

Chet Singh

Vs

State of Punjab and Others

Civil Appeal No. 2150 of 1968

(CJI M. H. Beg, A C. Gupta, P. S. Kailasam JJ)

24.03.1977

JUDGMENT

BEG, C.J. –

1. This appeal under Article 136 of the Constitution is directed against a very detailed judgment of the Punjab and Haryana High Court on a Writ Petition 1875 of 1965 filed under Articles 226 and 227 of the Constitution, assailing an order of the Additional Director, Consolidation, of Holding, passed on June 8, 1965. A perusal of that order, together with the earlier order of May 4, 1965, and the application for restoration dated May 15, 1965, filed by Gurdev Singh, respondent 3, shows : Gurdev Singh, who had some complaint against the Consolidation Scheme, was not present so that his petition was ordered to be filed by the Additional Director, Consolidation on May 4, 1965. Gurdev Singh, soon thereafter i.e., on May 15, 1965, filed an application for restoration supported by an affidavit, attributing his absence on May 4, 1965, to his illness. The order dated June 8, 1965, of the Additional Director, shows that the applicant Gurdev Singh's assertion that he could not attend due to illness, over which he had no control, was accepted by the Additional Director, who proceeded to exercise his powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act) and to set right the grievance of the applicant, Gurdev Singh, after going into all the relevant records. The learned Judge of the High Court, who heard the petition also went through the records very carefully, came to the conclusion that an assertion of rights by the petitioner/appellant, a member of the Sanjam Group, merely because of some report contained in the "Fard Badar", could not take away the effect of entries in the revenue records. The learned Judge held that no injustice was caused to the petitioner/ appellant and, for this reason also, there was no ground for interference under Article 226 of the Constitution.

2. The learned Counsel for the appellant has relied upon the case of Harbhajan Singh v. Karam Singh ([1966] 1 SCR 817 : AIR 1966 SC 641) where this Court held that the Additional Director exercising the powers of the State Government has no jurisdiction under Section 42 of the Act to review his previous order.

3. Section 42 of the Act runs as follows :

The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit :

Provided that no order or scheme or repartition shall be varied or reserved without giving the parties interested notice to appear and opportunity to be heard except in case where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.

4. The proviso to Section 42 lays down that notice to interest parties to appear and opportunity to be heard are conditions precedent to passing of an order under Section 42. The fact that the Additional Director was satisfied that the respondent, Gurdev Singh, did not have an opportunity of being heard due to his illness, seems to us to amount to a finding that the proviso could not be complied with so that the previous order could not be held to be an order duly passed under Section 42 of the Act. It could be ignored as "non est". The view taken in Harbhajan Singh's case would not apply to the instant case although Section 42 of the Act does not contain a power of review. Orders which are 'non est' can be ignored at any stage.

5. On the facts and circumstances of this case, we think that this is not a fit case for interference under Article 136 of the Constitution. The appellant, if he has acquired any rights by reason of long possession can assert them whenever any proceedings are taken before a competent authority to dispossess him. What we have held here or whatever has been held by the High Court will not affect such other rights, if any, as the appellant may have acquired by reason of possession. We do not know and refrain from deciding who is actually in possession and for how long and in what capacity. This appeal is dismissed. Parties will bear their own costs.

</html