

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2532-2019 (O&M)
Reserved on: 15.04.2024
Date of Decision : April 29, 2024

BHAJAN SINGH AND ANOTHER
...Petitioners
Versus
THE DIRECTOR, LAND RECORDS -CUM- DIRECTOR,
CONSOLIDATION, PUNJAB AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Amit Kohar, Advocate
for the petitioners.

Mr. Amit Kumar Goyal, Addl. A.G., Punjab

Mr. M.S. Batth, Advocate
for respondent No.5.

Mr. S.S. Swaich, Advocate and
Ms. Deepa Negi, Advocate
for respondent No.6.

None for respondent No.7.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant writ petition, the petitioners have prayed for the quashing of impugned order dated 18.12.2013, (Annexure P-5), passed by the Consolidation Officer concerned, of order dated 22.07.2015 (Annexure P-6), passed by Deputy Director, Land Records-cum-Settlement Officer, of order dated 18.08.2016 (Annexure P-7), passed by Deputy Commissioner-cum-Director/Consolidation, and of order dated 05.12.2018

(Annexure P-9), passed by the Director, Land Records, Punjab.

2. That the brief facts of the case are that Khasra No.702 was earmarked as Gair Mumkin Rasta, during consolidation vide Aks Shajra Latha of village Rode, Tehsil Bagha Purana (Annexure P-1). The said entry is also occurring in the jamabandis for the years 1967-68, 1982-83, 1987-88, 1992-93, and, 1997-98.

3. As per the communication No.631/Reader-I dated 16.12.2008, addressed by Naib Tehsildar, Bagha Purana, to The Deputy Commissioner, Moga, it has been reported that after the site inspection and according to the revenue record, Khasra No.702 is a Gair Mumkin Rasta, which is situated on the boundary of villages Rajiana and Rode, the said report is embodied in Annexure P-3.

4. That in the year 2011, Gram Panchayat of village Rode, Tehsil Bagha Purana, District Moga, instituted a petition under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act”), before the Director, Land Record, Punjab. Through an order made thereons, on 25.09.2013, the Director concerned, remanded the case with certain directions, directions whereof become extracted hereinafter.

“As per arguments advanced by the petitioner and the respondents and the documents submitted, the position is conflicting and in such a situation more inquiry of record of consolidation, revenue record and the position existing at spot is necessary which can possibly be made at the lower level. Therefore, this petition is remanded to District Revenue Officer - Consolidation Officer with the direction that after hearing the concerned parties, spot inspection and after making inquiry into the consolidation record and revenue record, and by remaining within the domain of the Istemal Scheme an appropriate order regarding change of kind of Khasra No.702

may be passed on merits. At the time of passing the order, instructions issued by Punjab Government from time to time in respect of area of Gram Panchayat and Jumla Mushtarka Malakan and in the light of the present law decision be made. In case with any correction if any other party is affected then application from the petitioner be obtained and by making him party /respondent he be given an opportunity of hearing. Copy of the order be sent to District Revenue Officer-cum-Consolidation Officer. Order pronounced. File be consigned to record room.”

5. The Consolidation Officer concerned, in compliance of the aforesaid directions, through an order made on 18.12.2013 (Annexure P-5), declared that Khasra No.702 was cultivable area and that its kind may be changed to that of Chahi instead of Gair Mumkin.

6. That the petitioners challenged Annexure P-5, through theirs instituting an appeal bearing No.03/2014, cast under Section 21(3) of the Act, before the Director Director concerned, wherein, the petitioners averred that Annexure P-5 was passed ex-parte without any notice being served upon them, thereby they claimed relief that it be quashed, and, set aside. They further averred that they are the owners of Khasra Nos.207//8, 9, 10, 11, 12, 19, 21, 206//6, 7, 14, 15 and 17, and, the petitioners are using Khasra No.702, as a Rasta to their Tak. However, the Deputy Director concerned, vide order dated 27.05.2015 (Annexure P-6) dismissed the said appeal by observing that kind of Khasra No.702 is wrongly recorded and, that it has been correctly recorded in the order under appeal. Resultantly he declared that there is no infirmity in the order under challenge (Ann. P-5).

7. Aggrieved from the order dated 27.05.2015 (Annexure P-6), the petitioners filed appeal bearing No.14/2015, cast under Section 21(4) of

the Act, before the Deputy Commissioner-cum-Director concerned. The said

appeal was also dismissed vide order dated 18.08.2016 (Annexure P-7) with the same observations, as were made in Annexure P-6.

8. Faced with this situation, the petitioners filed petition bearing No.116/2016, under Section 42 of the Act, before the Director, Land Records-cum-Director Consolidation, Punjab, Jalandhar, wherein, the petitioners questioned the jurisdiction of the authorities, to withdraw any passage earmarked in the consolidation scheme, and, duly recorded in the revenue records. The Director concerned, through an order made on 05.12.2018 (Annexure P-9), dismissed the petition by upholding the decisions rendered by the authorities below (Annexures P-5, P-6 and P-7), and, reiterated that Khasra No.702 was not mentioned in the Scheme Istemal, as rasta but was therein mentioned as Chahi. Resultantly, the reflection(s) made in the record of rights qua a rasta existing over Khasra No.702 after a rasta, thus was not in conformity with the Scheme Istemal, and, as such, the kind of Khasra No.702 was required to be corrected from rasta to chahi. Moreover, it was also stated therein that there is a rasta over Khasra No.699 to the tak of the present petitioners, and, that the disputed khasra No.702 is situated adjoining the said khasra number.

9. The germination of the lis is embodied in a motion cast under Section 21(3) of the Act. The provisions of Section 21, as carried in the Act, leverage a right in the estate holders concerned, to before the occurrence of the finalization of the consolidation scheme, rather to claim a right of repartition or redistribution of the lands, which are manifested in the consolidation scheme. It was in terms of the said availed remedy that Annexures P-5 to P-7 became passed.

“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.”

10. There is a vivid disclosure in the impugned orders, that despite in the Scheme Istemal, the disputed lands being classified as Chahi land, yet in the record of rights, the said lands being described, as Gair Mumkin Rasta. Therefore, the classification assigned to the disputed lands in the Scheme Istemal as Chahi, thus was required to be also given effect in the record of rights. However, despite the disputed lands being assigned the classification of Chahi in the Scheme Istemal, but yet in the record of rights, they became described as Gair Mumkin Rasta. Resultantly, therebys there was non adherence to the declaration(s) (supra), as became made in the Scheme Istemal.

11. In sequel, for undoing the said error, and, besides for ensuring the repartitioning of the said lands, to the estate holders concerned, the said estate holder made a motion as envisaged under Section 21 of the Act, before the Statutory Authority concerned. The said Statutory Authority(ies) upon becoming seized with the said motion but after making an incisive perusal of the Scheme Istemal and, therefroms their discerning that therein the disputed lands become classified as Chahi, but in the record of rights, the disputed land is yet reflected as Gair Mumkin Rasta. Therefore, through the impugned annexures, the said classification was ordered to be altered so as to make it in alignment with the Scheme Istemal.

12. Though, be that as it may, since after the making of the impugned annexures, the record of rights is required to become updated in terms of Section 22 of the Act, and, if that so happened thereby the jurisdiction under Section 42 of the Act, was barred excepting the makings of corrections of clerical errors or mistakes. Though, the above *inter se* discrepancy *inter se* Scheme Istemal, and, the record of rights, and, as relating to a mis description about the classification of the disputed lands, being made in the record of rights, despite the disputed lands being reflected in the Scheme Istemal as Chahi land, rather was a clerical error. Resultantly, when thereby the said clerical error was rectifiable through the invocation of the jurisdiction, under Section 42 of the Act. Moreover, the said motion was to be recoured, thus without the aggrieved preferring a motion cast under Section 21 of the Act, but even if the recourse by the aggrieved was made to the provisions contemplated under Section 42 of the Act, and, that too after the requisite error (*supra*) being undone through annexures P-5, P-6 and P-7. However, when through Annexure P-9, the Director, Land Revenue, Punjab, has affirmed the validity of the said annexures, thereby when as such, he has also undone a clerical error or a clerical mistake. Consequently, thereby this Court finds no infirmity in the order enclosed in Annexure P-9.

13. In nutshell, the dismissal order as made on the said motion is a validly made order, as thereby the clerical error (*supra*) has been undone, and, the annexures impugned before the Director, Land Record, Punjab, thus merited becoming upheld as tenably done.

14. Accordingly, there is no merit in the instant writ petition, as such, the same is dismissed.

15. Be that as it may, even if the aggrieved from the said impugned annexures, do have any subsisting grievance, therebys the said grievance relating to even the Scheme Istemal being incorrectly drawn or being flawed, inasmuch as, it being made in deviation from the report of the Advisory Committee, therebys the said grievance is yet amenable to become redressed by the aggrieved, through the latter accessing the Civil Court of competent jurisdiction.

(SURESHWAR THAKUR)
JUDGE

29.04.2024
Ithlesh

(LALIT BATRA)
JUDGE

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