

In the High Court of Punjab and Haryana at Chandigarh

[221]

CWP-4173-1997

Date of Decision: 13.02.2024

NARANJAN SINGH PETITIONER

VERSUS

STATE OF PUNJAB & OTHERSRESPONDENTS

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

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Ish Puneet Singh, Advocate for respondent No.3.

SURESHWAR THAKUR, J. (ORAL)

1. The learned counsels appearing for the parties before this Court, are, *ad idem*, that after quashing the impugned order, the writ petition be allowed, and, the *lis* be directed to become restored to its original number, inasmuch as *lis* bearing No.685, dated 12.11.1968 be restored, and, thereons, a fresh speaking decision be ordered to be made, but after hearing all affected parties, besides, within a period of three months from today.
2. The above *ad idem* statement is accepted, and, is ordered accordingly.
3. Needless to state that since at this stage, a Full Bench of this Court has rendered a decision in “Parkash Singh and others Vs. Joint Development Commissioner, Punjab and others” wherein in relevant paragraphs No. 42 to 46 thereof, the relevant paragraphs whereof stand extracted hereinafter, an expostulation of law has been made that in respect of disputed questions of title, thus arising qua the disputed lands rather amongst

the litigants concerned, thereupon, the said disputed questions of title, being not amenable to be either heard or decided in proceedings drawn under Section 42 of East Punjab Holdings(Consolidation and Prevention of Fragmentation) Act, 1948, but the said disputed questions of title, being permitted to be raised before the jurisdictionally competent Civil Court concerned, and, also such disputed questions of title being amenable to be adjudicated, upon, by the jurisdictionally competent Civil Court concerned.

“42.Their Lordships, thereafter, examined Section 16-A of the Consolidation Act and Section 117 of the 1887 Act, in detail, and proceeded to hold that the right of a Consolidation Officer to partition land, is subject to any decision, on the question of title, by a civil Court, as prescribed by Section 117 of the 1887 Act. An extract from the judgment reads as follows:-

So the matter of partition in consolidation of holdings is subject to the provisions of section 117 of that Act; it follows that whatever is the consequence stated in sub-section (2) of section 16-A is subject also to the provisions of section 117 of Punjab Act 17 of 1887. No doubt according to sub-section (2) of section 16-A of East Punjab Act 50 of 1948, notwithstanding anything to the contrary contained in any law for the time being in force, when land has been partitioned pursuant to a scheme confirmed under section 20 of that Act, it is to be held by each owner or tenant, to whom it has been allotted, in full right of ownership or tenancy, as the case may be, and the rights of other joint-owners or joint-tenants in the land are deemed to be extinguished. When this sub-section says that its provisions are to prevail 'notwithstanding anything to the contrary contained in any law for the time being in force,' these words do not exclude subsection (1) of the very section of which sub-section (2) is a part, that is to say, sub-section (1) of section 16-A of East Punjab Act 50 of 1948. So the provisions of both sub-section (1) and sub-section (2) of section 16-A of that Act are subject to a decision of the

question of title by a civil Court under section 117 of Punjab Act 17 of 1887.

43. The Hon'ble Judges of the Full Bench, thereafter, concluded as follows:-

7.It has been held in *Jit Singh v. State of Punjab, (a) CW 538 of 1962, decided on 11th November, 1962.* (P.C. Pandit, J.); *Ram Gopal v. The State of Punjab (Grover and Jindra Lal, JJ.), Beg Raj v. The Additional Director, Consolidation of Holdings 1966 Curr. LJ (Pb.) 134.* (Shamsher Bahadur, J.), and *Bhajan Lal v. The Punjab State, CW 439 of 1965, decided on 19th May, 1966.*(P.C. Pandit, J.), that when a question of title arises at the time of making provision for partition of joint holdings in a scheme of consolidation, then such a provision is not to be made until the question of title is disposed of by a civil Court according to section 117 of Punjab Act 17 of 1887.....The result then is that if a right-holder endeavours to raise what he considers is a question of title at the time of the framing of the scheme of consolidation and objects to a provision in that scheme for partition so far as his holding is concerned, then, if the officers under East Punjab Act 50 of 1948 reach a conclusion that a question of title is involved, they must stay their hands and leave the question of title to be decided in a civil Court, but if, on the contrary, they come to the conclusion that a question of title does not arise before them for the matter of framing the scheme of consolidation, then an aggrieved right-holder has one of the two courses open, (a), to go immediately to a civil Court and obtain a decision on the question of title claimed by him, or, (b) if he does not pursue the first course, to go before a civil Court after the completion of the partition and obtain a decision on the question of title as claimed by him. He would be doing so under section 117 of Punjab Act 17 of 1887, which is an exception kept alive by section 16-A of East Punjab 50 of 1948, and in either of the two cases, as above, the operation of sub-section (2) of

section 16-A of East Punjab Act 50 of 1948 will be subject to the decision of the civil Court.”

44. A perusal of this judgment reveals that Consolidation authorities exercise powers of revenue authorities but as Section 16- A of the Consolidation Act excludes Section 117-A of the Punjab Land Revenue Act, from power conferred, a Consolidation Officer, is not empowered to decide a question of title. The consistent view of this Court, for the last more than four decades, has been that Consolidation authorities, are not empowered to deliberate upon, much less decide a question to title. A few relevant judgments, holding as above, are ***Beant Singh and others v. State of Punjab and others, 1966 P.L.R., 221(DB), Karam Singh v. Harpal Bahadur Singh and others, 1970 P.L.J., 99.***

45.The matter, however, does not rest here. A dispute relating to the power of Director Consolidation, to decide whether land vests or does not vest in the Gram Panchayat came up for consideration before the Hon'ble Supreme Court in ***Gram Panchayat, Village Sidh v. Additional Director, Consolidation of Holdings, Punjab, (SC), 1997 (3) R.C.R.(Civil) 491 and Gram Panchayat, Nurpur v. St ate of Punjab, (SC), 1997(2) P.L.R., 694.*** The facts of these cases were that the Director Consolidation had partitioned “Shamilat Deh” amongst proprietors, while exercising power under Section 42 of the Consolidation Act, by holding that the land does not vest in the Gram Panchayat. After considering provisions of the Consolidation Act and the 1961 Act, the Hon'ble Supreme Court held that a Director Consolidation, exercising power under Section 42 of the Consolidation Act, is not empowered to decide whether land vests or does not vest in a Gram Panchayat as the only authority empowered to decide such a dispute is the Collector, exercising power under Section 11 of the 1961 Act. A relevant extract from the judgment in Gram Panchayat, Nurpur (supra) reads as follows:-

“The question before the Additional Director, Consolidation of Holdings, Punjab was whether the land in dispute was shamilat deh land and as such owned by the Gram Panchayat or it was

owned by the proprietors of the village. The Additional Director came to the conclusion that the respondents were the owners and proprietors of the land. The Gram Panchayat challenged the order of the Additional Director by way of a writ petition before the High Court. The petition was dismissed in limine.

2. Sections 11 and 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (the Regulation Act) are as under:

“Section 11. Decision of claims of right, title or interest in shamilat deh.- (1) Any person claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub- section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form as manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such as he deems fit.

Section 13. Bar of Jurisdiction of Civil Courts:- No civil court shall have jurisdiction:- (a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat under this Act ; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

3. It is not disputed that the jamabandi entries for the year 1944-45 prior to the Consolidation Act read as “Shamilat Deh Hasab Rasad Khewat” and in the cultivation column entry is “Maqbooza Malkan”.

4. The Additional Director interpreted the entires to mean that the respondents were in continuous possession of the land in dispute from 1944-45 onwards and on that assumption, he came to the conclusion that despite the entry in the column of assumption, he came to the conclusion that despite the entry in the column of ownership, the land was not shamilat deh land and as such did not vest in the Gram Panchayat. The High Court upheld the finding by dismissing the writ petition in limine.

5. We are of the view that the Additional Director Consolidation, had no authority to go into the question whether the land in dispute was shamilat deh or not. This is a question which could only be decided by the authorities under the Regulation Act. We, therefore, allow the appeal, set aside the impugned order of the Additional Director Consolidation and also the order of the High Court and send the matter before the Collector, Kapurthala for decision in accordance with law under the Regulation Act. We make it clear that the Collector shall decide the matter afresh in accordance with law irrespective of the orders passed by the Consolidation Authorities in this respect. We direct the Collector to decide the matter within 2 months of the receipt of this order.”

46. 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.”
4. The Remandee Court is directed to bear in mind the above, expostulations of law and after applying its them to the facts embodied in the relevant *lis*, thus the Remandee Court concerned, is directed to pass lawful orders on the remanded *lis*.
5. Pending application(s), if any, shall also stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 13, 2024
ANJAL

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