

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5219-1996
Reserved on: 15.04.2024
Date of decision: 29.04.2024

MOHAN LAL (DECEASED) THROUGH LR_s AND OTHERS

...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), and, dated 31.01.1996 (Annexure P-8).
2. The brief facts of the case are that the consolidation proceedings in the revenue estate of village 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, the record of rights became updated.

3. That some lands had fallen to the share of the predecessor-in-interest of petitioner No.1, thereby he came in the category of big land owner and in view of the provisions of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act"), area measuring about 29 Standard Acres $8\frac{3}{4}$ units was declared surplus by the Government, and, the land was further utilized as per the Rules.

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 thereby 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, the 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 at the back of the petitioners, order dated 26.05.1993 became rendered, order whereof, becomes embodied in Annexure P-6.

12. Aggrieved from Annexure P-6, the petitioners filed appeal thereagainst before the Settlement Officer stating that the orders

22.06.1971 (Annexure P-2) and order dated 10.08.1978 (Annexure P-3) already stood implemented and no cause of action has accrued to the said Gurbax Rai. Two more appeals were filed by other right holders. All the three 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 orders (supra), have been implemented or not, if the same is not implemented, the same be implemented.

13. 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 Pritam Singh and Tarsem Lal, besides the other affected persons. The present petitioners appeared before the Additional Director, Consolidation, and, also raised objections, yet the Additional Director, Consolidation rather accepted the petition vide order dated 31.01.1996 (Annexure P-8); whereby the order made respectively on dated 03.05.1994 (Annexure P-7) was set aside, and, the order dated 26.05.1993 (Annexure P-6) was upheld.

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

14. 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:*

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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, thus for the seekings of 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 an acquiescence by all concerned, to the finalized consolidation scheme. Resultantly, the aggrieved became 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 but when such a rasta is not created in the consolidation scheme.

21. 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 thereunders became 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 disputes relating to disputed question of title became settled, as such, makes the said exercised jurisdiction to become an ill exercised jurisdiction, or is to be said to become exercised with a gross illegality and material impropriety.

22. 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, as, 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.

23. 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.

24. 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 thus 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 a 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