

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(I) CWP-19946-2018 (O&M)
Reserved on: 09.02.2024
Date of Decision : February 20, 2024

RAMESH KUMAR AND OTHERS
...Petitioners
V/S
STATE OF HARYANA AND OTHERS
...Respondents

(II) CWP-15759-2018
RAMESH KUMAR AND OTHERS
...Petitioners
V/S
STATE OF HARYANA AND OTHERS
...Respondents

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

Present : Mr. Vaibhav Sharma, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Jagjot Singh, Advocate
for respondent Nos.6 to 24 (in CWP-19946-2018).

SURESHWAR THAKUR, J.

1. Since a common issue is involved in both the writ petitions
therefore both the writ petitions, are amenable to be decided through a
common verdict.

2. For the sake of brevity the facts are taken from CWP-19946-2018.

3. Through the instant petition, the petitioners pray for the issuance of a writ of mandamus for setting aside the impugned order dated 15.05.2018, as embodied in Annexure P-11, passed by the learned Commissioner concerned, through his exercising powers under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”), vide which the representation/ application of the petitioners for setting aside the implementation of the consolidation scheme prepared in the year 1978, has been dismissed. They also became aggrieved from Annexure P-9, whereby the District Collector, Bhiwani, has strived to in terms of the powers conferred under Section 22(1) and 23(2) of the IPC, through his appointing BDPO as Duty Magistrate, to ensure that the demarcation proceedings of the disputed sites is carried out.

4. In the year 1978 consolidation of the estates of village Asalwas Maratha and Golpura, Tehsil and District Bhiwani, and, pertaining to the petitioners was carried out under the Act of 1948. The proceedings for preparation of scheme and re-partition were completed by the respondents, but the respective physical possession was not got delivered by the competent authority concerned, in accordance with the scheme to the respective shareholders, and consequently all the inhabitants/shareholders of both the estates remained in physical possession over the land, as was existing prior to the scheme of consolidation passed in the year 1978. The

change was only effected on paper, and, the settled physical possession was not disturbed.

5. Regarding the consolidation, there arose multiple litigations, which went upto Hon'ble Supreme Court. The Hon'ble Apex Court on Civil Appeal No.1281 of 1980, titled as "**Rattan Lal and others Versus The Additional Director & others**", passed thereons, an order dated 12.03.1992, order whereof becomes extracted hereinafter. A reading of the hereinafter extracted order discloses that the Hon'ble Apex Court observed that the Additional Director, Consolidation of Holdings, Haryana, erred in dismissing the petition of the appellants under Section 42 of the Act of 1948, as time barred, and, the High Court also erred in dismissing the writ petition filed on behalf of those opposing the scheme of consolidation *in limine*. However, on account of the fact that the consolidation relates to the year 1978, and the order was passed in the year 1992, thereby the Hon'ble Apex Court held that the *inter se* rivalries between the right holders could be settled in the Appellate and Revisional stages under Section 21 of the Act of 1948.

"Heard learned counsel. We are of the view that even though the Additional Director, Consolidation of Holdings, Haryana was in error in dismissing the petition of the appellants under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as time-barred, and the High Court too was in error in dismissing their Writ Petition in limine, and that too with regard to the challenge of the Scheme, still we felt that at this distance of time, we should not upset the order under appeal so as to put the Scheme of Consolidation as a whole in jeopardy. It appears that the appellants besides had also challenged the re-partition based on the working out of the Scheme and the challenge to re-

partition too has been dismissed. Learned counsel for the appellants states that possessions after re-partition have not wholly changed. Be that as it may, when the scheme has been brought into force and possessions have changed on account of re-partition, inter se rivalries between the right holders can very well be settled in the Appellate and Revisional stages under Section 21 of the aforesaid Act. To have them determined as a bulk before the Additional Director is hardly the rightful remedy at this late stage.

With these observations, we cause no interference to the judgment under appeal. Accordingly the appeal is dismissed with no order as to costs.”

6. The petitioners and other inhabitants of the village from 30.09.1978 till date are in possession over the disputed lands, as it existed prior to consolidation of 1978, as after consolidation they were not put in possession according to the scheme by the competent authority concerned. During this period the petitioners and other inhabitants of both the villages have constructed their residential houses and raised construction, including tubewells etc. over those respective fields, which may fall to the share of other persons according to the consolidation scheme of 1978.

7. When the petitioners came to know that the authority concerned, is trying to implement the defunct consolidation scheme of 1978, they submitted a representation dated 20.06.2013 to the then Chief Minister, Haryana. When no action was taken by the authorities on the representation, they instituted CWP-25736-2013, before this Court. This Court through an order made on 25.11.2013 directed the Director General, Consolidation, Haryana to consider the representation of the petitioners within one from the date of receipt of the order. The said order becomes extracted hereinafter.

“It is stated by counsel for the petitioners that consolidation proceedings were started in Villages Asalwas Maratha and Golpura, District Bhiwani, in the year 1978. The Scheme was confirmed, however in furtherance to that Scheme, the re-partition was not effected and possession was not changed.

It is stated that now, as per their settled possession, the petitioners/right holders have made many improvements in the land in their possession. It is stated that, if the re-partition is effected at this stage, it will cause a great loss to the right holders of the village concerned.

At the time of arguments, it transpires that while stating their grievance, the petitioners have made a representation to the Chief Minister, Haryana which is found mentioned in document Annexure P-2 dated 25.7.2013. Vide that document, report was sought from the Director General, Consolidation, Haryana, Chandigarh qua request made by the petitioners regarding cancellation of consolidation scheme.

It is stated that the matter has not finally been decided.

Under the above circumstances, we dispose of this writ petition issuing direction to the Director General, Consolidation, Haryana, Chandigarh to take final action on the application filed by the petitioners.

The petitioners shall present their case before the said officer on or before 10.12.2013.

If any appearance is made along with copy of this writ petition, the Director General, Consolidation-respondent No.2 shall look into grievance of the petitioners and take an appropriate action.

Needful shall be done within one month from the date of receipt of a copy of this order.”

8. The petitioners again approached this Court through their filing

authorities concerned, to pass the final order within a period of two months from the date of receipt of a certified copy of the order.

9. As per Annexure P-9, the respondents concerned, are initiating proceedings to execute the consolidation scheme of 1978, thereupon, the petitioners again approached this Court through their filing CWP-15759-2018. Vide order dated 29.06.2018 this Court issued notice and stayed the further proceedings with respect to implementation of the consolidation scheme of the year 1978. On 15.05.2018 the authority concerned, disaffirmatively decided (Annexure P-11) the application/representation of the petitioners challenging the action of the respondents concerned, thus implementing the consolidation scheme of the year 1978. Annexure P-11 has been challenged before this Court.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS

10. The learned counsel for the petitioners has submitted that the doctrine of laches and estoppel, thus forbids the respondents concerned, to implement the finalized consolidation scheme of the year 1978. He further submits that since only paper entries are made in respect of delivery of physical possession to the estate holders concerned, wheretowhom such possession is declared to be so delivered in the consolidation scheme, and, in the updation of records which occurred in terms of Section 22 of the Act of 1948. Consequently, he submits that the assumption of physical possession over those tracts of lands, which otherwise became assigned to other estate holders, rather at the instance of those estate holders who did not become allotted the said tracts of lands, is rather adverse possession thereovers, and,

possidendi, thus commencing from 1948 upto now has rather but by efflux of time ripened into absolute title thereovers vis-a-vis the respective estate holders concerned.

11. Consequently, the learned counsel for the petitioners submits that the said adverse possession cannot be unsettled except through a suit for possession becoming instituted against the relevant estate holders, who have assumed adverse possession, over the apposite tracts of lands. Therefore, a challenge is also made to Annexure P-9.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

12. On the other hand, learned State counsel submits that the consolidation scheme was finalized in the year 1978, in accordance with the provisions of the Act of 1948, and, the petitioners and other inhabitants are in illegal possession of their estates.

ANALYSIS OF THE SUBMISSION OF LEARNED COUNSEL FOR THE PETITIONERS AND OF THE LEARNED STATE COUNSEL

13. A reading of the above extracted order, as made by the Hon'ble Apex Court, does unfold that thereby the Hon'ble Apex Court did not disturb the order made by this Court whereby it dismissed the challenge made by the aggrieved to the order passed under Section 42 of the Act of 1948, thus by the Consolidation Officer concerned, whereby the motion cast before him under Section 42 of the Act of 1948 became rejected.

14. Moreover, also it appears that thereby, the Hon'ble Apex Court had observed that the challenge made to the re-partitioning as proposed in the apposite finalized scheme also became dismissed.

Nonetheless since possessions after re-partition became noticed therein to

remain unchanged, as such, the Hon'ble Apex Court observed that yet the

inter se rivalries between the right holders can be settled in terms of Section 21 of the Act of 1948.

15. Be that as it may, some aggrieved estate holders instituted CWP-25736-2013 before this Court, and, on the said writ petition, the above extracted order was made, thus whereby directions were passed upon the Director General, Consolidation, Haryana, to attend to the grievances of the petitioners. In pursuance to the said made directions, the impugned order has been passed whereby the representation of the petitioners-aggrieved estate holders has been dismissed.

16. The ire point of controversy *inter se* the present petitioners, and, the respondents devolves, upon the amenability of processes becoming initiated at the instance of the respondents concerned, thus through the drawings of Annexure P-9, whereby attempts are made to conduct demarcations of the disputed sites, and, to thereby purportedly ensure coercive delivery of physical possessions to those estate holders, over whose lawful estates rather physical possession is assumed by other estate holders, to whom such sites are not allotted, and, who were but prior to the implementation of the consolidation scheme in the year 1978, rather were holding evident possession thereovers.

17. Initially it appears that the orders (*supra*), as passed by this Court in CWP-25736-2013 has been passed despite the Hon'ble Apex Court making directions (*supra*), upon Civil Appeal No.1281 of 1980, whereby the Hon'ble Apex Court after affirming the order passed by this Court, upheld the order passed by the Consolidation Officer concerned, whereby it dismissed the petition made under Section 42 of the Act of 1948, as the

Hon'ble Apex Court did not deem it fit and appropriate to put the scheme of consolidation as a whole in *jeopardy*.

18. Moreover, it is also noticed in the order (supra), passed by the Hon'ble Apex Court, that the challenge to the re-partitioning made in the confirmed consolidation scheme became though dismissed, but yet the Hon'ble Apex Court for ensuring that *inter se* rivalries between the estate holders thus become settled, through theirs recouring the appellate and revisional remedies, as prescribed in Section 21 of the Act of 1948, thereby the said remedies were preserved vis-a-vis the aggrieved estate holders concerned. Resultantly, therebys it appears that the order (supra), as became passed by this Court, on writ petition (supra), was procured through suppression of the above directions, as became passed by the Hon'ble Apex Court. In consequence, it appears that the directions (supra), also are *per in curium* the direction(s) (supra), passed by the Hon'ble Apex Court upon Civil Appeal No.1281 of 1980.

19. Consequently, the dismissal orders as comprised in the impugned Annexure P-11, when are passed in terms of a *per in curium* verdict passed by this Court in CWP-25736-2013, thereby concomitantly if the said orders are either favourable to the petitioners or unfavourable to them, yet they are legally inconsequential, the same being in passed in derogation of the directions (supra), passed by the Hon'ble Apex Court in Civil Appeal No.1281 of 1980.

20. In the face of the above, this Court is of the view that no valid challenge is amenable to be made to Annexure P-11, at the instance of the petitioners.

21. The further striking reason for not making any interference with the impugned annexure, is galvanized from the factum, that the Hon'ble Apex Court, while passing orders (supra), making a pointed observation, that the grievance raised by the estate holders concerned, relating to the tenability of re-partition proposed in the consolidation scheme, rather becoming rejected by the Consolidation Officer concerned, thus being amenable for being voiced through the appellate and revisional remedies, as enshrined in Section 21 of the Act of 1948.

22. Therefore, since in Section 22 of the Act of 1948, provisions whereof becomes extracted hereinafter, there are further appellate and revisional remedies, available to the aggrieved from the rejection order as made by the Consolidation Officer concerned, upon, his protest to the consolidation scheme. Resultantly, with the Hon'ble Apex Court, thus proceeding to make available to the petitioners the said appellate and revisional remedies, so as to enable them to cast a challenge to the order, as became passed by the Consolidation Officer concerned, whereby he rejected their protest to the proposed re-partition or re-allotments as occurring in the consolidation scheme.

“22. Preparation of record of rights. - (1) The Consolidation Officer shall cause to be prepared a new record of rights in accordance with the provision contained in Chapter IV of the Punjab Land Revenue Act, 1887 (XVII of 1887), in so far as these provisions may be applicable for the area under consolidation giving effect to the repartition [and order in respect thereof made] under the preceding section.

(2) Such record or right shall be deemed to have been prepared under section 32 of the Punjab Land Revenue Act, 1887.”

23. Therefore, only the said appellate and revisional remedies, if they were at the stage (supra), thus the recoursable remedies, rather become available to become recoured by the aggrieved. However, it appears that yet since the making of the order (supra), by the Hon’ble Apex Court in Civil Appeal No.1281 of 1980, the aggrieved concerned, did not choose to avail the said appellate and revisional remedies, rather they undertook to file unyielding representations, whereafter they were led to file CWP-25736-2013, before this Court, whereons, the above *per in curium* directions were passed by this Court, which subsequently led to equally legally defective orders becoming passed on the relevant representation.

24. In sequel, since a period of limitation is prescribed in Section 21 of the Act of 1948, for the aggrieved concerned, availing the appellate and revisional remedies, as prescribed in Section 21 of the Act of 1948. Resultantly, when it appears that the prescribed thereons period of limitation has expired, resultantly the said preserved remedies vis-a-vis the aggrieved by the Hon’ble Apex Court, thus cannot be at this stage become availed by the present petitioners.

25. Necessarily, the said jurisdiction is not exercisable, thus for making tinkering with finalized consolidation scheme nor is to be exercised so as to tinker with the updation of records, as is done in terms of Section 22 of the Act of 1948. The reason for disallowing the above tinkering strikingly emanates, from the factum, that since therebys a disputed question of title evidently surfaces, amongst the estate holders concerned, thereby the

said disputed question of title, when is neither amenable for being raised nor is amenable for being adjudicated upon by the authorities contemplated under Section 42 of the Act of 1948, thereby any adjudication as made by the authorities contemplated under Section 42 of the Act of 1948 vis-a-vis such disputed question of title, rather makes such an adjudication to be beyond the jurisdictional confines of the exercisable jurisdiction vested in it/them under Section 42 of the Act of 1948. Contrarily, in terms of the verdict made by the 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**, relevant paragraph whereof becomes extracted hereinafter, rather the jurisdiction to decide any question of title which is raised amongst the estate holders concerned, thus after the updation of revenue records taking place in terms of Section 22 of the Act of 1948, is to be exercised only by the Civil Court of competent jurisdiction or by the statutory forum concerned.

"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.”

26. The reason for making the conclusion stems from the factum, that when the said orders are at the said stage rather challenge-able through invocation of jurisdiction under Section 21 of the Act of 1948, thereby when at the stage (supra), rather no updation of the records taken place, especially when the updation of records takes place in terms of Section 22 of the Act of 1948, besides when the said section occurs post Section 21 of the Act of 1948. Resultantly, thereby when only after the complete testings’ being made vis-a-vis scheme prepared or confirmed or vis-a-vis re-partition made by any officer, thus on the relevant motion being made by the aggrieved concerned, before the officer as contemplated in Section 21 of the Act of 1948, thus the updation of records in terms of Section 22 of the Act of 1948, rather takes place. Therefore, reiteratedly when only at the said stage the jurisdiction under Section 42 of the Act of 1948, is exercisable but the said jurisdiction is not exercisable when after complete testings’ being made rather the updation of records takes place in terms of Section 22 of the Act of 1948. Preponderantly also when on updation of records, there is a complete estoppel against the workability of mandate of Section 42 of the Act of 1948

allotments or under allotments made to the estate holders concerned, is in terms of the verdict made in *Parkash Singh's case (supra)*, rather exercisable only by the Civil Court of competent jurisdiction/ statutory forum.

27. Since at the stage of passing of the verdict by the Hon'ble Apex Court in Civil Appeal No.1281-1980, the verdict of the Full Bench of Hon'ble Apex Court in *Parkash Singh's case (supra)*, was not in force, therefore, and, besides when the said remedies pronounced vis-a-vis the aggrieved in verdict (*supra*), drawn by the Hon'ble Apex Court, thus evidently are time barred. Resultantly, the clout of the verdict drawn by the Full Bench of this Court holds the fullest hold, and, thereby no other remedy is available to the aggrieved, excepting the aggrieved instituting a civil suit before the jurisdictionally competent Civil Court concerned, for theirs therebefore seeking a declaratory decree, either on the basis of theirs perfecting title over the disputed tracts of lands, through adverse possession, or theirs claiming a declaratory decree qua the allotments made in the records of rights, updated in terms of Section 22 of the Act of 1948, rather suffering from a gross fallacy, inasmuch as, therebys their respective disjunct tracts of lands, become not added onto their major portions.

28. In the light of the above, this Court finds that the District Collector in order to enforce the consolidation scheme, through Annexure P-9 in CWP-19946-2018, and, Annexure P-4 in CWP-15759-2018, has untenably attempted to disturb the physical possession of the estate holders over the disputed tracts of lands, therefore the annexures (*supra*), are required to be quashed, and, set aside. As such Annexure P-9 in CWP-

19946-2018, and, Annexure P-4 in CWP-15759-2018 are quashed, and, set aside, but Annexure P-11 in CWP-19946-2018 is affirmed, and, upheld.

29. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

20.02.2024

(SUKHVINDER KAUR)
JUDGE

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