

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-18744-2022 (O & M)

Reserved on: 05.03.2024

Pronounced on: 12.03.2024

SHANKRI DEVI ALIAS SHANKER DEVI AND ORS.Petitioners

Versus

DIRECTOR, CONSOLIDATION OF HOLDINGS-CUM-DIRECTOR,
LAND RECORDS, PUNJAB, JALANDHAR AND ORS.

....Respondents

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

Argued by: Mr. Krishan Singh Dadwal, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. Manit Malhotra, Advocate
for respondent No. 3.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners seek the quashing of order dated 09.02.2022 (Annexure P-7), as became rendered by respondent No. 1, wherebys after elapsing of a period of 32 years, the order dated 20.07.1987 (Annexure P-3) which was rather passed with the agreement of the parties, thus have been set aside.

2. Before proceeding to determine the validity of the above made prayer before this Court, it is imperative to go through Annexure P-1. Annexure P-1, as is but evident on a reading thereof, was passed

Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Act of 1948').

3. In the said petition, the petitioner had advanced two claims. Firstly that he is a co-sharer in Khata 413/418, thus with the respondents therein and thereby he asked for his share (supra) in the *khata* (supra) being partitioned. The second contention as became raised thereins related to the over valuations of the land, as became allotted to him in the consolidation scheme, as, thereby land lesser than his entitlement became allotted to him.

4. On the said petition, Annexure P-1 became rendered. Through Annexure P-1, the Additional Director, Consolidation, Punjab made an order of remand to the consolidation officer, with a direction to him that he should determine whether the relevant disputed khasra numbers have been wrongly over valued or not.

5. The Consolidation Officer, Hoshiarpur, in pursuance to Annexure P-1, thus on the statements as became made before him, by the litigants, whereins, they rendered their respective acceptances to the proposed partition/separation of their share in the joint *khata*, rather through Annexure P-3, thus proceeded to make the relevant allotment(s).

6. Be that as it may, one Ashok Kumar son of Hans Raj who became aggrieved from Annexure P-3, despite his father one Hans Raj making a consensual statement in respect of the relevant partitionings being ordered and which were so done through Annexure P-3, yet laid a motion under Section 42 of the 'Act of 1948'.

7. On the said motion, as became preferred under Section 42

therebys the Director Land Records, Punjab, Jalandhar remanded the *lis* to the District Revenue Officer-cum-Consolidation Officer, with a direction that after hearing the parties, by taking into account the consolidation scheme, major portion of khasra No. 2113, if possible, be partitioned between the present parties.

8. The learned counsel appearing for the petitioners has argued that the impugned Annexure P-7 has impermissibly caused review of Annexure P-3, and, in his making the said argument, the learned counsel for the petitioners has made dependence, upon, judgments rendered by this Court respectively in cases titled as ***'Harbhajan Singh Vs. Karam Singh and Others', (1966 AIR (Supreme Court) 641); 'Baldev Singh and Others Vs. Additional Director, Consolidation of Holdings, Punjab and Another', (2005 (2) R.C.R. (Civil) 351); 'Gurjinder Singh and Another Vs. State of Punjab and Another', (2016 (3) R.C.R. (Civil) 342) ; 'Sukhbir Singh and Others Vs. Assistant Director, Consolidation, Haryana and Others', (2013 (33) R.C.R. (Civil) 275), 'Dharampal Vs. The Director Consolidation Department, Haryana, Panchkula and Others', (2012 (67) R.C.R. (Civil) 939) and 'Gram Panchayat Village Kakarwal Vs. Additional Director, Consolidation of Holding, Punjab and Others', (2011 (52) R.C.R. (Civil) 527)***, wherein, it has been expostulated that there is no power vested under the 'Act of 1948', thus in the statutory authorities contemplated therein, to make any review of orders passed, on a petition cast under Section 42 of the 'Act of 1948'.

9. Though therebys the counsel for the petitioners may make a well espousal for the quashing and setting aside of Annexure P-7.

Court by the counsel for the respondents, that since through Annexures P-1, P-3, and, even through Annexure P-7, there has been an impermissible tinkering with the finalized consolidation scheme, therefore, the said tinkering is barred by law as declared in 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**, in the relevant paragraph(s) thereof, para whereof becoming extracted hereinafter. In the said extracted paragraph, it has been expostulated that where a disputed question of title emerges in respect of the allotment(s) made to the estate holders concerned in the finalized consolidation scheme, thereby the said dispute is not required to be settled in proceedings drawn under Section 42 of the 'Act of 1948' but rather is required to be settled through the aggrieved accessing the learned Civil Court of competent jurisdiction. Therefore, in view of the expostulations made in the hereinafter extracted paragraph(s) as carried in the judgment (supra), thereby through the Annexures (supra) there has been impermissible tinkering with the finalized consolidation scheme.

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.”*

10. Since the said judgment acquires the fullest sway and clout, in respect of the impermissibility of tinkering being made, rather with the finalized consolidation scheme, and that too, through invocation of jurisdiction cast under Section 42 of the 'Act of 1948'.

11. Moreover, when the said exercisings of jurisdiction, is only limited to the creation of a path, when no consolidation path is created or qua the said consolidation path being obstructed, and/or, is exercisable only to undo clerical or arithmetical errors, as occur in the consolidation scheme. However, the said jurisdiction does not extend to any tinkering being made with the finalized consolidation scheme.

12. In addition, if any challenge was to be made in respect of the finalized consolidation scheme, especially relating to re-partitioning or re-distribution of lands amongst the estate holders concerned, rather the said challenge was to be laid in terms of Section 21 of the 'Act of 1948'. However, since the said remedy remained un-recoursed by the aggrieved from the finalized consolidation scheme, whereas, rather his

invoking the remedy under Section 42 of the 'Act of 1948' which otherwise is unavailable to become recoured, but excepting on the above grounds.

13. Therefore, all the orders as enclosed in Annexure P-1, P-3 and P-7 are deemed to be made for want of valid jurisdiction becoming vested in the authorities contemplated under Section 42 of the 'Act of 1948'. Resultantly, the argument (supra) as posed before this Court by the learned counsel for the petitioners, that the orders (Annexure P-1 and P-3) were impermissible to be reviewed rather is a misfounded argument and is rejected.

14. Even otherwise, if distribution(s) of lands were made to the estate holders concerned, in terms of their entitlement(s) theretos and if subsequently any of the joint *khata* holders, rather required that the same be severed or dis-membered by metes and bounds. Resultantly, the remedy for causing dis-memberment of the joint *khata* amongst the co-*khata* holders concerned, was not the one envisaged under Section 42 of the 'Act of 1948', but was through an application for partition becoming filed in terms of the relevant provisions, as carried in the apposite Land Revenue Act.

15. It is also not known whether the suit lands were ancestral coparcenary property or not. Since, only thereby the present petitioners may become aggrieved. Therefore, for want of material (supra), thereby too, they may not be, unless so proved in a regular partitioning proceedings drawn under the Punjab Revenue Act, thus become entitled to cause any severance of the joint *khata*. Moreso, in proceedings drawn under Section 42 of the 'Act of 1948', especially when the said

respondent concerned to cause dis-memberment of his share in the joint *khata*.

16. Since the said application remained un-instituted rather a mis-constituted motion under Section 42 of the 'Act of 1948' became laid before the authorities contemplated therein. Therefore, too the motion cast under Section 42 of the 'Act of 1948' was barred, as therebys no partitioning or dis-memberment of the joint *khata* amongst the joint *khata* holders could be validly ordered.

FINAL ORDER OF THIS COURT.

16. In view of the above observation(s), this Court finds no merit in the instant petition and rather in terms of the submissions (supra) addressed before this Court by the learned Senior Deputy Advocate General, Punjab and the learned counsel for respondent No. 3, this Court proceeds to quash Annexures P-1, P-3 and P-7, but leaving liberty to the parties to appear before the Revenue Officer concerned, with an application for making dis-memberment of the allotted joint *khata* amongst the joint *khata* holders concerned.

17. 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

12.03.2024

kavneet singh

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