

PUNJAB AND HARYANA HIGH COURT

Mukhtiar Singh

Vs

State of Punjab

Letters Patent Appeal No. 548 of 1968

(Mehar Singh CJ. and R.S. Narula, J.)

04.03.1970

JUDGMENT

R.S. Narula, J.

1. The order of Shri Ajit Singh, Additional Director, Consolidation of Holdings, Punjab, Chandigarh, dated March 22, 1967 (Annexure 'C' to the writ petition) passed at the instance of Sardara Singh respondent No. 2, whereby the earlier order of the Assistant Director, Consolidation of Holdings, dated August 12, 1966 (Annexure 'B' in favour of the appellants was set aside, was impugned by the appellants in Civil Writ 1431 of 1967, on the solitary ground that the Additional Director had no jurisdiction to pass an order to their prejudice without issuing notice to them and affording them a reasonable opportunity of being heard. The learned Single Judge before whom the writ petition came up for final disposal, dismissed the same by the order, dated July 19, 1968, on the solitary ground that no injustice, what to say of manifest injustice, had been caused to the appellants by the impugned order though it has no doubt been passed by the Additional Director without any notice to them and without hearing them.

2. In this better Patent Appeal against the judgment of the learned Single Judge, Mr. S.P. Goyal has submitted on behalf of the appellants that the approach of the learned Single Judge was not quite correct, and that the impugned order having been passed in violation of the mandatory requirements of the proviso to section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (hereinafter called the Act), the appellants were entitled to have the same quashed *ex. debito justitiae*. It is not disputed that the order of the Assistant Director (Annexure 'B') was in favour of the appellant. It is also beyond question that the said order was set aside by the Additional Director without notice to the appellant, in exercise of his powers under section 42 of the Act. The proviso to section 42 reads :-

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

consideration."

It is nobody's case that the State Government, or, for the matter of that, the Additional Director, was satisfied in the present case that the proceedings before the Assistant Director had been vitiated by unlawful consideration. Nor is any such finding recorded in the order. That being so, the Additional Director had no authority to set aside or vary the order of the Assistant Director without complying with the mandatory requirements of the above quoted proviso. Observations have been made in the order of the Additional Director which go to the merits and root of the controversy between the parties. Though the Additional Director has not doubt left the passing of a final order to the Assistant Director on the ground that Mukhtiar Singh appellant was not present before him, and he would not like to decide the case in his absence, and that the final order be passed after hearing him afresh, very little has been left by the Additional Director to be decided by the Assistant Director on merits. The grounds on which the Assistant had decided in favour of the appellants have not been fully dealt with by the Additional Director.

3. In any event, the impugned order having been passed in a manner prohibited by law, it cannot be said that it has not caused any injustice to the appellants. In *Joginder Singh v. The Deputy Custodian General, Evacuee Property, Mussoorie*,¹ decided on March 26, 1962, their Lordships of the State Government observed that where an inferior Tribunal acts beyond its jurisdiction, its action necessarily results in injustice to the party against whom action has been taken, for justice has to be done according to law, and the High Court is entitled to exercise jurisdiction under Articles 226 and 227 of the Constitution where it finds that an inferior Tribunal has acted beyond its jurisdiction. As already held above, the Act specifically prohibits the State Government from exercising its jurisdiction under section 42 with a view to vary or reverse the order of a lower authority under the Act without complying with the statutory requirements of the proviso to that section. The impugned order of the Additional Director having been passed beyond his jurisdiction in the above sense, must necessarily be deemed to have resulted in injustice to the appellants. We are, therefore, constrained to observe that the observations of the learned single Judge to the effect that an order passed without complying with the requirements of the proviso to section 42 of the Act did not result in injustice, much less manifest injustice to the appellant, were not in accord with the pronouncement of the State Government in the case of *Joginder Singh and others* (Supra).

4. For the foregoing reasons, we allow this appeal with costs, set aside the judgment of the learned Single Judge, allow the writ petition of the appellant, and quash the impugned order of the Additional Director, dated March 22, 1967 (Annexure 'C'). Nothing stated in this judgment will, however, be deemed to stand in the way of the State Government rehearing and redeciding the application of respondent No. 2 under Section 42 of the Act in accordance with law after due compliance with the proviso to section 42. Counsel's fee Rs. 100/-.

Mehar Singh, C.J.

5. I agree.

Petition allowed.

Cases Referred.

1 C.A.No. 457 of 1958