

PUNJAB AND HARYANA HIGH COURT

S. Gurdial Singh

Vs

State of Punjab

(M Singh, C.J. Harbans Singh and D Mahajan, JJ.)

25.05.1967

JUDGMENT

Harbans Singh, J.

1. In these 3 writ petitions (Nos. 913, 915 and 1061 of 1966) a common point of law was raised namely, that Section 14(1) of the East Punjab Holdings, (Consolidation and Prevention of Fragmentation) Act, 1948, hereinafter referred to as the Act, was ultra vires the Constitution and for this reason the three petitions were ordered to be heard by a Full Bench Section 14(1) runs as follows:

"14 (1) With the object of consolidating holdings in any estate or group of estates or any part thereof for the purpose of better cultivation of lands therein the State Government may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified "

2. After a notification is issued under Sub-section (1), a Consolidation Officer is appointed under Sub-section (2) who after obtaining the advice of the landlords of the estate or estates concerned and the Gram Panchayat etc., has to prepare a scheme for the consolidation of holding in such estate or estate.

3. The contention in all these three writ petitions was that in the three estates concerned there was in fact, no fragmentation in existence, and consequently there was no need for any consolidation and that by issuing the notification without giving an opportunity to the rightholders to be heard, to enable them to convince the State Government that in fact there was no such need for consolidation the fundamental rights of property of the right-holders were violated and for that reason the provision was ultra vires the Constitution.

4. The learned counsel referred to number of provisions in the Act to support his contention that as a consequence of such a notification a number of restrictions are imposed on the right of alienation by the rightholders and some portion of the land held by the rightholders can be taken away without compensation, for common purposes. He conceded that the Supreme Court has upheld the vires of the provisions in the Act which authorise the Consolidation authorities to reserve land for common purposes without compensation. He however, urged that once the notification under Sub-section (1) of Section 14 of the Act is a proper one then these consequences follow and the right-holders are deprived of some land for common purposes in accordance with the said Act. However, in a case where such a notification is not justified because there is no fragmentation in the village at all and no opportunity is given to the rightholders to show that there is no need of consolidation, the notification is bad and inasmuch as Sub-section (1) does not provide for any hearing, the same must be held to be ultra vires of the Constitution. Reference was made to a Full Bench (Division Bench?) decision of this Court reported as *Som Dass v. State of Punjab*¹, It was held by the Bench that under Sub-section (1) of Section 14 a notification can be issued only with the object of consolidating holdings and for no other purpose. Inter alia it was observed as follows:

"While preparing a scheme for the consolidation of holdings, the Act of course, authorises reservation of land for common purposes, but that seems to me to be an incidental power conferred by the statute exercisable when consolidating the holdings in pursuance of the notification issued under Section 14 (1) of the Act. On the language of Section 14, I am unable to persuade myself to hold that a notification can be issued for the sole substantive purpose of reserving land for common purpose or assigning land to a Panchayat without consolidating the holdings. The power of the Government to meddle with citizens' property under the Act is strictly confined within the four corners of the power conferred by it and if Section 14(1) does not in terms, whether express or by necessary intendment justify a notification for reserving land for common purposes without consolidating holdings, this Court, in my opinion is competent and, indeed under a duty to strike down a notification which seeks to reserve land for common purposes under this section. Such a notification would obviously be outside the statute and therefore, ineffective "

5. Now in Civil Writ No. 913 of 1966 before us in paras 1 and 2 it was averred as under:

"(1) That the rightholders of village Jethu Nangal District Amritsar are mostly displaced landholders having got allotted land from the Government which did not stand in need of any consolidation. The areas in their possession and ownership are already mostly in compact blocks and no fragmentation existed requiring consolidation (2) That in spite of above facts the State Government issued a notification under Section 14(1) ** **

declaring its intention to hold consolidation proceedings in this village. There was, however no notice ever given to any of the rightholders ** ** to represent against the proposed consolidation proceedings before the issue of notification ** ** ** "

6. In reply to these paragraphs 1 and 2, in the written statement it was only stated that there is no provision for issue of any notice to the right-holders before issuing a notice under Section 14(1) and that the aforesaid section has been held to be valid by two Bench Decisions Unfortunately no reply was given on facts as to whether there was any fragmentation in the village requiring consolidation. However, a mere reading of the order of the Consolidation Officer dated 13th July 1960 (Annexure 'E') which was passed by him on certain objections raised by the petitioners' father before him qua the kurrah allotted to him in repartition in the village shows that the land of the petitioners' father who was displaced person was in several plots and was intermingled with the local residents. In para 2 it is stated as under "* * * * some land of the petitions (Bishan Singh, father of the present petitioners in this writ petition) is situate in between the land of the local owners and then some land is situate on the western side adjacent to the border of village Majupura near its boundary pillar. In this way the land of the petitioner is in three villages. Now the entire land has been given to the petitioner at one village ** *** "

7. In view of the above, it is futile or the part of the petitioners to suggest that in fact there was no fragmentation in the village and no consolidation was required. That being so, the academic question whether, an opportunity to the petitioners to show that. In fact, there was no fragmentation, was legally necessary or not, need not be decided. Any observations made in this respect would be obiter.

8. It has also to be borne in mind than the impugned notification in the present case was issued as far back as 8th of November 1957- Repartition took place on 5th of March 1960. The petitioners raised objections before the Consolidation Officer, went up in appeal to the Settlement Officer and then to the Assistant Director and thereafter filed a revision under Section 42 of the Act before the Additional Director. At no time during all these proceedings they raised the question that the notification was bad or that no consolidation was needed in the village. They only raised questions on merits as to where they should or should not be given their tak to taks. Coming as they do, to this Court nearly ten years after the notification, which they are trying to impugn and there being no merit in the plea raised for the first time, this Court would be justified in refusing them any relief under its writ jurisdiction under Article 326 on that ground alone.

9. The learned counsel urged that the impugned order of the Additional Director Consolidation of Holdings was bad on merits The point urged by him was that the major portions were wrongly determined. This is denied in the return filed on behalf of the Department, and inasmuch as this is a disputed question of fact, this Court cannot so into the same because it is not a Court of

appeal. Paras 7 to 13 of the petition list a number of grievances on behalf of persons who are not parties to this petition either as petitioners or even as respondents. It is not understandable how the petitioners are justified in taking up the grievances of persons who have not moved this Court.

10. Lastly, it was urged that the petition under Section. 42, in the first instance, came for hearing before S. Lal Singh Additional Director, who asked a Chahant to be prepared by the Patwari showing the pehri and chahi areas and thereafter he was transferred and S. Ajit Singh took over as Additional Director and the aforesaid officer without caring to look at this Chahant decided the petition on minor matters. The return is filed by the aforesaid officer S. Ajit Singh, and in para 18 he admitted the fact that his predecessor-in-office had called for a Chahant and went on to say that he examined the case and disposed of the same on merits. It is clear from the impugned order that the petitioners were given relief qua one kanal of land which was separated from their main tak and that area was brought into their tak. It is, therefore, obvious that there is nothing in the impugned order which requires interference by this Court. This petition is consequently dismissed with costs.

11. Civil Writ No. 1061 of 1966 is also considerably belated so far as the notification under Section 14(1) of the Act is concerned. Notification in this case was issued as far back as 23rd of March 1959 the scheme was published on 20th of December 1983 and confirmed on 25th of January 1964. According to the allegations in the petition after repartition petitioners approached the Settlement Officer then the Assistant Director and ultimately the Director under Section 42 of the Act. Surprisingly enough no copy of order of any of the Consolidation authorities has been placed on the record. It can, therefore, be safely presumed that this point was not raised. The copies not being on the record it is further not possible to form a clear idea as to whether the plea taken by the petitioners that in fact there was no fragmentation in the village has any basis. However the allegations in the petition are of a type which give an indication that there was considerable fragmentation in the village which would legally give ample power to the State Government to issue a notification under Section 14(1). In Sub-clause (x) of para 6 of the petition it is stated that Sohan Singh, one of the petitioners had some area near the village which was originally valued at Re. 1. Subsequently the value was reduced to annas /4/- and that he had some area at a distance of about half a mile where he was given a tak after consolidation. In fact, the learned counsel for the petitioners did not seriously urge that there was, in fact, no fragmentation in the village. The question of the validity of Section 14(1) therefore, does not arise for decision in this case either.

12. The petitioners have no case on merits as well. The first point urged by the learned counsel for the petitioners was that petitioner No. 4 Udham Singh was given three marlas less than his

due Main Singh petitioner No. 5 two marlas and Chanan Singh and Surain Singh petitioners No. 9 and 10, two marlas less. The copy of the Director's order not being on the record, it is not possible to see whether this point was taken before the Director and how it was dealt with. In any case, in sub-para (ii) of para 6 of the return filed by the Director, it has been explained how this 'kami' came into being and that such a shortage can be ignored. In accordance with the provisions of the scheme. In giving plots it is obviously not possible to give absolutely exact area to which a person is entitled, and where the scheme so provides, and the shortage to be condoned is comparatively insignificant, there can be no occasion for interference.

13. The other point raised was that the scheme has been violated in different ways. These matters are detailed in paragraph 6 of the petition. A number of Sub-clauses deal with the grievances of persons other than the petitioners who are not parties to this petition and must be ignored. With regard to the other points raised, these are all denied in the return and being questions of fact cannot be looked into by this Court in its exercise of writ jurisdiction and more so when even the copy of the order of the Director has not been put on the record from which it can be gathered as to whether these points were even raised there or not.

14. In view of the above, therefore, there is no merit in Civil Writ No. 1061 of 1966 and the same is also dismissed with costs.

15. This now brings us to Civil Writ No. 915 of 1966. This writ must succeed on points other than the validity or otherwise of Section 14(1). It is not necessary to decide that point in this writ also.

16. Three main points were urged:

17. First, that in view of Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules 1949 (hereinafter referred to as the Rules) which runs as under:

"18. An application under Section 42 shall be made within six months of the date of the order against which it is filed: Provided that in computing the period of limitation, the time spent in obtaining copies of the orders and the grounds of appeal, if any, filed under Sub-section (3) or Sub-section (4) of Section 21, required to accompany the application shall be excluded: Provided further that an application may be admitted after the period of limitation prescribed therefor if the applicant satisfies the authority competent to take action under Section 42 that he had sufficient cause for not making the application within such period." A petition under Section 42 of the Act challenging an order of a subordinate officer can be filed within six months of the date of the impugned order. In the present case, the petition filed before the learned Additional Director was against the order dated

30th March 1960 passed under Section 21(1) of the Act The petition under Section 42, therefore, could have been filed on or about 30th of September, 1960. In fact, the petition on which the action was taken by the Director was filed more than three years after the date of the order, i.e. 13th of May 1963. Battan Singh had sent a petition in the form of a memo to the Director Consolidation of Land, Jullundur, on 5th of May 1963. Apparently this was received in the office on 13th of May 1963 which is the date referred to in the order of the Additional Director. This petition was not in the proper form. Subsequently he put in the petition on the prescribed form on some later date. This application on the requisite form is Annexure 'A' to which the original letter dated 5th of May 1963 forms a part The reason given in the letter for making the application late is as follows:

"I am a Deputy Superintendent of Police. Central Reserve Police serving operational area in Assam at the time of Consolidation of land in my village, hence was not present ** ** After the consolidation is over in my absence the Consolidation Officer after a long time again allotted my block No. III to another man whose major portion was not there only to harass me and I had been allotted block No. 1 in place of Block No. III without any major portion for which I had been put in a great loss. ** **"

18. Learned Additional Director dealt with this question of delay as follows:

"This petition was received on 13-5-63. Proceedings under Section 21(1) were done on 30-3-1960. This is a prima facie time barred petition. The petitioner was in the Army and could not pursue his case." And then he started with the allegations in the petition on merits and by his order dated 23rd February 1966 withdrew 8 Kanals I Maria standard out of the 'C' grade block of Saman Kaur etc. (now petitioners in the writ) and gave them instead 7 kanals 12 Marias standard out of the 'A' block of Bat-tan Singh and his brother Bakhshish Singh. Battan Singh and Bakhshish Singh were given the area withdrawn from the present petitioners. While making this exchange he noted the three objections raised by Saman Kaur etc. These were-

(1) That this change will give them two blocks instead of one in one grade and it will be against the scheme.

(2) that if any area is to be given, it should be given along with 'A' grade area already given.

and (3) that they have made improvements.

19. In dealing with these objections he observed as follows: --

"It is quite correct that the claim has been laid after three years. The present fittings of the

petitioner happen to be beyond the scheme as the deficiency in grade 'C' is more than 75-15 K. But the scheme, provides that an extra tak can be given and in the case of Smt. Sama Kaur respondent she is a bigger right holder than the petitioner. There is no harm in giving her two takes in one block. Consequently the above proposal is hereby confirmed under Section 42. But it is further ordered that the petitioner should pay a sum of Rs. 300 to the respondent."

20. The argument of the learned counsel for the petitioners was that although the Additional Director noted the fact that the petition was hopelessly barred by time, he gave no clear finding that there was good cause for the delay. It was contended that the 2nd proviso is similar to the provision of Section 5 of the Indian Limitation Act and it is now well settled that a petitioner in order to get extension of time under Section 5 of the Indian Limitation Act must explain each day's delay. In *Bhagat Singh v. Additional Director, Consolidation of Holdings Punjab*², a Bench of this Court observed as follows "Rule 18 ***** prescribes a period of limitation for filing a revision under Section 42 of the Act. Where such a petition is filed after the period of limitation prescribed, the period can be extended if sufficient cause is shown for the delay" Same view was taken by another Bench of this Court in *Sewa Singh v. State*³. The learned Judges considered at length a number of earlier decisions and observed as follows:

"** ** an order passed by a competent authority under Section 42 of the Act would be set aside when knowing it to be barred by time the authority or official proceeds to its disposal on merits without first "extending the period of limitation prescribed by the Rules. The competent authority which extends the period of limitation must do so on being satisfied that 'sufficient cause' for not making the application within time exists, to say that the application under Section 42 is meritorious would not constitute a finding about the sufficiency of cause within the meaning of the second proviso to Clause 18 of the Rules."

21. In *Deendar v. State of Punjab*⁴. Mr. Justice Mahaan took the same view and observed "** * under the second proviso to Rule 18 a petition for revision under Section 42 of the Act may be admitted after the period limitation provided sufficient cause for not making the application within the period prescribed is made out * * "

22. In this case the Additional Director without going into the sufficiency or otherwise of the cause for the delay merely waived the time limit in order to redress the grievance of the petitioners. The order was held to be without jurisdiction.

23. Mr. Justice Narula in two cases reported as *Sher Singh v. State of Punjab*⁵, and *Chhutmal v. Additional Director Consolidation of Holdings*⁶. & Mr. Justice P. C. Pandit in another case

reported as *Pat Ram v. State of Punjab*, 1966 Cur LJ 533 (Punj) took a similar view

24. In the present case the petition was filed after three years and all that the learned Additional Director has stated is that the petitioner was in the Army could not pursue this case. In the first place, the petitioner was not in the Army but was certainly in the Border Security Force, where the officers have to serve under conditions which are more or less similar to those prevailing in the Army. However, before the learned Additional Director could have extended the time he had to come to a conclusion that during this entire period of three years the petitioner was incapable of moving the authority or there were other good reasons for his not doing so earlier. In the petition, it was pointedly remarked that Battan Singh used to visit the village on annual leave during all these years. That has not been specifically denied. Furthermore even in the petition as has been noted above, only in a vague manner it was stated that he was serving in operational area in Assam during the consolidation. He (Battan Singh) does not state that for the entire period from the date of the impugned order till he made the petition he was continuously in the operational area and was therefore, not able to put in the petition.

25. In the light of the authorities cited above the order of the Additional Director, who did not give a finding that he was satisfied on the material placed before him that there was good cause for the delay would be without jurisdiction. It was however suggested that Rule 18 does not take away the powers of the Director as State delegate to take action not on the petition but suo motu on certain facts coming to his notice say through, a petition, at any time. It was urged that the words at any time have been interpreted by this Court to mean what it says. In other words there is no time limit to such an action being taken under Section 42 and interfering with an order of a subordinate officer. The learned counsel opposite, however urged that the very idea of providing limitation under Rule 18 is to ensure some finality to the repartition done during consolidation so that the right-holders may, with feeling of security undertake steps to improve their land and otherwise make investments for providing means of irrigation to step up agricultural production. In a proper case, if the justice so requires and there was good cause for a person not approaching the authorities under Section 42 within six months proviso gives ample scope for extension of time and it would run counter to the very idea with which Rule 18 was made, if whenever a Director proceeds to interfere even after noticing that the application was after expiry of six months it has to be presumed that he purported to act in the exercise of his power to act suo motu. In view, however, of the fact that this petition must succeed on the other point to be dealt with hereinafter, it is not necessary to consider this matter and give a definite decision on the point.

26. The second point taken was that the order of the Consolidation Officer dated 15th October, 1960 was based on a statement made by Bakhshish Singh, brother of Battan Singh, who was

joint with him, and being in the village was looking after the interest of Battan Singh. The statement of Bakhshish Singh is Annexure 'F' and runs as follows; --

"Stated that in third Block area my percentage is lesser than all right holders. The area which is now available in third block is very inferior and is choridden. I willingly want to set my C-block area in my first and second blocks killa Nos. 61/22 and 63/22 If in future I make any complaint or appeal, that may be dismissed "

27. It was pointed out by the learned counsel for the petitioners that it were these very Killas 61/22 and 63/22- which were taken away from the tak of Bakhshish Singh and his brother Battan Singh and given back to Sama Kuar etc. and the very land which they had refused to take in their 'C' block on the ground that it was inferior and cho-ridden was given back to them The complaint of the petitioners is that in 1960 the respondents did not want to take the inferior land although in ordinary Kanals the area was larger and desired to have land in lieu thereof near their 'A' and 'B' blocks though the area in ordinary Kanals was much less and that after the inferior area had been improved by the petitioners at considerable expense and labour during the period of three years. Battan Singh respondent felt tempted to get back that improved land because of the largeness of the area. The fact that there has been some Improvement is obvious from the order of the learned Additional Director in granting Rs. 300 as compensation On the face of it the petition made by Battan Singh was mala fide and there was hardly any justification to allow him to go back on an arrangement allowed at the request of the respondents themselves. There is no manner of doubt that the interests of Bakhshish Singh and Battan Singh are the same. Their Khata is joint and Bakhshish Singh was representing his brother Battan Singh before the Consolidation authorities because Battan Singh was in Assam. At that time, in the year 1960 they did not want 'C' grade area because it was cho-ridden and inferior There is no reason why after the lapse of three years they should be allowed to ask back that area. The order of the Consolidation authority being a consent order on general principles, they are estopped from agitating this subsequently after lapse of such a long time when knowingly they had allowed the petitioner to make the improvements in the land on the representation that no complaint or appeal shall be made in future against the order passed.

28. The third point raised is stronger still. As is clear from the order of the learned Additional Director, the value of the land withdrawn from the petitioners was 8 Kanals 1 Maria and the value in standard acres of the land given to them was 7 Kanals 12 Marias. Thus by this change they were deprived of 9 standard Marias. The Additional Director had no jurisdiction to deprive them of the property without giving compensation

29. The learned counsel for the petitioners also made a grievance of the fact that in any case if they were to be deprived of the area which they had improved, the Additional Director should

have made an inquiry into the value of the improvements made and for this purpose should have given a definite opportunity to the petitioners to lead evidence to show that the improvements made far exceeded Rs. 300 that has been arbitrarily allowed to them. It is however not necessary to go into this matter

30. From the above it is clear that the impugned order of the learned Additional Director is not only without jurisdiction but on the face of it is wrong on merits and the interference made by the learned Additional Director was altogether uncalled for and unjustified. I, therefore, accept this petition, make the rule absolute and quash the order of the Additional Director dated 23rd February 1966 The petitioners will have their costs for the respondents Counsel's fee Rs. 200
Mehar Singh, C. J.

31. I agree.

32. D.K. Mahajan, J.

So do I.

Cases Referred.

11966 Cur LJ 668 = (AIR 1967 Punj 186)

21966-68 Pun LR 496

3Civil Writ No. 1197 of 1964 D/- 4-10-1966 (Punj)

41965-67 Pun LR (SN) 107

51966 Cur LJ 362 (Punj)

61966 Cur LJ 762 (Punj)