

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 20.03.2024
Pronounced on: 18.04.2024

1. CWP-5939-2018

BALBIR SINGH AND OTHERSPetitioners

Versus

STATE OF HARYANA AND OTHERSRespondents

2. CWP-27924-2018

NIRMALA SIHAG AND ANR.Petitioners

Versus

STATE OF HARYANA AND OTHERSRespondents

3. CWP-31050-2018

DEVENDERPetitioner

Versus

STATE OF HARYANA AND OTHERSRespondents

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

Argued by: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate
Mr. Pankaj Gautam, Advocate
for the petitioner(s) (in CWP-5939-2018).

Mr. Adarsh Jain, Advocate
for the petitioner(s)
(in CWP-27924-2018 and CWP-31050-2018).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana.

Mr. Rohit Rattewal, Advocate for
Mr. Ashish Yadav, Advocate
for respondent No. 6 (in CWP-5939-2018).

SURESHWAR THAKUR, J.

questions of law, besides, arise from common thereto Annexures, thus, they are amenable to be decided through a common verdict.

2. For the sake of brevity, the facts of CWP-5939-2018 are taken here for deciding the instant controversy.

3. Through the instant writ petition, the petitioner(s) ask for quashing of Annexure P-10, as became passed by the Commissioner, Gurgaon Division, exercising the powers of Director Consolidation under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Consolidation Act, 1948') besides they also ask for the quashing of Annexure P-11, as became passed by the Tehsildar-cum-Consolidation Officer, Manesar, exercising the powers under Section 21 (2) of the 'Consolidation Act, 1948'.

4. The consolidation operations in the *mohal* concerned commenced in pursuance to a notification (Annexure P-1), which became issued on 27.03.2000. Subsequently, the Consolidation Advisory Committee was constituted on 25.05.2001. As reflected in Annexure P-3, the said Consolidation Advisory Committee determined the valuations of land, thus in the hereinafter extracted manner.

<i>Land owned by the proprietors</i>	<i>16 Anna</i>
<i>Cultivable land of the Gram Panchayat</i>	<i>12 Anna</i>
<i>Drar and Nalas</i>	<i>8 Anna</i>
<i>Pahar</i>	<i>4 Anna</i>

5. The draft consolidation scheme was published on 16.06.2008 and after the hearing of objections the scheme was sanctioned/accepted on 28.07.2010 (Annexure P-4). Post the making of Annexure P-4, the process of re-partitioning was initiated and was

proceedings are annexed as Annexure P-5. As unfolded by Annexure P-6, which though embodies therein the proceedings launched under Section 21(1) of the 'Consolidation Act, 1948', but it appears that the aggrieved from Annexure P-6, did not prefer any appeal or revision thereagainst. Resultantly, possession in terms of the scheme of re-partitioning Annexure P-6, was delivered from 11.06.2011 to 25.06.2011, thus to the estate holders concerned. However, subsequently one Satpal son of Googan and others submitted a complaint (Annexure P-7) to the Director General of Consolidation of Holdings, Haryana, alleging therein that 150 acres of panchayat land valued at Rs. 300 crores has been transferred to the private parties.

6. On Annexure P-7, the Director General of Consolidation while exercising powers under Section 42 of the 'Consolidation Act, 1948', made a direction whereby the valuations of the panchayat land were ordered to be re-made besides the transfer of panchayat land to the private parties, as made in the consolidation proceedings, but was also set aside (Annexure P-8).

7. Against Annexure P-8, some of the aggrieved filed writ petition bearing No. 21861 of 2012 and on the said writ petition Annexure P-9 became rendered. The operative portion of Annexure P-9 is extracted hereinafter.

“..In view of above, this writ petition is allowed and the order under challenge dated 22.8.2012 (Annexure P8) stands quashed. The Divisional Commissioner, Gurgaon Division, Gurgaon upon whom powers of the Government have been conferred under Section 42 of the Act is directed to take up the matter afresh and pass an appropriate order after affording effective opportunity of

hearing to both the parties. Both the parties are directed to appear before the above said officer on 29.7.2013. The Commissioner will serve notice upon the other rightholders also who are likely to be affected..”

8. In pursuance to the above made orders made by this Court, the Director Consolidation passed Annexure P-10, whereby he remanded the *lis* to the consolidation officer concerned, who made Annexure P-11. Resultantly both Annexures P-10 and P-11 become assailed before this Court.

Reasons for accepting the writ petition(s) and for setting aside the impugned Annexures.

9. It is an uncontested factum that Annexure P-6, remained un-assailed at the instance of any of the aggrieved. Annexure P-6 was drawn in terms of Section 21 (1) of the 'Consolidation Act, 1948' provisions whereof, become extracted hereinafter, thereby given the said Annexures rather remaining unchallenged through an appeal or revision being preferred thereagainst. Resultantly, it acquired finality and conclusivity.

*“21. **Repartition** – (1) The Consolidation Officer shall, after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed under section 20, and the boundaries of the holdings as demarcated shall be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned.”*

10. Moreover, when the said Annexure P-6 also became implemented and executed through apposite possessions becoming delivered to the estate holders concerned. Therefore, but obviously the said delivery of possessions was made only after the updation of

records becoming made in terms of Section 22 of the 'Consolidation Act, 1948'.

11. Though after the updation of records taking place, there is no exercisable jurisdiction vested, in the Director of Consolidation rather within the domain of Section 42 of the 'Consolidation Act, 1948', especially, when it has been declared in a Full Bench Judgment made by 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, that the exercising of jurisdiction by the statutory authority concerned, on a motion laid before him, under Section 42 of the 'Consolidation Act, 1948' rather is limited to correction of arithmetical or clerical errors and/or to creation of a consolidation path, but where no such consolidation path is created or is exercisable when there is obstruction against the user of said path by any of the estate holders concerned.

*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.”

12. Therefore, when but obviously the jurisdiction to re-draw the entire concluded consolidation scheme, thus on anvil of their being any purported over valuation or under valuation of the respective estates of the estate holders concerned, and, of the Gram Panchayat concerned, besides on anvil of mis-allotment(s) of lands being made respectively to the estate holders concerned besides to the Gram Panchayat concerned, rather is not exercisable, thus by the authority contemplated under Section 42 of the 'Consolidation Act, 1948'. Resultantly, thereby the exercisings of jurisdiction over the said controversy by the Director rather on a motion constituted before him under Section 42 of the 'Consolidation Act, 1948', thus was vitiated with the vice of lack of jurisdictional empowerment inhering in him, thus to either entertain and much less to adjudicate the said motion.

13. Predominantly, also when the validly exercisable jurisdiction, thus on emergence of the dispute(s) (supra), is expostulated in the judgment (supra) rather to be exercisable solitarily by the Civil Court concerned. Therefore, the operative portion of the verdict (supra), as made by this Court, thus leading the Director

Consolidation through to Annexure P-10, hence make an order of remand, to the Consolidation Officer concerned, whereafter's the Consolidation Officer made the impugned Annexure P-11, thus are declared to be per incuriam, the declaration of law made in **Parkash Singh's case (supra)**.

14. Be that as it may, after the updation of records taking place in terms of Section 22 of the 'Consolidation Act, 1948' and that too after none of the aggrieved from Annexure P-6, making a challenge thereto, thereby when it acquired binding and conclusive effect. Resultantly when thereafter's transfer of possessions were made to all the estate holders concerned, inclusive of the Gram Panchayat concerned. Consequently, the unchallenged finalized consolidation scheme, thus was not amenable to be revoked through the making of a legally infirm order (Annexure P-10) besides by the co-equally infirm order (Annexure P-11), both orders whereof, are made in terms of a verdict made by this Court in CWP No. 21861 of 2012, verdict whereof for reasons (supra), is per incuriam the declaration of law made in **Parkash Singh's case (supra)**.

15. The said decisions are not only ex facie per incuriam the declaration of law made in **Parkash Singh's case (supra)** but are also in derogation of the statutory mandate enclosed in Section 36 of the 'Consolidation Act, 1948', provisions whereof are extracted hereinafter, inasmuch as, thereby the unchallenged binding and conclusive consolidation scheme, has been untenably varied or revoked, and, that too, despite the said power of revocation or initiation of a fresh scheme becoming thereunders' preserved rather only in the State Government,

thereunders the subsequent scheme is required to be prepared, published and confirmed but in accordance with the provisions of the 'Consolidation Act, 1948'. As such when the State Government was the sole repository of exercising able powers to revoke or vary the earlier finalized consolidation scheme, thus through a notification becoming issued by it, whereafters a fresh consolidation scheme, thus was required to be drawn, but only on a notification becoming issued by the State Government, rather for re-bringing the *mohal* concerned to re-consolidation operations, so that, upon adherence being made to all the apposite statutory provisions, thus the finalized consolidation scheme becomes made. However, when apparently there is no notification issued by the State Government, thus either for respectively varying or cancelling the instant consolidation scheme nor when there is any notification issued by the State Government rather for re-bringing the *mohal* concerned to re-consolidation, thus through adherence being made to all the relevant statutory provisions.

“36. Power to vary or revoke scheme. - A scheme for the consolidation of holdings confirmed under this Act may, at any time, be varied or revoked by the authority which confirms it subject to any order of the State Government that may be made in relation thereto and subsequent scheme may be prepared, published and confirmed in accordance with the provisions of this Act.”

16. In consequence, the orders (supra) which do *prima facie*, vary and revoke the finalized consolidation scheme are in conflict with Section 36 of the 'Consolidation Act, 1948' and are required to be quashed and set aside.

17. In sequel, the writ petition succeeds and the impugned orders are quashed and set aside on the ground that they are made in gross departure of the validly exercisable jurisdiction by the said authorities.

18. Before parting this Court is led to make certain observation(s) against the authorities exercising jurisdiction under Section 42 of the 'Consolidation Act, 1948'. Moreover, this Court is also led to make certain corrective observation(s) vis-a-vis the Collectors concerned, exercising jurisdiction under the Punjab Village Common Lands (Regulation) Act, 1961. The said corrective observation(s) are as under:-

1) Firstly, the authorities envisaged under Section 42 of the 'Consolidation Act, 1948' are required to be adhering to the mandate of law encapsulated in **Parkash Singh's case (supra)** besides are enjoined to also reverse the judgment of even date rendered by this Court.

2) It appears that the non compliance(s) to the mandates as enclosed in this judgement do arise either because of sheer lack of knowledge or ill training(s) of the authorities contemplated under Section 42 of the 'Consolidation Act, 1948'. Therefore, the Additional Chief Secretary(ies) to the Governments of Punjab and Haryana, are directed to forthwith prepare data, thus revealing the numbers of unchallenged verdicts, which became recorded by the authorities contemplated under Section 42 of the 'Consolidation Act, 1948', especially when such verdicts are outside the contours and domains of judgment made today by this Court. The said data be collected and submitted before this Court on or before **15.07.2024**.

3) Moreover, this Court has also consistently noticed that the Collectors concerned in making trials both over petitions cast under Section 7 and/or under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, though are required to be framing issues as arise from the contentious pleadings of the litigants concerned, and, whereafter they are required to be permitting the litigant concerned, to adduce the apposite evidence on those issues, whereons, the discharging onus becomes cast on the litigants concerned, but yet the said recourses remain un-adopted, thus leading to gross injustice.

4) The Collectors concerned are also not bearing in mind the principles relating to proof of demarcation reports through the author(s) thereof stepping into the witness box.

5) The appellate authorities concerned, while dealing with the applications for condoning the delay are also not formulating issues, on the contentious pleadings nor are they permitting the litigant concerned to adduce the evidence discharging onus thereons.

19. Therefore, this Court also orders the Additional Chief Secretary, Revenue(s), respectively to the State of Punjab and to the State of Haryana, to ensure, that trainings are imparted to the authorities contemplated under Section 42 of the 'Consolidation Act, 1948', besides are directed to ensure that trainings are imparted to the Collectors and Appellate Authorities contemplated under the Punjab Village Common Lands (Regulation) Act, 1961.

20. The trainings to be so imparted be ensured to be completed within two months from today and with an intimation to this Court becoming made on an affidavit to be sworn in by the concerned.

FINAL ORDER OF THIS COURT.

22. In aftermath, this Court finds merit in the writ petition(s) and, with the above observation(s), the same are allowed. The impugned orders are quashed and set aside.

23. However, this Court reserves liberty to the aggrieved/private respondents concerned to access the legally permissible remedies in terms of *Parkash Singh's case (supra)* besides leaves liberty in the State Government, to thus for well informed and tangible reasons issue a notification in terms of Section 36 of the 'Consolidation Act, 1948'.

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

18.04.2024

kavneet singh

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