

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4929-1996
Reserved on: 15.04.2024
Date of decision: 29.04.2024

TARSEM LAL AND ANOTHER

...Petitioners

Versus

THE ADDITIONAL DIRECTOR, CONSOLIDATION, PUNJAB AT
MOHALI AND OTHERS

...Respondents

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

Present: Mr. Madan Lal Saini, Advocate
for the petitioners.

Mr. Deepak Jindal, Advocate
for respondent Nos.2 to 5.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners have challenged the impugned orders dated 17.08.1982 (Annexure P-4), dated 12.9.1983 (Annexure P-5), dated 26.05.1992 (Annexure P-6), dated 31.01.1996 (Annexure P-8), and, dated 15.03.1996 (Annexure P-9).
2. The brief facts of the case are that the consolidation proceedings in the revenue estate of village Patti Mashian Zira, Tehsil Zira, District Ferozepur were concluded before the year 1960. Therefore, entitlement of all the right holders were assessed in the Naksha Hakdarwar and thereafter they were allotted lands as per the valuation of their shares. Resultantly, as such the finalized consolidation scheme

became drawn, and, also in terms of Section 22 of the Act, became updated.

3. That during the process of partition of Shamlat Deh land a vast track area fallen to the share of one Bihari Lal, who is father of Mohan Lal; a person similarly situated like the petitioners and from them the petitioners purchased land in a bonafide manner for valuable consideration and are in possession of the same till date.

4. That one Gurbax Rai (father of private respondents), was the owner of 2 Kanal and 16 Marlas as per Lari No.918, 919, and in Patti Machian his share came to be around 1 Marla only, and, the same was given to him at the time of partition of the said Khata.

5. That one Jagdish Chander son of Manohar Lal along with his brother filed an application (Annexure P-1) under Section 42 of the Act, whereby they pleaded that by partitioning of Shamlat Deh Khewat rather loss has been caused to them and lesser area has been allotted to them, than their entitlement, thus therebys allotments be made rather in terms of their possession. Similar application was moved by one Raja Devi and, both these applications were treated as petitions No.81 and 196 and were disposed of vide common order rendered on 22.06.1971 (Annexure P-2), by the then Additional Director, Consolidation, and, it was ordered that the scheme be amended and the case was remanded to the Consolidation Officer for necessary action.

6. That the said Jagdish Chander again moved an application under Section 42 of the Act, before the Additional Director, Consolidation, with a prayer that the order dated 22.06.1971 (Annexure P-2) be implemented. The said application was disposed of, on

10.08.1978 (Annexure P-3), whereby it was ordered that it is not possible to implement the said order without disturbing the whole village and the said Jagdish Chander can be compensated out of the Bachat land which has been wrongly allotted in the name of Municipal Committee. Resultantly, the case was sent to the Consolidation Officer for necessary action.

7. In consequent thereto, the Consolidation Officer passed an order dated 24.3.1979, wherein it was ordered that the land be allotted to Shri Jagdish Chander and Raja Devi etc. out of the Municipal Committee's land. Resultantly, mutation No.9809 was sanctioned in this regard.

8. Subsequently, one Gurbax Rai (father of private respondents) filed an application under Section 42 of the Act in the year 1981, before the Additional Director, Consolidation, with a prayer that the order dated 22.06.1971 (Annexure P-2) as amended vide order dated 10.08.1978 (Annexure P-3) has not been implemented, and, the same be ordered to be implemented. In the said application only State was impleaded as a party. Vide order dated 17.08.1982 (Annexure P-4), the Additional Director, Consolidation without calling any of the right holders and also without looking into the facts that both these orders have already stood implemented, remanded the lis to the Consolidation Officer.

9. The said Gurbax Singh was not a party in the earlier order, and no relief was given to him vide orders dated 22.06.1971 (Annexure P-2) and order dated 10.08.1978 (Annexure P-3), but these orders were passed at the instance of Jagdish Chander and Raja Devi, to whom land

was allotted out of the Bachat Land vide mutation No.9809 dated 18.05.1979.

10. Pursuant to the orders passed on 17.08.1982 (Annexure P-4), the Consolidation Officer was unable to comply with the directions mentioned in Annexure P-3. Resultantly, said Gurbax Singh again filed an application under Section 42 of the Act before the Additional Director, Consolidation, asking for the same relief. Through an order made thereons, on 12.09.1983 (Annexure P-5), again the Additional Director, Consolidation without calling any report from the Consolidation Officer rather ordered that both these orders be implemented within a period of 3 months.

11. In pursuance to Annexure P-5, the Consolidation Officer sent a report stating therein, that the order can be implemented but only after the entire consolidation operation becomes revoked, but the said report did not find any favour with the OSD to Director, Consolidation, and, it was ordered that the earlier passed orders be implemented. In the meantime, the ACO, prepared some reports at the back of the petitioners, wherein it was recommended that a vast tract of area be withdrawn from the petitioners and other rights holders. The said report was accepted by the Consolidation Officer, besides, that at the back of the petitioners, order dated 26.05.1993, become rendered, order whereof becomes embodied in Annexure P-6. Through the said order, the Consolidation Officer withdrew the area from the petitioners which they had bonafidely purchased and in lieu thereof nothing was given to them.

12. Aggrieved from Annexure P-6, the petitioners filed separate petitioners Nos.25 and 26 of 1993 before the Settlement Officer. During

the pendency of these petitions, other affected person also filed three appeals challenging Annexure P-6. Those appeals were allowed vide order dated 03.05.1994 (Annexure P-7), by the Settlement Officer, and, the Consolidation Officer was directed to see whether the order (supra), have been implemented or not, and, if the same is not implemented, the same be implemented,

13. That when the petitions filed by the petitioners came up for hearing, it was brought to the notice of the competent authority that the impugned order has already been set aside by the Settlement Officer and the case has been remanded to the Consolidation Officer directing him to look into whether the earlier orders have been complied or not. In view of the above, through an order made on 09.08.1994 (Annexure P-7/A), the petitions filed by the petitioners under Section 42 of the Act, was dismissed as infructuous but with liberty to them to join the proceedings before the Consolidation Officer.

14. Gurbax Rai challenged the order dated 03.05.1994 (Annexure P-7), through his filing petition under Section 42 of the Act, before the Additional Director, Consolidation. In the said petition he did not implead the petitioners, besides the other affected persons. The Additional Director, Consolidation accepted the petition vide order dated 31.01.1996 (Annexure P-8); whereby the order made respectively on 03.05.1994 (Annexure P-7) was set aside, and, the order dated 26.05.1993 (Annexure P-6) was upheld.

15. The the impugned order dated 31.01.1996 (Annexure P-8) was passed at the back of the petitioners, as such when they came to know about the passing of the said order, they moved an application

under Section 42 of the Act for recalling of the order (supra). In the said application, the petitioners had pleaded that the Consolidation Officer has withdrawn an area from them and nothing has been given in lieu thereof. They are bonafide purchasers, as such, their rights cannot be taken away without hearing them. But the said application was dismissed by the Additional Director, Consolidation, through an order made on 15.03.1996 (Annexure P-9).

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

16. 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 respectively made annexures P-4, P-5 and P-6, which ultimately led to the making of the impugned annexure P-8, whereby the Additional Director Consolidation of Holdings, Punjab at Mohali, accepted the petition of predecessor-in-interest of the private respondents. Through the said annexures the finalized consolidation scheme, besides apparently the record of rights, as became updated in terms of Section 22 of the Act, become tinkered with, besides become untenably scuttled.

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:*

17. 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 only upon a motion asking for corrections being done of arithmetical, and, clerical mistakes as occur in the finalized consolidation scheme and in sequel whereofs, thus the updation of records is made in terms of Section 22 of the Act.

18. 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*, such well conferred title over the relevant tracts of lands. Resultantly, thereby such clerical mistakes do require theirs being undone. Irrespective of the said motion being made after the lapse of elongated spell of time since the updation of records taking place in terms of Section 22 of the Act, pursuant to the finalization of the consolidation scheme.

19. 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.

20. 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. 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. Therefore, 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 exercisings of jurisdiction to be beyond the jurisdictional confines of the exercisable jurisdiction vested in it/them, under Section 42 of the Act.

21. Strikingly also when the remedy for seeking the undoings of any errors in the finalized/draft consolidation scheme, is thus, but before the updation of records of rights taking place in terms of Section 22 of the Act. The said remedy is through the aggrieved rather preferring a motion under Section 21 of the Act, for therebys his/her/theirs seeking re-partition or redistribution of the lands, as became spoken in the Scheme Istemal, Khatoni Paimaish, or in the report of the Advisory Committee, besides as become spoken in the finalized/ draft consolidation scheme. However, it appears that despite the said recourses remedy remaining unavailed by the aggrieved from the finalized consolidation scheme, in pursuance whereof the updation of records of rights took place in terms of Section 22 of the Act, yet the remedy under Section 42 of the Act, becoming invoked by the aggrieved concerned.

22. The effect of non adoption by the aggrieved of the remedy constituted under Section 21 of the Act, which otherwise was the able remedy for the aggrieved concerned, seeking redistribution or re-

partitioning of the lands concerned, thus before the updation of records of rights taking place in terms of Section 21 of the Act, is that, when therebys there was acquiescence by all concerned, to the finalized consolidation scheme. Resultantly, the aggrieved become estopped to recourse the remedy under Section 42 of the Act, especially when the contours and limits of the exercisable jurisdiction as contemplated therein, is only for correction of arithmetical error or for the creation of a consolidation rasta when such a rasta is not created in the consolidation scheme.

23. However, despite the contours of the jurisdiction vested in the authority contemplated under Section 42 of the Act, being trammelled within the said domain(s), yet the said jurisdiction become exercised, but even post the updation of records taking place in terms of Section 21 of the Act. Consequently, when despite an estoppel for the reasons (supra), working against the aggrieved concerned, inasmuch as, the said estoppel becoming sparked from the aggrieved concerned, failing to recourse the prior thereto remedy contemplated under Section 21 of the Act, yet the jurisdiction becoming exercised under Section 42 of the Act. Resultantly, the said exercising of jurisdiction, especially when therebys rather disputes relating to disputed question of title becoming settled, as such, makes the said exercising of jurisdiction to become an ill exercised jurisdiction, or is to be said to become exercised with a gross illegality and material impropriety.

24. Conspicuously also in case there was a gross pervasive errors in the record of rights thus relating to inaccurate valuations being made of the relevant tracts of lands, resulting in inequitable allotments

being made to the estate holders concerned, thereupon, such gross pervasive stains manifesting themselves in the record of rights, as become updated in terms of Section 22 of the Act, was through a petition under Section 36 of the Act, being filed before the government so, that in terms thereof, a fresh notification for re-bringing the entire *Mohal* to re-consolidation, thus becomes issued.

25. Therefore, the orders respectively enclosed in Annexures P-4, P-5 and P-6, as become passed through exercising of jurisdiction under Section 42 of the Act, requires theirs becoming declared to be legally flawed, and, as such they are required to be set aside.

26. Consequently, in view of the findings recorded by this Court, this Court allows the instant petition, 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 theirs seeking the annulment of the records, as has occurred in terms of Section 22 of the Act of 1948. Further reserving liberty to the government, to if deems fit, to issue notification under Section 36 of the Act, so that the *Mohal* concerned, is re-brought to fresh consolidation operations being conducted.

(SURESHWAR THAKUR)
JUDGE

29.04.2024
Ithlesh

(LALIT BATRA)
JUDGE

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