, quashing even a consensually drawn finalized consolidation scheme, but, only when the officer concerned notices gross improprieties, or, material illegalities becoming hence committed by the consolidation officer concerned.

REMEDY U/S 42 HAS TO BE EXERCISED WITHIN A REASONABLE TIME FROM THE DATE OF DRAWING OF THE CONSOLIDATION SCHEME BY THE CONSOLIDATION OFFICER CONCERNED

7. Moreover, the words “may at any time”, as exist in the opening part of Section 42 of the Act of 1948, do also reserve liberty, in the aggrieved concerned to, may be not after an inordinately procrastinated duration of time, from the making of the finalized

consolidation scheme, rather recourse the provisions of Section 42 of the Act of 1948. In other words, the statutory words “may at any time”, though do not *stricto sensu*, prescribe any rigid bar of limitation rather for the well availment of the remedy, as prescribed under Section 42 of the Act of 1948, but yet, the said remedy, has to be adopted within a reasonable time. In the instant factual situation, where the consolidation proceedings were completed in the Mohal concerned in the year 2016, and, when the remedy, as contemplated in Section 42 became adopted in the year 2017. Thus, the adoption of the remedy under Section 42 of the Act of 1948 was obviously availed within a reasonable time, and/or, was not availed after an inordinately procrastinated duration of time, rather elapsing since the making of the finalized consolidation scheme in the year 2016. Therefore, the bar of limitation, as alleged by the counsel for the petitioners to infect the impugned order, as enclosed in Annexure P-7, is obviously not attracted thereto.

**ANALYSIS OF THE IMPUGNED ORDER, AS ENCLOSED IN
ANNEXURE P-7**

8. An analysis of the relevant portions of the impugned order, wherein, speaking(s) occur about the authority exercising jurisdiction under Section 42 of the Act of 1948, rather noticing material illegalities, and, gross improprieties in the finalization of the consolidation scheme, at the instance of the learned Collector concerned, thus are but extracted hereinafter:-

“This fact has been confirmed, by District Revenue Officer, Bhiwani vide its report at Serial No.2194 dated 06-08-2018 qua this case, that Johar land of village has been allotted to private owner and against this, land has been given in small

part in other areas to Gram Panchayat. Hence, natural shape and design of Johar has been disturbed. Most of disturbance has been caused to Johar of Dumnia and Anana whose 93 Kanals 10 Marlas and 205 Kanals areas respectively has been cut/diminished. Other than this, without any justify reasons, land has been diminished from all Johar, for example: 17 Kanals 13 Marlas from Pipliya Johar, 14 Kanals 7 Marlas from Makdana Johar, 3 Kanals 4 Marlas from Kundali Johar, 5 Kanals 10 Marlas from Dumnia Johar and 10 Kanals 15 Marlas from Anana Johar (total 51 Kanals 09 Marlas). Originally above mentioned five Johar had total land of 1040 Kanals, 861 Kanals 15 Marlas, 191 Kanals 2 Marlas, 331 Kanals and 635 Kanals and 15 Marlas respectively. But district revenue officer and district development and Panchayat Officer in its joint report has mentioned of weak and untenable reasoning regarding cutting, diminishing and transferring at other places of the area of pond.

Other than above, there has been found following irregularities in the consolidation proceeding.

- 1. In middle of the Johar and its area, passage has been provided.*
- 2. Provisions of new passage has been made by changing old pucca passage.*
- 3. Some Biswedar has been given land from other social purpose land of Gram Panchayat as private owner.*
- 4. Bani situated on land of Gram Panchayat in Gram Panchayat area has been converted into land of private person.*
- 5. Bachat land existed before Consolidation proceeding has not been included into land of Gram Panchayat.*
- 6. Assessment of appellants that total land of Gram Panchayat should be 4611 Kanals 2 Marals seems to be correct. In old Khewat no.68, land of Gram Panchayat was 4116 Kanal, Surplus Land 431 Kanal 10 Marla and 128 Kanals 4 Marlas given to Gram Panchayat in place of cutting plot is of Gram panchayat out of which 64 Kanals 8 Marlas land would get diminished for passage.*

7. *Some path has been given to private owner which not go any further. Hence there is strong suspicion of illegally encroaching it by nearest owner.*

8. *Ram Mehar son Jai lal etc. has been given more land of 13 Kanals 18 Marlas, Mahender son of Rattan Singh etc. 5 Kanals 15 Marlas more, Amart Pal son of Kapu 5 Kanals 3 Marlas more, and Vir Singh son of Sardara etc 6 Kanal 8 Marla. Other than them, there are other Biswedars who have been given land more than their demand.*

The benefit on the point of limitation is given to appellants. In this regard, ruling of Hon'ble Apex court Gram Panchayat, Kanonda versus Director, Consolidator, 1990 AIR 763, 1989 support the point of appellants.

Respondents have averred that changing of the land of Gram Panchayat into private land and whole consolidation proceeding is legally valid which is not liable to be accepted on basis of above mentioned reasoning.

On basis of above discussion and finding appeal of appellant to be legal, justified, reasonable and valid, same is allowed. By exercising power provided under section 42 of Consolidation Act 1948, it is ordered that consolidation completed in village Gokul Pura dated 30.09.2016 and allotment done as per it, on finding same to be illegal, wrong and incorrect, it is declared to be annulled from initial and set aside and is directed to competent officer to initiate fresh consolidation proceeding. This consolidation be done as per following directions and guidance:

1. *Johar, Pond, Charnd, Canal, river, Rajwaha, rainy drain, forest land and Bani come under Gram Panchayat be kept as it was before consolidation. Their area be not disturbed. Their shape not be changed.*

2. *Surplus land-Jumla Mustarka Malkana and other holding land recorded in the revenue record before consolidation in name of Gram Panchayat be included in area of Gram Panchayat. If any villager of village has any objection on it, then he can file for declaring himself to be owner before collector or commissioner court as per section 13 A of Punjab Gram Shamlat land (Regulation) Act 1961.*

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3. *No passage or any structure be constructed or provided from the land of Johar and pond.*

4. *Following ruling with regard to Shamlat land and Panchayat land be kept in consideration while changing Shamlat and Panchayat land during consolidation proceeding:*

- (i) *RCR Civil 2009 4 Page 559*
- (ii) *2013(1) RCR CIVIL PAGE 437*
- (iii) *1970 PLJ PAGE 442*
- (iv) *2013(1) LAR PAGE 255*
- (v) *2013(1) LAR PAGE 73*
- (vi) *2008(2) RCR CIVIL PAGE*
- (vii) *AIR 1967 SC PAGE 927*
- (viii) *2011(3) LAR PAGE 119*

5. *Those roads, paths, street and other construction done with the government money be kept as it was.”*

9. A reading of the above extracted gross, and, pervasive infirmities, as, become committed by the consolidation officer concerned, in his finalizing the consolidation scheme, in respect of those lands, which fell for consolidation in the Mohal concerned, do but obviously reveal, that certain imminent material illegalities, and, gross improprieties were committed by the consolidation officer concerned. The above extracted gross illegalities, when they appertain to mis-allotments, being made for the relevant purpose(s), in the finalized consolidation scheme, even of Johar, Pond, Charand, Canal, River, Rajwaha, Rainy Drain, Forest land, and, Banni lands. Thus, such gross misdemeanors, do obviously coax this Court to conclude, that irrespective of the fact, that the estate holders had purveyed their consent qua allotments of the above categories of land, being made to the estate holders concerned, and/or, to the Gram Panchayat concerned, that they are required to be undone.

10. Moreover, when the genre of the categories (supra), as spelt in the impugned order, make them but unamenable for allotment to the

estate holders concerned, and/or, when the genre of the apposite lands, but make them impartible. In other words, when the genre of the apposite lands are, but, qua theirs being usable, or, utilizable by the entire village proprietary concerned, but, after management, and, control thereof becoming vested in the Gram Panchayat concerned. Resultantly and reiteratedly, any consent qua the allotments of the above genre of lands, rather was completely insignificant, and, also irrelevant. Therefore, in assigning any credence to consensuality, if any, conveyed by the estate holders concerned, to the consolidation officer concerned, to make mis-allotments thereof, and/or, to cause brazen change of user of such lands, but from their meaningful able user, rather would bring the ill casualty (supra) qua the above categories of land becoming untenably diverted to the estate holders concerned. Naturally, then the very intrinsic spirit ingraining the genre of the said categories, and which, but, as stated above, made them usable only for the common purpose(s) of the village, and/or, when they were meant for maintaining the environmental health of the village concerned, rather would become defeated, and, completely jeopardized. Consequently then, any approbation by this Court to the consent, if any, as meted to the consolidation officer, by the estate holders concerned, in respect of their mis-allotments, or, in respect of their impermissible diversion, qua their meaningful user but for some other unmeaningful purpose, rather would tantamount to this Court acting against the principles of public policy, and, also this Court proceeding to untenably defeat the environmental health of the village concerned. Moreover, Charand lands, which are but amenable for user only for the purpose of enabling the livestock of the villages concerned to make

grazings thereon, but, cannot be put to any use other than the tenable use (supra) thereof.

CONCLUSION

11. Therefore, the argument (supra), as addressed before this Court, as becomes rested primarily, on the finalized consolidation scheme, being completely consensual, is a misfounded argument, and, is liable to be rejected.

12. The above extracted material illegalities, and, gross improprieties, as existing in the drawing of a consensual consolidation scheme, by the consolidation officer concerned, does also, as tenably done by the learned Commissioner concerned, in his making the impugned order, enclosed in Annexure P-7, rather constrain this Court to order for redrawing of the consolidation operations in the Mohal concerned.

13. Therefore, as a sequel to the above, this Court does not find any merit in the instant writ petition, and, it accordingly stands **dismissed**, and, the order(s) impugned in the instant writ petition is affirmed and maintained.

14. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

23.03.2023
devinder

(KULDEEP TIWARI)
JUDGE

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