

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-716-1996
Reserved on: 01.02.2024
Pronounced on: 19.02.2024

GRAM PANCHAYAT VILLAGE NORANGSHAHPURPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

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

Argued by: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Anirudh Gupta, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Navjot Singh, Advocate with
Mr. Shubham Tandon, Advocate
for respondents No. 4 and 5.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, a challenge is made to order dated 16.08.1995 (Annexure P-5), whereby the Director Consolidation of Holdings, Punjab, Jalandhar, exercising jurisdiction under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Consolidation Act, 1948') remanded the case to the consolidation officer. The relevant part of the order is extracted hereinafter.

“ I, therefore, remand the case to consolidation officer to work out the entitlement of the respondents in terms of

standard area as well as in ordinary area and if there is any shortage then allot them out of Khasra No. 363. He should ensure that no land should be allotted where there is construction and street or pond area actually used. The request of the petitioner regarding not allotting panchayat land is however is rejected.”

Brief facts of the case.

2. The consolidation proceedings took place in the *mohal* concerned in the year 1955-56. Thereafter, a petition under the 'Consolidation Act, 1948' was filed by the private respondents stating therein that during the consolidation they were not given complete land and there is a shortage to the extent of 6 kanals 17 marlas, shortage whereof may be made good. On that basis, the Director Consolidation vide order dated 17.07.90 on the apposite petition, remanded the case to the Consolidation Officer, to state whether any shortage has taken place, the reasons thereof and to make good the same.

3. It is averred in the writ petition that the Consolidation Officer through an order made on 17.05.1993 (Annexure P-2), on the remanded *lis*, withdrew an area of 6 kanals 17 marlas from the Gram Panchayat, which includes an area of 17 marlas out of khasra No. 363, which has been given to respondents No. 4 and 5. In the said khasra number, the area is earmarked for *chhapar* and part of it was for Gurudwara Sahib and Dharamshala.

4. The petitioner-Gram Panchayat aggrieved therefrom filed an appeal before the Settlement Officer. However, the Settlement Officer through an order (Annexure P-3) dismissed the said appeal.

5. Feeling aggrieved therefrom, the petitioner filed thereagainst an appeal before the Assistant Director, Consolidation of

Holdings, Punjab Jalandhar. However, through an order drawn on 03.08.1994 (Annexure P-4), the said appeal became dismissed.

6. Aggrieved from the afore orders, the petitioner Gram Panchayat filed a petition under Section 42 of the 'Consolidation Act, 1948' before the Director Consolidation of Holdings, Punjab, Jalandhar.

7. Through, an order drawn on 16.08.1995, on the apposite petition, the Director, Consolidation remanded the case to the Consolidation Officer with the direction(s) extracted above.

8. The making of Annexure P-5, has caused pain to the petitioner-Gram Panchayat, and, has led to institute thereagainst the instant writ petition.

INFERENCES OF THIS COURT.

9. The core controversy which has emerged amongst the contesting litigants, is whether there was any legal justifiability, to after snatching the lands of the Gram Panchayat concerned, which became earmarked to it, in the finalized consolidation scheme, to thereafter make allotment(s) thereof, to the private respondents, so as to ensure that deficiency, if any, in the area allotted to them thus becomes overcome.

10. The disputed lands appear to become reserved for the benefit of the village proprietary body, thereby, the Gram Panchayat concerned, was made the Manager and Controller of the disputed lands, which however became snatched from the Gram Panchayat concerned, and, were allotted to the private respondents to make good, the deficiency in the area, as became allotted to them.

11. Necessarily, thereby, the persons who became affected by

were members of the entire village proprietary body. Necessarily, also, the said subtractions from the areas allotted to the Gram Panchayat concerned, for ensuring theirs becoming used for the common purposes of the village proprietary body, did not occur, from the estates of private individuals concerned.

12. If the subtraction had occurred from the estates of private individuals concerned, and, thereafter such subtracted areas, become allotted to the private respondents, rather to make good the deficiency in the areas of lands allotted to them in the consolidation scheme, besides if the said also resulted in the other estate holders concerned, from whose estates, such subtractions were made, becoming also compensated. Moreover, when both consenting to such an arrangement, that thereby may be to a limited extent, the jurisdiction conferred under Section 42 of the 'Consolidation Act, 1948' may have been construed to become validly exercised. However, the above was not the scenario, in the instant case.

13. The reason for making the above conclusion spurs, from the factum that the scope of the jurisdiction to be exercised in a petition under Section 42 of the 'Consolidation Act, 1948', is limited to correction of clerical or arithmetic errors, as occur in the records of rights, as prepared in sequel to the consolidation operations conducted in the *mohal* concerned, and/or is confined to create a consolidation *rasta*, but if the said *rasta* is not carved in the consolidation scheme.

14. Resultantly, when therebys no valid jurisdiction became conferred upon the Competent Authority contemplated under Section 42 of the 'Consolidation Act, 1948', to either try or make a decision

15. In sequel, when there is no material placed on record declaring that the impugned order (Annexure P-5), was with regard to a clerical or arithmetical mistake rather when apparently a entrenched dispute arose with respect to the entitlement of the private respondents vis-a-vis the disputed lands, as such, there was no jurisdiction vested in the authority contemplated under Section 42 of 'the 1948 Act', to either try or make an adjudication on the said motion, nor could it be exercised so as to tinker with the consolidation scheme.

16. Therefore, when the purpose of the petition is, to make tinkering with the consolidation scheme, inasmuch as, to snatch the lands vested in the Gram Panchayat concerned, but for facilitating the village common purpose, therebys, but obviously a serious dispute arose with respect to title on the disputed lands respectively inhering in the Gram Panchayat concerned, or in the private respondents concerned.

17. Since the above dispute did emerge amongst the contesting litigants. Therefore, the entertainment of the said dispute, much less any makings of any valid adjudication thereons, as untenably done through the making of the order of remand, rather was beyond the permissible jurisdictional limits (supra), as invested in the Authority contemplated under Section 42 of the 'Consolidation Act, 1948'.

18. Tritely put in the event of the said dispute emerging, thus as declared by a verdict made by the Full Bench of this Court in case titled as '**Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others**' reported in **2014 (2) R.C.R. (Civil) 721**, relevant paragraph whereof is extracted hereinafter, the said

the civil Court of competent jurisdiction and/or by the competent authority contemplated under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, and, not by the authority contemplated under Section 42 of the 'Consolidation Act, 1948'.

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."*

FINAL ORDER OF THIS COURT.

19. In aftermath, this Court finds merit in the writ petition, and, with the above observation(s), the same is allowed. The impugned

order (Annexure P-5) is quashed and set aside.

20. However, this Court reserves liberty to the private respondents concerned, to access the legally permissible remedies in terms of *Parkash Singh’s case (supra)*, especially to propagate before the Civil Court concerned, that they are bonafide purchasers for consideration of the disputed lands.

21. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

19.02.2024

kavneet singh

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