

105

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8213-1995 (O&M)
Date of decision:07.02.2024

TEJA SINGH (DECEASED) THROUGH LRs AND ORS.

...Petitioners

Versus

STATE OF PUNJAB AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. G.S. Nagra, Advocate and
Mr. K.S. Rawat, Advocate for the petitioners.

Mr. Maninder Singh, DAG, Punjab

Mr. R.K. Chauhan, Advocate for
Mr. M.L. Saini, Advocate
for respondent No.4.

SURESHWAR THAKUR, J. (ORAL)

1. One Karnail Singh, and others instituted a petition under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”). In the said petition the petitioners claimed the hereinafter extracted reliefs.

“That before consolidation Khata of Harnam Singh, Nidhan Singh, Pal Singh in equal share (1/3 each) was joint and had old Khasra Numbers 706 (3-8), 711 (3-13) and new khasra number 55/62 (5-18) was deducted from Nidhan Singh 1-11, Pal Singh 1-11 and 2-17 from Harnam Singh. The area of above Khasra Number be partitioned amongst the co-sharers according to their share and deficiency caused to the petitioner be made good.”

2. On the said petition, the Director, Consolidation of Holdings, Punjab made Annexure P-7, whereby he proceeded to make remand of the lis to the Consolidation Officer concerned, with a direction to him that after hearing all the contesting litigants, his proceeding to, if the said claims are admissible under the scheme, to accordingly allow or reject the said claims.
3. The Consolidation Officer concerned, in terms of directions made, upon him through Annexure P-7, proceeded to, make the amendments in the manners, as detailed in Annexure P-8, amendments whereof become extracted hereafter.

Sr. No.	Name of owner	Excluded			Included		
1.	Karnail Singh-Jarnail Singh- Jit Singh sons of Harnam Singh in equal shares	55//62 min	0-18	0-18	192//18/4 19/2 71//12/5 north-west 77//9/6 north-east Qitta 4	3-4 4-3 0-12 0-7 8-6	1-4 1-11 0-12 0-7 3-14
2.	Karnail Singh etc. KH. No.2983 mortgagors, Arjun Singh son of Sunder Singh mortgagee	192//18/4	3-4	1-4	Xxx		
3.	Karnail Singh etc. KH. No.2984 mortgagors, Inder Singh-Sardara Singh sons of Waryam Singh in equal shares mortgagees.	192//19/2	4-3	1-11	Xxx		
4.	Teja Singh- Megha Singh- Harnek Singh sons of Nadhan Singh in equal shares.	71//12/5 North-West 77//9/6 North-East Qitta	0-12 0-7 0-19	0-12 0-7 0-19	55//62 min	0-18	0-18

4. The learned State counsel submits, that the aggrieved from Annexure P-8 preferred an appeal thereagainst before the learned Additional Director concerned. On the said appeal, the learned Additional Director made an order on 31.10.1989, whereby he proceeded to after accepting the

said appeal make an order of remand to the Consolidation Officer concerned.

5. In pursuance to the said order of remand, the Consolidation Officer concerned, as unfolded by Annexure P-10, proceeded to make the hereinafter extracted corrections or modifications in the consolidation scheme.

Sr. No.	Name of owner	<u>Excluded</u>			<u>Included</u>		
		Number	O.A.	St. A	Number	O.A.	St. Area
1.	Karnail Singh-Jarnail Singh- Jit Singh sons of Harnam Singh in equal shares	55/62 min	0-18	0-18	192//18/4 19/2 71//12/5 North-West 77//9/6 North-East Total:	3-4 4-3 0-12 0-7 8-6	1-4 1-11 0-12 0-7 3-14
2.	Karnail Singh etc. KH. No.2983 mortgagors, Arjun Singh son of Sunder Singh mortgagee	192//18/4	3-4	1-4	Xxx		
3.	Karnail Singh etc. KH. No.2984 mortgagors, Inder Singh-Sardara Singh sons of Waryam Singh in equal shares mortgagees.	192//19/2	4-3	1-11	Xxx		
4.	Teja Singh- Megha Singh- Harnek Singh sons of Nadhan Singh in equal shares.	71//12/5 North-West 77//9/6 North-East	0-12 0-7 0-19	0-12 0-7 0-19	55//62 min	0-18	0-18

6. Annexure P-10 brought grievance to the aggrieved therefrom, and, thus they filed an appeal thereagainst before the Settlement Officer, who through an order embodied in Annexure P-11 after accepting the said appeal proceed to set aside the order made on 04.02.1992, by the Consolidation Officer concerned, and, remanded the lis to him with a direction that deficiency in the area of appellants be made good from the reserve area.

7. At the outset, it is fairly conceded today before this Court by the learned counsels appearing for the litigants, that the petition (supra), as became laid under Section 42 of the Act of 1948, before the competent authority concerned, became so laid after almost a period of 35 years, lapsing since the finalization of the consolidation scheme, rather taking place.

8. Though, in the light of the above grossly barred motion becoming laid before the competent authority concerned, thereby the said motion was required to be rejected at the very threshold. However, yet when there is no period of limitation, as such is prescribed in Section 42 of the Act of 1948, but yet any motion which is preferred in terms of the said provision, is to be laid within a reasonable period of time. Moreover, the bar of limitation as contemplated in the provisions (supra), may not *stricto sensu* become attracted, to a situation when gross errors or clerical mistakes became reflected in the updation of records, as made in terms of Section 22 of the Act of 1948, inasmuch as, the updation of records not synchronising with the scheme *istemal*, *naksha pamaish* or *misl hakiat* as became drawn by the Consolidation Officer concerned.

9. Though, the learned counsel appearing for the respondent No.4 has today argued before this Court, that the errors as were ordered to be rectified, thus were validly rectified, as they were merely arithmetical mistakes or clerical errors which crept into the records of rights, as became, so updated, on completion of the consolidation operation. Therefore, he submits that as such thereby no disputed question of title arose nor thereby became ousted the jurisdiction created under Section 42 of the Act of 1948.

10. However, for the reasons to be assigned hereinafter, not only the petition (supra), was grossly time barred, and, as such was required to be

rejected at the threshold, but also the said motion, nursed a grievance directly relating to a dispute arising amongst the contesting litigants, with respect to the entitlements to lands, which they claim to be mis-allotted to one or the other and/or, related to there being a deficiency in the areas, as became allotted to one or the other.

11. The above plea became founded on the premise, that the Consolidation Officer concerned, after purportedly awarding owelty to the estate holders concerned, in lieu of subtracting areas from his land shares, as declared in the pre consolidation record, his thus yet proceeding to also allot lands, which were otherwise not allottable to the estate holders concerned.

12. Learned counsel for respondent No.4 has yet vociferously submitted before this Court, that the said manner of making corrections are vis-a-vis arithmetical or a clerical mistakes. Nonetheless, as stated (*supra*), the core controversy, as espoused before this Court, by the learned counsels appearing for the litigants concerned, is not in respect, of any owelties becoming awarded by the Consolidation Officer concerned, during the course of his conducting consolidation operation, in the *mohal* concerned, nor the core controversy appertains to, in lieu thereof some mis-allotments yet being made to the recipients of owelties, rather it appears that the controversy which otherwise is engaging the contesting litigants concerned, appertains to compensation at the pre consolidation area becoming adjudged in respect of the lands owned by the litigants concerned, besides the said assessed compensation becoming in terms of the shares of the landowners concerned, in the acquired estates also becoming received by them. Importantly also when as such the said acquired lands did not vest in the landowners concerned, rather vested in the Acquiring Authority whether

therebys too some lands in lieu of such acquired lands were to be awarded to the land-losers concernd.

13. Therefore, since at the pre consolidation era, in terms of their respective shares in the landholdings concerned, the joint estate owners in the joint khata rather received compensation. Resultantly, there was no occasion for the Consolidation Officer concerned, and, neither did it so arise that the awards any purported owelties to the estate holders concerned, in lieu of his subtracting lands from their respective share(s) in the joint holdings.

14. Consequently, the above core controversy which engages the contesting litigants, was not required to be rested or settled in proceedings drawn under Section 42 of the Act of 1948, inasmuch as, the said controversy did not relate to any arithmetical or clerical errors creeping in the records of right, which became updated in terms of Section 22 of the Act of 1948, but the dispute (supra), related to the tenability of allotments or mis-allotments being made respectively through the apposite records which became prepared by the Consolidation Officer concerned, prior to the updation of records (supra), taking place in terms of Section 22 of the Act of 1948.

15. In sequel, when the said controversy, did not reiteratedly require remediations, given theirs being made no rectifiable arithmetical or clerical errors, rather when it related to an entrenched dispute arising amongst the estate holders, thus relating to their respective entitlements, to the land shares as awarded to them in the *istemal*, *naksha pamaish* or *hissa hakiat*, besides in the *misl hakiat*. Therefore, the said issue of mis-allotments, or under allotments was required to be settled in a civil suit becoming instituted

by the aggrieved from the finalized consolidation scheme concerned. Significantly also when impugned orders do impermissibly tinker with the finalized consolidation scheme, and that too after an inordinate delay of almost 35 years occurring since the said scheme becoming finalized.

16. The above view is analogically supported by a Division Bench of this Court rendered in 'Parkash Singh and others versus Joint Development Commissioner, Punjab', reported in 2014(2) RCR (Civil) 721, relevant paragraph whereof becomes extracted hereinafter.

"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."

17. 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 disputed question of title.

Therefore, 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 thereafter a declaratory suit for thereby annulling the updation of records, as has occurred in terms of Section 22 of the Act of 1948.

- 18. No order as to costs.
- 19. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

07.02.2024
Ithlesh

(SUDEEPTI SHARMA)
JUDGE

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