



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.13100 of 1997 (O&M)
Date of Decision: 18.09.2024

Gram Panchayat of Village Bhojowali and another
.....Petitioners.

Versus

Director, Consolidation, Punjab and others
.....Respondents.

CORAM: *HON'BLE MR. JUSTICE G.S. SANDHAWALIA*
 HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Jatinder Singla, Advocate
 for the petitioners.

 Mr. Shekhar Verma, Addl. A.G, Punjab
 for respondents No.1 and 2.

 None for respondents No.3 to 11 and 12(ii) and 13.

 Respondents No.12(i), 14 and 15 proceeded ex-parte
 vide order dated 16.10.2019.

G.S. SANDHAWALIA, J.(Oral)

By way of the present writ petition filed under Article 226/227 of the Constitution of India, the petitioners have challenged the order dated 16.09.1996 (Annexure P-5), whereby respondent No.1-Director, Consolidation of Holdings, Punjab, had allowed the petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the 1948 Act') filed by respondent



No.3-Ajmer Singh for partition of the land comprised in Khasra No.1210//33 min, 635, 636, 872, 681/1, 127, 128, 129, 130, 703, 704, 708, 709, 859, 877, 878, 873, 874, 875, 876 and 879, total measuring 67 Kanals 8 Bighas 8 Biswas falling in Village Bhojowali, Tehsil Malerkotla, District Sangrur and had remanded the matter to the Consolidation Officer (Tehsildar) with the directions to actually work out the requirements of the common purposes, as per consolidation law. It was further directed that the remaining land left after meeting the requirements of common purposes, be partitioned and distributed amongst the right holders as per their shares. In the impugned order dated 16.09.1996 (Annexure P-5), respondent No.1 also observed that the land in question does not vest in the Gram Panchayat and is not covered under Section 2(g) of the Punjab Village Common Lands Act, 1961 (for short 'the 1961 Act'). Subsequent challenge has also been made to the order passed by respondent No.2-Consolidation Officer, Dhuri on 02.07.1997 (Annexure P-7), whereby the order Annexure P-5 passed by respondent No.1 was given effect to and the land in question was re-distributed amongst the right-holders as per their respective shares.

2. In the written-statement filed on behalf of private respondents No.3 and 6 to 11, it has specifically been denied that the Director Consolidation has no jurisdiction to entertain the petition. It has been submitted that there is no time limit for initiating proceedings under Section 42 of the 1948 Act and the land in question does not come within the definition of Section 2(g) of the 1961 Act and therefore, the reference to the judgments Annexures P-3 and P-4 is misplaced and is liable to be



ruled out of consideration.

3. Learned counsel for the petitioners has submitted that the consolidation proceedings had taken place way back in the year 1952 and the Director Consolidation has no authority and jurisdiction to go into the question whether the land is Shamilat Deh or not and the authorities only under the 1961 Act can decide whether the land is Shamilat Deh or not and the question of ownership can only be decided by the Collector under Section 11 of the 1961 Act. In support of his contentions, he has placed reliance upon the law laid down by Hon'ble Supreme Court in ***Gram Panchayat Nurpur Versus State of Punjab, 1997(3) RCR(Civil) 47*** and ***Gram Panchayat, Village Sidh Versus Additional Director, Consolidation of Holdings, Punjab, 1997(3) RCR(Civil) 491.***

4. In similar circumstances, the Co-ordinate Bench in ***CWP No.4425 of 1997*** titled as ***Gram Panchayat Versus Additional Director, Consolidation, Punjab*** vide order dated 14.01.1998 had answered the question in the following manner:-

“Jagga Singh and few others filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 before the Additional Director, Consolidation, Punjab, Mohali for allotment of certain land by way of partition. This petition was opposed by the Gram Panchayat. The Gram Panchayat also filed written statement. It was specifically mentioned in the written argument that the land in dispute is Shamlat Deh, before the consolidation proceedings in the village



and a question of title can only be decided by the authorities under the Punjab Village Common Lands (Regulation) Act 1961. Other Objections were also taken.

The Additional Director, Consolidation, however, by order dated 19.11.1996 allowed the application and distributed the land to the various right holders as detailed therein. During the course of his order he did notice that the petitioners therein were the owners in possession of “Shamlat Deh Hasab hissis rasab” area. He also noticed that from the perusal of the record it is found that earlier to the consolidation the land in question was the ownership of “Hasab hissis Jadi” and the same was transferred in favour of the Gram Panchayat vide mutation No.147. Hence this writ petition at the instance of the Gram Panchayat.

Learned counsel for the petitioner by reference to the judgments of the Supreme Court in Gram Panchayat Nurpur Vs. State of Punjab and others 1997(1) PLJ 268 and Gram Panchayat Vs. Additional Director Consolidation of Holdings, Punjab and others 1997(1) PLJ 313, submitted that the Director, had no jurisdiction to deal with the land, which was not carved out as a result of cut during consolidation and it is only the Collector under the Punjab Village Common Lands (Regulation) Act, who could decide the title about the land in dispute. Learned counsel thus submitted that the order of the



*Additional Director, passed u/s 42 of the Act is not sustainable in law. Learned counsel also placed reliance on a decision of the Supreme Court in **Gram Panchayat, Nangal Vs. Director of Consolidation & ors. S.L.P. (C) 6989 of 1996** decided on 8.12.1995, to contend that the application under Section 42 of the Act could not be entertained after a lapse of more than 30 years and it ought to have been filed within a reasonable time. In this case it was held by the Supreme Court that where no period of limitation is prescribed, power must be exercised within a reasonable time, which is to be determined on the facts and circumstances of the case.*

After hearing learned counsel for the parties and perusing the record we are of the opinion that the order of the Additional Director, Consolidation, Punjab, Mohali, Annexure P-3 is not sustainable in law as the learned Addl. Director did not keep in view the aforesaid judgments of the Supreme Court. The consolidation in the village admittedly took place in the year 1955-56 and the application under Section 42 of the Act was moved after a lapse of 40 years. Moreover even according to the Addl. Director, the land was Shamlat Deh even prior to consolidation. Once that was so, he could not decide the question of title thereto and the land was required to be dealt with by the Collector, under the provisions of the Punjab Village Common Lands (Regulation) Act. The title to such land can only be decided by the Collector and



none else. In that view of the matter we allow this writ petition, quash the impugned order, Annexure P-3 and leave the parties to approach the appropriate authorities for such relief as may be permissible in law.”

5. Another Co-ordinate Bench in ***Mehar Singh and others Versus Gram Panchayat Sehjo Majra, Tehsil Samrala, District Ludhiana and others, 2013(3) RCR(Civil) 378*** also held that the only authority empowered to decide such question is the Collector, exercising power under the 1961 Act and the consolidation authorities, much less the Director, exercising power under Section 42 of the 1948 Act had no jurisdiction to decide whether the land vests or does not vests in a Gram Panchayat. The relevant portion of the said judgment reads as under:-

“The next contention that as a mutation does not confer title, the mere recording of a mutation by revenue authorities does not divest the petitioners of their title, cannot be accepted. The land, in dispute, was Shamilat Deh and came to vest in the Gram Panchayat under a statutory declaration contained in the 1953 Act, that land described as Shamilat Deh shall vest in the Gram Panchayat. The statutory declaration was to be reflected in the revenue record by way of a mutation as there is no other method whereby a statutory declaration of title can be reflected in the revenue record. The argument that as the Director Consolidation has held that the land does not belong to the Gram Panchayat and thereafter



*proceeded to partition the land amongst proprietors, this order could not be ignored by the Collector, cannot be accepted. Consolidation authorities, much less the Director, exercising power under Section 42 of the Consolidation Act, had no jurisdiction to decide whether land vests or does not vest in a Gram Panchayat. The only authority empowered to decide such a question is the Collector, exercising power under the 1961 Act. A reference in this regard may be made to judgments of the Hon'ble Supreme Court titled **Gram Panchayat, Nurpur v. State of Punjab, 1997(3) RCR (Civil) 47 (SC)** and **Gram Panchayat village Sidh v. Additional Director Consolidation of Holdings, 1997(3) RCR (Civil) 491 (SC)**. Even otherwise and as referred to in the preceding part of this judgment, the Hon'ble Supreme Court granted liberty to the Gram Panchayat to seek adjudication of the question of title.”*

6. It is noticed by us that the notice of motion in the present appeal was issued way back on 04.09.1997. Perusal of the order dated 16.10.2019 shows that respondents No.12(i), 14 and 15 had refused to accept the notice and therefore, they were proceeded against ex-parte. The land in question has been described as *Shamlat Deh Hasab Rasad Zare Khewat*. In similar circumstances, in **CWP No.17984 of 1997** titled as **Gram Panchayat Village Bhambri Versus State of Punjab and others** decided on 12.09.2013, one of us (G.S. Sandhawalia, J.) was party to a similar issue decided by the Co-ordinate Bench wherein it was held that

land which was shown as *Shamlat Deh* in any form cannot be partitioned under the 1948 Act by the authorities.

7. Keeping in view the above facts and circumstances, we are of the considered opinion that the present writ petition deserves to be accepted.

8. Accordingly, the instant writ petition is allowed and the impugned orders Annexures P-5 and P-7 are set-aside, granting the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

September 18, 2024
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No