

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(I)

CWP-14896-1996
Reserved on: 13.02.2024
Date of decision: 20.02.2024

MUNICIPAL COUNCIL BARNALA

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

(II)

CWP-14897-1996

MUNICIPAL COUNCIL BARNALA

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

(III)

CWP-14898-1996

MUNICIPAL COUNCIL BARNALA

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present:

Mr. A.P. Bhandari, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab

Mr. Govind Tanwar, Advocate
for respondent No.4.

Mr. Rajesh Kashyap, Advocate for
Mr. K.S. Chahal, Advocate
for respondent No.5 in CWP-14898-1996.

SURESHWAR THAKUR, J.

1. Since a common issue is involved in all the writ petitions therefore all the writ petitions, are amenable to be decided through a common verdict.

2. For the sake of brevity the facts are taken from CWP-14896-1996.

3. Through the instant writ petition, the petitioner-Municipal Council, Barnala has challenged the order dated 05.01.1996, passed by the Consolidation Officer, Mohali (Hoshiarpur).

For the reasons to be assigned hereinafter there is merit in the instant writ petition, and, the same is required to be allowed.

4. The reason for allowing the instant petition strikingly emanates from the factum that the jurisdiction cast under Section 42 of the The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”) provisions whereof becomes extracted hereinafter, thus was not exercisable by the Authorities, who made the order on 13.07.1995, and, which ultimately led to the making of the impugned annexure P-4, 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:

5. 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 of 1948, is 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 of 1948.

6. The above jurisdiction is but with a holistic purpose, so as to ensure 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 *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 holders. Resultantly, thereby such clerical mistakes do require theirs being undone.

7. 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 of 1948, as through the creation of a rasta, thus easementary rights would become exercised thereons by all the estate holders concerned.

8. Necessarily, the said jurisdiction is not exercisable, thus for making tinkerings with finalized consolidation scheme nor is to be exercised so as to tinker with the updation of records, as is done in terms of Section 22 of the Act of 1948. The reason for disallowing the above tinkerings 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 of 1948, thereby any adjudication as made by the authorities contemplated under Section 42 of the Act of 1948 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 of 1948. Contrarily, in terms of the verdict made by the Full Bench of this Court in case titled as '**Parkash Singh and others versus Joint Development Commissioner, Punjab**', reported in **2014(2) RCR (Civil) 721**, 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 of 1948, is to be exercised only by the Civil Court of competent jurisdiction or by the statutory forum concerned.

“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.”

9. 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).

10. 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 of 1948 by the competent statutory authority is to be exercised in respect of any order passed in terms of Section 21 of the Act of 1948. Moreover, the words subsequent to “any order passed” inasmuch as, scheme prepared or confirmed or re-partition made by any officer under the Act of 1948 are to be construed to be relating “to an order” whereby any scheme prepared or confirmed or re-partition made by any officer under the Act of 1948, 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 of 1948.

11. The provisions of Section 21 of the Act of 1948, 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.

12. Since the jurisdictional domain of the Consolidation Officer as enshrined in Section 21 of the Act of 1948, extends to re-partition of the said lands, even after the happenings of finalization of the consolidation scheme under Section 20 of the Act of 1948, 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, thereby 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 of 1948, 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 recourses encapsulated in Section 21 of the Act of 1948, but yet the employment by the aggrieved of the said statutory recourses, yet has to take place prior to the updation of the records taking place in terms of Section 22 of the Act of 1948.

13. 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 of 1948, when all are the subject matter of the statutory provisions embodied in Section 21 of the Act of 1948. 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 of 1948, thereby when orders for making any interference thereons, is but passed by the officers enunciated in Section 21 of the Act of 1948. 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 of 1948, whereby when the said undoings or affirmation, 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. 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 of 1948, thus at a stage post the updation of records taking place.

14. 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 of 1948, 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 of 1948, besides when the said section occurs

post Section 21 of the Act of 1948. 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 of 1948, rather the updation of records in terms of Section 22 of the Act of 1948, thus takes place. Therefore, reiteratedly when only at the said stage of testings', thus the jurisdiction under Section 42 of the Act of 1948, is exercisable, but when 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 of 1948. Preponderantly also when on updation of records, there is a complete estoppel against the workability of the mandate of Section 42 of the Act of 1948, rather in the said event the jurisdiction to adjudicate vis-a-vis grievance(s) *qua* mis-allotments or under allotments being made to the estate holders concerned, is in terms of the verdict made in ***Parkash Singh's case (supra)***, rather to be exercised only by the Civil Court of competent jurisdiction/statutory forum.

15. Since through the impugned order (Annexure P-4) since rather an interference has been made vis-a-vis the finalized consolidation scheme, but after the updation of records taking place, and, that too, when more than 34 years has elapsed since the finalization of consolidation scheme, thereby also the jurisdiction as exercised through the impugned order, rather is completely beyond the contours of Section 42 of the Act of 1948.

16. Consequently, in terms of the said judgment (supra), and, also in view of the findings recorded by this Court, suggestive that the dispute engaging the contesting litigants involves a disputed question of title. Therefore, this Court allows the instant petitions, and, quashes and sets aside the impugned orders, leaving liberty to the aggrieved to access the Civil Court of competent jurisdiction to file therebefore a declaratory suit for thereby his seeking the annulment of the records, as has occurred in terms of Section 22 of the Act of 1948.
17. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

20.02.2024
Ithlesh

(SUKHVINDER KAUR)
JUDGE

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