

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 9993 of 1996 (O&M)

Reserved on : 14.2.2024

Date of Decision: 20.2.2024

Labh Singh and others

.....Petitioners

Versus

Additional Director Consolidation, Punjab,
Mohali and others

.....Respondents

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

Argued by: Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. B.S.Mann, Advocate for
Mr. G.S.Nagra, Advocate
for respondents No. 2 and 3.

Mr. Naresh Chander, Advocate for
Mr. N.S.Dadwal, Advocate for respondent No. 4.

SURESHWAR THAKUR, J.

1. The instant petition is directed against the order dated 19.4.1996 (Annexure P-1), passed by the Additional Director, Consolidation of Holdings, Punjab, Mohali, whereby on a petition instituted before him under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948'), the Additional Director, Consolidation, thus proceeded to after snatching the lands, which became allotted to the Gram Panchayat concerned, in the finalized consolidation scheme, rather allot them to the petitioners therein.

2. Be that as it may, since it is averred in the instant petition, that since the issue qua the legality of the said allotments, as made through Annexure P-1, to the village proprietor concerned, is similar to the one, as

learned counsels submit, that the decision made by this Court in CWP-17632-1995, be also made in the instant writ petition.

3. In the wake of the above *ad idem* statement made before this by all the learned counsels for the contesting litigants, this Court proceeds to quash the impugned order, thus on the ground that thereby there has been an untenable tinkering with the finalized consolidation scheme, despite the jurisdiction vested in the Director concerned, under Section 42 of the Act of 1948, being trammled to make rectifications vis-a-vis arithmetical errors or clerical mistakes, as occur in the record of rights, as drawn in terms of Section 22 of the Act of 1948, and/or in case a consolidation rasta is not carved in the consolidation scheme, thereupon to carve a consolidation rasta for the estate holders concerned, thus for enabling the latter to exercise thereons their easementary rights.

4. Needless to say, that except the above, no other jurisdiction is vested in the Director, Consolidation, in his exercising powers under Section 42 of the Act of 1948, to either tinker with the finalized consolidation scheme, or to order for re-partition or re-allotment of the lands to the estate holders concerned, and, that too after snatching from the Gram Panchayat concerned, thus the lands which became earmarked qua it for the village common purpose.

5. Necessarily when through the impugned order tinkerings are visibly made with the finalized consolidation scheme, besides when therebys there are purportedly unjustifiable allotments of lands, thus to the estate holders concerned, but after the said lands becoming snatched from the Gram Panchayat concerned. Resultantly thereby, the limits (*supra*) of the exercisable jurisdiction thus by the authority concerned, but has been

patently transgressed.

6. Since the jurisdiction to make any interference with the finalized consolidation scheme, and/or the jurisdiction to try any disputed question of title relating to under allotments or mis-allotments being made respectively to the Gram Panchayat concerned, or to the private estate holders concerned, thus by the consolidation officer concerned, rather is triable, as declared by a Full Bench of this Court in case titled as '**Parkash Singh and others versus Joint Development Commissioner, Punjab**', reported in **2014(2) RCR (Civil) 721**, thus by the jurisdictionally competent Civil Court concerned. The relevant paras of the judgment (supra) are extracted hereinafter.

“The arguments addressed by counsel for the parties, appear to suggest a broad agreement that the Director Consolidation, has no power whether under Section 42 of the Consolidation Act or under any other provision to decide a question of title relating to "Shamilat Deh" but as counsel for the petitioners has raised a plea that in case there is an error in consolidation proceeding and the error is likely to affect ownership of a proprietor or the Gram Panchayat in "Shamilat Deh", the Director Consolidation would be entitled, in the exercise of power under Section 42 of the Consolidation Act, to order such a correction, even if it adversely affects the ownership of a Gram Panchayat, the plea requires a degree of consideration. Counsel for the petitioners also contends that as "Jumla Mushtarka Malkan" is not included in "Shamilat Deh" by Section 2(g) of the 1961 Act, Consolidation authorities, who have created "Jumla Mushtarka Malkan" in the exercise of powers under Section 18, 23-A of the Consolidation Act and Rule 16(ii) of the Consolidation Rules would necessarily be empowered to decide whether the land is or is not "Jumla Mushtarka Malkan", i.e., whether it was created by applying an excessive pro-rata cut on the holdings of proprietors and whether land described as "Jumla Mushtarka Malkan" was

actually earmarked or reserved for a common purpose and as a consequence whether the land vests in the State Government or the Gram Panchayat, for the purpose of management and control.”

7. While answering the question raised, the Full Bench of this Court in the abovesaid case held as under:-

“Accepting for a moment that power conferred by Section 42 of the Consolidation Act empowers the State or its delegate, the Director Consolidation/ Director Land Records to order correction of any error committed, while establishing the "Shamilat Khewat" or creating "Jumla Mushtarka Malkan" and while doing so to adversely affect the proprietary or possessory rights of a Gram Panchayat or the State, such an order, in our considered opinion, cannot be held to be a binding or a final adjudication on a question of title. Section 42 of the Consolidation Act merely empowers the State, to satisfy itself as to the legality or propriety of any order, passed or scheme prepared during consolidation and to correct any errors committed during consolidation but does not empower the authority to decide a disputed question of title. Thus, if a party raises a question of title, under Section 42 of the Consolidation Act or pleads that land has been wrongly allotted to the Gram Panchayat as it is not "Shamilat Deh" or there is an error in allotment of "Jumla Mushtarka Malkan" land, the Director Consolidation, should generally desist from passing an order touching upon a question of title and should direct parties to file a petition under Section 11 of the 1961 Act, where the land is "Shamilat Deh" and before an appropriate forum where the land is "Jumla Mushtarka Malkan". If, however, the authority does not adopt such a course and passes an order holding that the land does not vest in the Gram Panchayat or that the land is not "Jumla Mushtarka Malkan", the order so passed would at best be an order passed by a Tribunal of limited jurisdiction and, therefore, not conclusive as to the proprietary and possessory rights of a Gram Panchayat or a private individual,

so as to estopp the Gram Panchayat or a private individual from approaching the adjudicatory authority i.e. the Collector exercising power under Section 11 of the 1961 Act or an appropriate forum to determine whether land vests or does not vest in a Gram Panchayat. As referred to in the preceding paragraphs, Consolidation authorities, including the authority exercising plenary jurisdiction, under Section 42 of the Consolidation Act, exercise powers of a revenue officer under the 1887 Act. A revenue officer is not competent to decide disputed questions of title as held by a Full Bench in Ajit Singh's case (supra) and the Hon'ble Supreme Court in Gram Panchayat, Nurpur (supra). Thus, even if we were to hold that Consolidation authorities are empowered, under the Consolidation Act, to correct errors, touching upon a question of title, such an exercise of power cannot be held to a final or a binding opinion on a question of title

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We, therefore, hold that:- (a) Consolidation authorities, are tribunals of limited jurisdiction; (b) Consolidation authorities exercise powers of revenue officers, under the 1887 Act, a power to record and update fiscal entries and prepare record of rights; (c) but are not empowered to decide a question of title or vest/divest a party of its title; (d) the only authority empowered to determine a question, whether the land is "Shamilat Deh", between a Gram Panchayat and a private individual was the Civil Court but after enactment of Sections 11, 13 and 13-A of the 1961 Act, the Collector and; (e) if the land is "Jumla Mushtarka Malkan", an appropriate forum."

8. In sequel, after applying the mandate (supra), as enclosed in *Parkash Singh's* case (supra), to the facts at hand, which are similar to the facts in verdict (supra), this Court is constrained to quash the impugned order.

9. Accordingly, the instant petition is allowed. The impugned order is quashed, and, set aside. However, liberty is reserved to the

aggrieved concerned, to access the jurisdictionally competent Civil Court concerned, to raise the question of title, and, also to receive therefrom a declaratory title in respect of the disputed lands.

10. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 20, 2024
Gurpreet

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