

CWP-25022-2016 & connected case 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220 (I) CWP-25022-2016 (O&M)
Date of Decision : March 21, 2023

SUKHDEV SINGH AND ORS.
-Petitioners

V/S

THE DIRECTOR LAND RECORD PUNJAB & ORS
-Respondents

(II) CWP-7298-2017 (O&M)

BAKSHISH SINGH AND ANR.
-Petitioners

V/S

DIRECTOR LAND RECORD, PUNJAB AND ORS.
-Respondents

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

Present : Mr. A.K. Ahluwalia, Advocate
for the petitioners (in both cases).

Mr. Maninder Singh, DAG, Punjab.

Mr. M.L. Saggar, Sr. Advocate with
Mr. Rohit Joshi, Advocate
for the respondent No.4 (in CWP-7298-2017).

Mr. A.S. Sandhu, Advocate
for the respondent No.4 (in CWP-25022-2016).

SURESHWAR THAKUR, J.(ORAL)

1. This order shall dispose of both these writ petitions, i.e. CWP-25022-2016, and, CWP-7298-2017, as they arise of the same verdict drawn on 31.08.2016, by respondent No.1. For brevity, the facts are being extracted from CWP-25022-2016.

2. A petition bearing No.98 of 2008, was cast under Section 42 of

CWP-25022-2016 & connected case

2

the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act of 1948' for short). The petitioner, in the petition (supra), is impleaded as respondent in the instant writ petition, and, it made a challenge to the finalized consolidation scheme, as became settled by the consolidation officer concerned. Through a decision made on the petition (supra), on 30.09.2009, the competent authority made the hereinafter extracted operative direction, upon the concerned:-

“The arguments of the petitioner were considered and the record on file perused. In this case, there is need to inquire the record of the consolidation, which can be done at a lower level, so while condoning the delay in filing the petition, the District Revenue Officer-cum-Consolidation Officer is instructed with remanding a case that after hearing both the parties and perusing the consolidation record to the extent that the new Khasra number formed in lieu of earlier Khasra No.937/1 (20-12) Gair Mumkin Pond, 937/3 area 0-1 Gair Mumkin Bahron House, total 20-13 Biswas. The decision regarding the deficiency of the petitioner be taken on merits. While doing so, if there is any adverse effect on any other party, then he should be given an opportunity of being heard to your level.”

3. A reading of the hereinabove extracted operative directions, as made upon the litigants concerned, reveals, that the District Revenue Officer-cum-Consolidation Officer was directed to, after the remand of the lis to him, afford an opportunity of hearing to the affected parties, and, after his perusing the relevant record(s), to the extent that the new khasra number formed in lieu of earlier Khasra No.937/1 (20-12) Gair Mumkin Pond, 937/3 (0-1) Gair Mumkin Bahron House, measuring 20-13 Biswas, hence make a decision regarding the deficiency of the petitioner. However,

CWP-25022-2016 & connected case

3

subsequently the aggrieved therefrom preferred an appeal, cast under Section 42 of the Act of 1948, before the appellate authority concerned. The appellate authority concerned, as unfolded by Annexure P-9, made the hereinafter extracted directions, as are carried in the operative part of the said order:-

“The consolidation officer cannot give further instruction in the order under challenge dated 30.04.2013 against the provisions of the Consolidation Act, so in the instructions given above by the Consolidation Officer, in the order dated 30.04.2013 (under challenge. The below mentioned instructions:-

“that the tak of respondent No.2 Amar Singh, 3. Amarjit Singh, 4. Sukhdev Singh ss/o Kesar Singh, 5. Bakshish Singh s/o Mukhtiar Singh, 6. Jagdish Singh, 7. Kaka Singh, 8. Puran Singh s/o Daulat Singh may not be disturbed.”

is quashed and the consolidation officer is instructed that he should pass an order on merit, as per instructions given under Section 42 of the Consolidation Act.”

4. Therefore, a reading of the operative part of the order, as enclosed in Annexure P-9, thus, but reveals that the consolidation officer concerned was again directed to, make an order on merits, in terms of Section 42 of the Act of 1948.

5. It is the order carried in Annexure P-9, which has been challenged by the aggrieved, through its casting the instant petition before this Court. Though, the order, as enclosed in Annexure P-9, is but, a simpliciter direction upon the consolidation officer concerned, to redraw a fresh decision, upon the lis engaging the contesting litigants, and, obviously when no decision yet has been taken on the lis remanded by the consolidation officer concerned, in pursuance to the remand to him, of the lis, by the appellate authority concerned. Therefore, prima facie, the instant

CWP-25022-2016 & connected case

4

writ petition is not maintainable at this stage, more so, unless this Court had restrained the consolidation officer concerned from meteing compliance to the order made upon him, and, as becomes enclosed in Annexure P-9.

6. In that regard, a reading of the order, as made by this Court, on 05.12.2016, reveals, that this Court had not restrained the authority concerned to draw further proceedings, in pursuance to the making of Annexure P-9. However, as disclosed in CM-11264-2022, in, CWP-25022-2016, the authority concerned has, merely on the basis of the pendency of the instant writ petition, before this Court, whereby, a challenge is made to Annexure P-9, rather has not proceeded to undertake any further proceedings, in pursuance to the directions, as carried in Annexure P-9.

7. The above want of drawings of proceedings by the officer concerned, in pursuance to the directions, as carried in Annexure P-9, and, which directions are not stayed by this Court, is but, a gross departure from the duties, as were required to be performed by the consolidation officer concerned, in terms of an unstayed order, as enclosed in Annexure P-9.

8. In consequence, since no prejudice yet has been caused to the petitioners herein , and, which but may assumingly become caused, in case, a decision is made by the consolidation officer concerned, after his making a fresh decision on the remanded lis to him. Therefore, the instant writ petition is, at this stage, dismissed as being ill constituted. However, the consolidation officer concerned, is directed to, within one month from today, but, after hearing all affected persons, terminate the remanded lis. It is clarified, that in case, a decision adversarial to the petitioners, is made by the consolidation officer concerned, thereupon, it is open to the petitioners to, subsequently avail the statutory remedy(ies), as contemplated by law.

CWP-25022-2016 & connected case 5

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

(SURESHWAR THAKUR)
JUDGE

March 21, 2023
devinder (KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No