

CWP-10927-1996

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10927-1996
Reserved on: 24.05.2024
Date of decision: 27.05.2024

M.C. BARNALA

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. S.P. Garg, Advocate and
Mr. A.P. Bhandari, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Jatinder Singh, Advocate
for applicants/respondent Nos.4(i) to 4(iii).

SURESHWAR THAKUR, J.

1. One Mukhtiar Singh-respondent No.4 herein, instituted petition No.S-176/93, before the Additional Director, Consolidation of Holdings, Punjab, Jalandhar, impleading therein Municipal Committee, Barnala (Sangrur) through its Executive Officer, as respondent.
2. Respondent No.4, in the apposite petition, claimed that there was shortage or under allotment of land to him, and, as such the said be undone through the land assigned in the consolidation scheme, to the Gram Panchayat concerned, for the benefit of the village proprietary

body, lands whereof has now transmitted to M.C. Barnala, thus being assigned to him.

3. Through a decision drawn on the said lis, on 28.04.1994 (Annexure P-3), the Additional Director, Consolidation remanded the lis to the Consolidation Officer with a direction to him that he should visit the spot and make good the shortage caused to respondent No.4 from the bachat lands. In pursuance to Annexure P-3, Annexure P-4 became recorded, whereby modifications were made after accepting the remanded lis, and, the Consolidation Officer proceeded to make the hereinafter extracted modifications in the finalized consolidation scheme. Subsequently petition No.114/95 became raised by the M.C. Barnala, whereby it challenged Annexure P-3 and P-4. The said petition became allowed through an order Annexure P-5 becoming made thereons.

S. No.	Name of the owner	(Cancellation) Kharaj				(Allotment) Shamil		
		Killa	Rakba	Killa	Rakba			
1.	Mukhtiar Singh	266/15/2	east	0-6	0-8	251/14/2	3-12	1-8
	S/o Arjun Singh	16/3	“	0-12	0-12	217/12/1 (min)	1-0	0-12
		25/2	“	0-8	0-8			
		301/4/1	“	0-6	0-6			
		4/3	“	0-6	0-6			
				2-0	2-0		4-12	2-0
2.	MC, Barnala	Which land mutated in SR				Which land mutated in SR		
		No.1 has been allotted				No.1 has been cancelled.		

4. In pursuance to Annexure P-5, Annexure P-6 became recorded whereby the order rendered on 08.09.1994 (Annexure P-4) became affirmed. Resultantly, the present petitioner becomes aggrieved from the said order, and, is led to institute the instant writ petition before this Court.

5. Imminently the Consolidation Operations in the *Mohal* concerned, evidently concluded in the year 1961-62, whereas, Misl No.S-176/93, became instituted by respondent No.4 much belatedly therefrom i.e. in the year 1993.

6. It is not contested amongst the contesting litigants that in pursuance to the said concluded, consolidation operations in the *Mohal* concerned, thus in the year 1961-62, thus the records of rights became updated in terms of Section 22 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act”).

7. Be that as it may, though no period of limitation is prescribed under Section 42 of the Act for the contemplated therein, valid exercisings of jurisdiction becoming made, thus on the motion, as becomes laid before the statutory authority concerned. However, for the reasons to be assigned hereinafter, the makings of the decision on the said made motion, is strictly confined to the said motion being made for corrections being done to clerical or arithmetical mistakes or to create a revenue rasta, if no rasta is created by the consolidation officer concerned.

8. The reason for allowing the instant petition strikingly emanates from the factum that the jurisdiction cast under Section 42 of the Act, provisions whereof becomes extracted hereinafter, thus was not exercisable by the Authorities, who made the order on 23.05.1995 (Annexure P-5), and, which ultimately led to the making of the impugned annexure P-6, whereby the Consolidation Officer concerned, accepted the remanded case and allotted the lands to the objector.

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:*

9. The reason for drawing the above inference stems from the factum, that the validly exercisable jurisdiction by the authorities contemplated under Section 42 of the Act, is reiterated only upon a motion asking for corrections being done of arithmetical and clerical mistakes as occur in the finalized consolidation scheme and in sequel whereby the updation of records is made in terms of Section 22 of the Act.

10. The above jurisdiction is but with a holistic purpose, thus for ensuring that such mistakes, as but truncate the rights of the estate holders, who have rather been assigned title over certain tracts of lands, thus respectively in the *Scheme Istemal* or in the *Naksha Paimaish* and in the finalized consolidation scheme, rather do not untenably *jeopardise* the well conferred title over the relevant tracts of lands, rather whereovers an able title is conferred in the apposite estate holder(s). Resultantly, thereby such clerical mistakes do require theirs being undone.

11. Moreover, the said jurisdiction is only exercisable upon no consolidation rasta becoming created, thereupon a dire necessity arising for the creation of a rasta, through the invocation of jurisdiction under

Section 42 of the Act, as through the creation of a rasta, thus easementary rights would become exercised thereons by all the estate holders concerned.

12. Necessarily, the said jurisdiction is not exercisable, thus for making tinkering with finalized consolidation scheme nor is to be exercised so as to ill tinker with the updation of records, as is done in terms of Section 22 of the Act. The reason for disallowing the above ill tinkering strikingly emanates, from the factum, that since therebys a disputed question of title evidently surfaces, amongst the estate holders concerned, thereby the said disputed question of title, when is neither amenable for being raised nor is amenable for being adjudicated upon by the authorities contemplated under Section 42 of the Act, thereby any adjudication as made by the authorities contemplated under Section 42 of the Act vis-a-vis such disputed question of title, rather makes such an adjudication to be beyond the jurisdictional confines of the exercisable jurisdiction vested in it/them, under Section 42 of the Act. Contrarily, in terms of the verdict made by the Division Bench of this Court in case bearing No.CWP-5939-2018 titled as 'Balbir Singh and others V. State of Haryana and others', relevant paragraph whereof becomes extracted hereinafter, rather the jurisdiction to decide any question of title which is raised amongst the estate holders concerned, thus after the updation of revenue records taking place in terms of Section 22 of the Act, is to be exercised only by the Civil Court of competent jurisdiction or by the statutory forum concerned.

“11. Though after the updation of records taking place, there is no exercisable jurisdiction vested, in the Director of

*Consolidation rather within the domain of Section 42 of the 'Consolidation Act, 1948', especially, when it has been declared in a Full Bench Judgment made by this Court in case titled as '**Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others**' reported in **2014 (2) R.C.R. (Civil) 721**, relevant paragraph whereof is extracted hereinafter, that the exercising of jurisdiction by the statutory authority concerned, on a motion laid before him, under Section 42 of the 'Consolidation Act, 1948' rather is limited to correction of arithmetical or clerical errors and/or to creation of a consolidation path, but where no such consolidation path is created or is exercisable when there is obstruction against the user of said path by any of the estate holders concerned.*

*46. 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."*

12. Therefore, when but obviously the jurisdiction to re-draw the entire concluded consolidation scheme, thus on anvil of their being any purported over valuation or under valuation of the respective estates of the estate holders concerned, and, of

the Gram Panchayat concerned, besides on anvil of mis-allotment(s) of lands being made respectively to the estate holders concerned besides to the Gram Panchayat concerned, rather is not exercisable, thus by the authority contemplated under Section 42 of the 'Consolidation Act, 1948'. Resultantly, thereby the exercisings of jurisdiction over the said controversy by the Director rather on a motion constituted before him under Section 42 of the 'Consolidation Act, 1948', thus was vitiated with the vice of lack of jurisdictional empowerment inhering in him, thus to either entertain and much less to adjudicate the said motion.

*13. Predominantly, also when the validly exercisable jurisdiction, thus on emergence of the dispute(s) (supra), is expostulated in the judgment (supra) rather to be exercisable solitarily by the Civil Court concerned. Therefore, the operative portion of the verdict (supra), as made by this Court, thus leading the Director **Consolidation through to Annexure P-10, hence make an order of remand**, to the Consolidation Officer concerned, whereafters' the Consolidation Officer made the impugned Annexure P-11, thus are declared to be per incuriam, the declaration of law made in **Parkash Singh's case (supra)**. ”*

13. Furthermore, the said coinages “any order passed, scheme prepared or confirmed or re-partition made by any officer under Act” as occur therein are to be assigned both an appropriate and tenable signification(s).

14. To the considered mind of this Court the import or signification to be assigned to the said coinages, is that, the jurisdiction which is to be exercised under Section 42 of the Act by the competent statutory authority is to be exercised in respect of any order passed in terms of Section 21 of the Act. Moreover, the words subsequent to “any

order passed” inasmuch as, scheme prepared or confirmed or re-partition made by any officer under the Act, are to be construed to be relating “to such an order” whereby any scheme prepared or confirmed or re-partition made by any officer under the Act, rather becomes so prepared, confirmed or made, thus in terms of an order as made, thus through the invocation of remedies prescribed in Section 21 of the Act.

15. The provisions of Section 21 of the Act, become extracted hereinafter.

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 objector 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.

16. Since the jurisdictional domain of the Consolidation Officer as enshrined in Section 21 of the Act, extends to re-partition of the said lands, even after the happenings of finalization of the consolidation scheme under Section 20 of the Act, but only upon written objections being preferred within 15 days of the publication of the finalized consolidation scheme. Moreover, when the aggrieved from the order so passed by the Consolidation Officer, has statutory rights as enshrined in sub Sections, 3, 4 and 5 thereof. Consequently, therebys the coinages “scheme prepared or confirmed or re-partition made by any officer under Act” which occur post the coinage(s) “any order passed”, thus existing in Section 42 of the Act, thus are to be deemed to be vesting a leverage in

the aggrieved to make recourses rather for undoing the scheme prepared, scheme confirmed or re-partition done, thus through his employing the said statutory re-courses encapsulated in Section 21 of the Act, but yet the employment by the aggrieved of the said statutory re-courses, yet has to take place prior to the updation of the records taking place in terms of Section 22 of the Act.

17. The reason for making the above conclusion becomes sparked from the factum, that the scheme prepared or confirmed or re-partition made by any officer under the Act, when all are the subject matter of the statutory provisions embodied in Section 21 of the Act. Therefore, the coinages (supra), whereby the scheme prepared or confirmed or re-partition made, when becomes the subject matter of relevant testings, through employments rather by the aggrieved vis-a-vis the mandate of Section 21 of the Act, thereby when order(s) for making any interference thereons, is but passed by the officers enunciated in Section 21 of the Act. Resultantly, when thereby necessarily the undoings vis-a-vis schemes prepared or confirmed or the re-partition, thus becomes made rather by an officer, through his employing the mandate of Section 21 of the Act, whereby thus the said respective undoings or affirmations, do result “in an order”, which however is yet amenable for becoming adjudicated upon, through exercise of jurisdiction under Section 42 of the Act of 1948 by the competent authority but only when in sequel thereto the records of rights are not updated in terms of Section 22 of the Act. In other words, the validity of the said order is yet not amenable for becoming decided through exercisings of jurisdiction under Section 42 of the Act, thus at a stage post the updation of records taking place.

18. The reason for making the conclusion stems from the factum, that when the said orders are at the said stage rather challengeable through invocation of jurisdiction under Section 21 of the Act, thereby when at the stage (*supra*), rather no updation of the records takes place, especially when the updation of records takes place in terms of Section 22 of the Act, besides when the said section occurs post Section 21 of the Act. Resultantly, thereby when only after the complete testings become made vis-a-vis scheme prepared or confirmed or vis-a-vis re-partition made by any officer, thus through an order becoming made on the relevant motion being preferred by the aggrieved concerned, before the officer as contemplated in Section 21 of the Act, rather the updation of records in terms of Section 22 of the Act, thus takes place. Therefore, reiteratedly when only at the said stage of testings', thus the jurisdiction under Section 42 of the Act, is exercisable, but the said jurisdiction is not exercisable when after complete testings being made, rather the updation of records takes place in terms of Section 22 of the Act. Preponderantly also when on updation of records, there is a complete estoppel against the workability of the mandate of Section 42 of the Act, rather in the said event the jurisdiction to adjudicate vis-a-vis any grievance(s) *qua* mis-allotments or under allotments being made to the estate holders concerned, is in terms of the verdict made in ***Balbir Singh's case (supra)***, rather to be exercised only by the Civil Court of competent jurisdiction/statutory forum.

19. Since for the reasons stated (*supra*), the initial lis, filed in the year 1993, which resulted in Annexure P-3, and, further resulted in pursuance thereto Annexure P-4, becoming passed, thus therebys bachat

lands, became allotted to the private respondents, whereby thus tinkering were made with the finalized consolidation scheme, which had also earlier resulted in pursuance thereto updation of records taking place in terms of Section 22 of the Act.

20. Consequently when for reasons (*supra*), post the updation of records the jurisdiction under Section 42 of the Act is barred to be exercised in the relevant motion, whereby both Annexures P-3 and the pursuant thereto Annexure P-4, are quashed, and, set aside.

21. In addition, though the present petitioner became aggrieved from Annexure P-3, and, P-4 on the ground that the present petitioner although was arrayed as respondent in the said lis, but became untenably proceeded against *ex parte*, but yet the said grievance was not to be ventilated in a fresh petition becoming instituted, but was to be ventilated in a petition filed under Order IX Rule 13 of the CPC, before the authority which passed the said order, thus for whereby the said made order, rather directing the respondent-petitioner herein to be proceeded against *ex parte* becoming attempted to be recalled and set aside.

22. Since the above endeavour remained unrecoursed rather a fresh petition under Section 42 of the Act, became instituted by the present petitioner before the Additional Director, Consolidation which resulted in Annexure P-5, and, the consequent thereto Annexure P-6, becoming passed. Resultantly, whereby the making of the said petition, is to be construed to be a review petition preferred against Annexure P-4, especially when no review jurisdiction is conferred, upon the authority constituted under the Act, thereby neither the said petition was maintainable nor any order was to be passed thereovers.

23. In consequence, impugned Annexure P-6, is quashed, and, set aside. In aftermath, the instant writ petition is accepted, and, the impugned annexures Annexures P-3, P-4 are also quashed, and, set aside, but leaving liberty to all the aggrieved concerned, to access Civil Court remedies.

24. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

27.05.2024
Ithlesh

(SUKHVINDER KAUR)
JUDGE

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