PUNJAB AND HARYANA HIGH COURT

Joginder Singh

Vs

Director of Consolidation of Holdings

C. W. P. No. 564 of 1986

(V. Ramaswami, C.J. and G.R. Majithia, J.)

08.08.1988

JUDGMENT

G.R. Majithia, J.

1The writ petitioners have challenged the order of the Director of Consolidation of Holdings, Punjab passed under section 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, hereinafter referred to as the Act) in this petition.

2. The brief facts as unfolded in the writ petition are these. The petitioners are in possession of different Parcels of land under the Gram Panchayat (respondent No. 2). The land was described as Shamlat deh in the revenue record and owned by the Gram Panchayat. It was mutated in the name of the Gram Panchayat in the years 1956-57 under the provisions of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Village Common Lands Act).

3. The right holders of the village, including respondents No. 3 to 6, preferred a petition under Section 42 of the Act before the Director of Consolidation of Holdings, Punjab, in August, 1985, contending that the land in dispute was *banjar qadim* and according to the entry in the Wajib-Ul-Arz of the village it had to be apportioned among the proprietors and Khewatdars of the village pro rata of their holdings in the revenue estate; that the Director of Consolidation of Holdings had no jurisdiction to hold that the land in dispute vested in the Gram Panchayat and was liable to be partitioned among the proprietors; that the petition had been filed after a lapse of 25 years; no petition under Section 42 of the Act could be filed challenging the title of the Gram Panchayat over the land in dispute and the proper remedy lay under Section 11 of the Punjab Village Common Lands (Regulation) Act, and that the Collector was the proper authority to decide whether the land vested in the Gram Panchayat or not.

4. Respondents No. 3 to 26 who are the proprietors filed a joint written statement. They controverted the allegations made by the petitioners in the writ petition and averred that the disputed land was described in the Record of Rights prior to consolidation as banjar and kanjar dadim in the individual cultivating possession of the Khewatdars, and in the column of cultivation it was recorded as in possession of Malkan (owners) while in the column pertaining to

assessment it was recorded as bila lagan bawajah Kabza sab ka hissedari (without payment of rent being in possession of co-sharers); that it could not vest in the Gram Panchayat and the Director of Consolidation of Holdings was perfectly justified to partition the land as per rules on the basis of entries in the Wajib-ul-Arz and there was no bar of limitation to a petition under Section 42 of the Act when the re-partition and the scheme has been challenged.

5. The Gram Panchayat-respondent, through its Sarpanch, filed an affidavit dated April 25, 1986 in which the allegation that the order of the Director of Consolidation of Holdings was passed in favour of the proprietors in collusion with the Sarpanch, Gram Panchayat, was denied, and it was urged that the Gram Panchayat had challenged the order of the Director of Consolidation through *titled as Gram Panchayat, Akar v. Director*[1]*, Consolidation of Holdings, Punjab Chandigarh and 24 others.*

6. Respondent Nos. 3 to 26 through C.M. No. 2116/87 sought vacation of the stay order granted in favour of the writ petitioners and placed on record a copy of the order passed by a Bench of this Court in CWP No. 147/1986 (supra) dismissing the writ petition filed by the Gram Panchayat. The order of the Bench of this Court was upheld by the Supreme Court of India is Special Leave Petition filed by the Gram Panchayat.

7. The writ petitioners filed reply to C.M. No. 2116/87 (supra). They did not dispute the facts mentioned by the right-holders in the civil miscellaneous but the gravamen of the charge was that the Sarpanch was in collusion with the right-holders and he was not protecting the interests of the Gram Panchayat.

8. Mr. P.K. Palli, the learned senior advocate, made the following submission :-

> (a) that the land vested in the Gram Panchayat under the Village Common Lands Act. The land which once vested in the Gram Panchayat could not be divested;
>
> (b) that the Director of Consolidation of Holdings had no jurisdiction to entertain the petition under Section 42 of the Act as it was time-barred;
>
> (c) that the petitioners were not made parties i.e., respondents to the petition under Section 42 of the Act; so, the order passed at their back stands vitiated.

9. The learned counsel drew our attention to section 2(g) of the Village Common Lands Act which reads as under :-

> "2(g) 'shamilat deh' includes :-
>
> (1) land described in the revenue records as Shamilat Deh excluding abadi deh;
>
> (2) shamilat tikkas;
>
> (3) land described in the revenue records as shamilat tarafs, parties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purpose of the village;

(4) land used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells of ponds within abadi deh or gorahed, and

(5) land in any village described as banjar qadim and used for common purposes of the village according to revenue records :-

but does not include land which :-

(i) x x x

(ii) has been allotted on quasi-permanent basis to a displaced person;

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed and is not in excess of the share of the co-sharer in the shamilat deh;

(v) is described in the revenue records as shamilat taraf, patti, panna or thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, a house or for cottage industry immediately before the comencement of this Act;

(vii) x x x

(viii) was shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or

(ix) was being used as a place of worship or for purposes subservient thereto immediately before the commencement of this Act;

(h) 'Shamilat law' means :-

(i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953; or

(ii) in relation to land situated in the territory which immediately before the ist November, 1956, was comprised in the State of Patiala and East Punjab State Union, the Pepsu Village Common Lands (Regulation) Act, 1954;

(iii) 'State Government' means the Government of the State of Punjab."

A reading of the definition of shamilat deh contained in section 2(g) of the Village Common Lands Act clearly shows that the land in dispute does not come within the ambit of shamilat deh. It is not described in the revenue records as shamilat deh. The writ-petitions have not placed any material on record to enable us to draw an inference that the land was recorded as shamilat deh in the Record of rights or was described as banjar qadim and used for common purposes of the village prior to consolidation. Even otherwise, in the scheme of consolidation there existed adequate shamlat deh land for common purposes, including the purpose of the Gram Panchayat. The excess land secured from the proprietors by imposing a pro rata cut deserves to be redistributed among the proprietors in accordance with their rights.

10. Rule 16 (ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 may be noticed :-

> "In an estate or estates, where during consolidation proceedings there is no Shamal Deh land or such land is considered inadequate, land shall be reserved for the Village Panchayat and for other common purposes, under Section 18 (c) of the Act out of the common pool of the village at the scale given in the schedule to these rules. Proprietary rights in respect of land so reserved (except the area reserved from the extension of abadi of proprietors and non-proprietors shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of record of rights as Jumla Malkan Wa Digar Hakdaran Arazi Hasab Rasad. The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of village proprietary body and the Panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned."

If land was deducted from the holdings of the proprietors, the same was illegal and contrary to the provisions of rule 16 (ii) of the Rules, and had to be restored to them. The Director of Consolidation after a perusal of revenue record arrived at the following finding :-

> "I had heard the parties in detail in this case on 28.11.1985 at Patiala and the orders were reserved. The records were also examined. From the record it is clear that the area 1396 B-7B was mostly Banjar and Banjar Qadim and was in the individual possession of the khewatdars as, according to the entries in the jamabandi in the cultivation column, it was Maqbooza Malkan and in the column pertaining to assessment to land revenue it is mentioned as Bila Lagaan Bawaja Qabaza Sabqa Hissedari. From the record it has been observed that a number of right holders including Sh. Mangal Singh, etc. had got the area transferred to their proprietorship on the score of their possession vide mutation Nos. 376, 514 and 490 etc. The plea of the petitioners that mutation No. 386, transferring the land belonging to the petitioners in the name of the Gram Panchayat did not satisfy the ingredients of Section 2 (g) of the Village Common Lands Act and, as such, could not be transferred in the name of the Gram Panchayat. The learned counsel for the petitioners also pointed out that according to citation 1977 PLJ 276, this land could not be transferred to the name of the Gram Panchayat as this area was not in use for common purposes. The learned counsel for the respondent (Gram Panchayat) could not rebut the pleas taken up

by the learned counsel for the petitioners. It is admitted by the respondent Gram Panchayat that the area which is liable to be distributed was originally entered as Shamlat deh Hassab Rasad Zer Khewat and in the cultivation column, it is entered as Maqbooza Malkan. Evidently, it was not used for common purposes. That being so, the area which was not being used for common purposes, could not be transferred to the name of the Gram Panchayat under Section 2 (g) of the Village Common Lands Act and the consolidation authorities had no right or power to change the title of the land. They should have kept this area in the name of Shamlat deh Hassab Rasad Zar Khewat and, in the cultivation column, it should have been entered as Maqbooza Malkan. The consolidation authorities had further no jurisdiction to break the possession of the individual Ghair-Morrows is who were in possession of the Shamlat Deh Hassab Rassa Zar Khewat. Mutation No. 386 is certainly illegal as it was not sanctioned under any specific authority nor it was done in accordance with the law. From the record, it is clear that the total area reserved for the Gram Panchayat in the consolidation scheme is 38K-18M and the Panchayat was not entitled to anything more than this. The provisions of the scheme are sacrosanct. The rest of the area shall have to be restored to the Shamlat Deh Hassab Rasad Zar Khewat as per the original record inherited by the consolidation Department. Since the revenue record is inherited by the consolidation Department indicating this area to be Shamalat Deh Hassab Rasad Zar khewat, the plea of the petitioners that this should be distributed amongst the shareholders cannot be resisted on any valid ground. That being so, the area measuring 2263K-16M but excluding area used for common purposes during consolidation proceedings should be distributed amongst the share-holders as per provisions contained in the jamabandi of 1951-52, which is the only authentic document inherited by the Consolidation Department. Since mutation No. 386 dated 12.6.1956 is illegal and nonest and it cannot form the basis of conferring any right or title, it has to be ignored and is ignored accordingly."

11. No material has been placed before us to hold that the finding arrived at by the Director, Consolidation of Holdings on an appraisal of the revenue record is vitiated. We do not find any infirmity or illegality in the order of the Director of Consolidation of Holding that the land is not shamlat deh. Resultantly, it did not vest in the Panchayat. Moreover, the banjar and banjar qadim land will be deemed to be in possession of the overs till the contrary is proved. The land was in possession of the proprietors as per their shares in the Khewat. Apart from this, an error of law which is apparent on the face of record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In this connection, the observations of the Supreme Court in *Syed Yaokoob v. K.S. Radhakrishnan and others*[2], are very relevant. Their Lordships of the Supreme Court, while dealing with this question, were pleased to observe as under :-

"In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected

by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*[3]*,)*; *Nagendra Nath v. Commr. of Hills Division*[4]*,* and *Kaushalya Devi v. Bachittar Singh,*[5] *".*

12. There is yet another aspect of the matter to which a brief reference has to be made, Section 11 of the Village Common Lands Act, envisages that a person claiming a right title or interest to any land vested or deemed to have vested in the Panchayat under the Act can submit to the Collector, within such time as may be prescribed, a statement of his claim in writing, signed and verified in the manner prescribed, and the Collector shall have jurisdiction to decide such claim. The order passed by the Collector is appealable before the Commissioner. A complete machinery is provided to adjudicate the rights of a person who asserts whether a particular land vests or does not vest in the Panchayat. The petitioners could have availed themselves of the remedy open under Section 11 of the Act, but no grouse can be made against the order passed by the Director, Consolidation of Holdings, is these proceedings unless they were able to bring the case within the four corners of the dictum of the Apex Court in the Sayed Yakoob's case (supra). The first submission of Mr. Palli is, thus, rejected.

13. The next submission of Mr. Palli does not hold good in view of the authoritative pronouncement of the Full Bench of this Court reported as *Jagtar Singh v. Additional Director of Consolidation of Holdings*[7]*,* In the present case, the right-holders had not challenged any order of consolidation authorities but had attacked the validity of the scheme and the re-partition, and the bar of limitation of six months under Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, is not attracted to the facts of the instant case.

14. Mr. Palli next submitted that the impugned order is vitiated because the petitioners were not afforded any opportunity of hearing before the passing of the order. In support of this submission, he relied upon the following authorities :-

(i) *Narinder Nath Sachdeva v. Bhajan Lal*[7]*,*

(ii) *Gram Panchayat of Village Serohi v. Har Lal*[8]*,*

(iii) *Ajit Singh v. Smt. Subaghan*[9]*,* These authorities have no bearing to the facts of the instant case. The dispute before the Director of Consolidation (Holdings) was between the proprietors and the Panchayat. They had no right to be impleaded as a party/respondent. They got the property on an annual lease from the Panchayat. If the Panchayat rights were in jeopardy it could defend them. The person who had got the property on lease for a year has no right or locus standi to become a party to those proceedings. This matter is not res integra. It directly came up for consideration in *(Nek Singh and others v. State of Punjab*

through Additional Director[10]*, Consolidation of Holdings and others) decided on August 12, 1986,* whereas Division Bench of this Court in somewhat similar circumstances, held as under :-

> "As regards the petitioners not having been made parties to the petition under Section 42 of the Act, it may be observed that the petitioners had no right to be impleaded as respondents to the petition in question. The matter was between the proprietors and the Gram Panchayat".

In CWP No. 2820/1986 (supra), the facts were almost identical as in the present case. The writ-petitioners who claimed themselves to be lessees under the Gram Panchayat challenged the order of the Additional Director, Consolidation of Holdings, whereby in exercise of the powers under Section 42 of the Act, he directed the Consolidation Officer to re-distribute the land pro rata among the proprietors which was deducted for a common purpose. The view taken by the Bench appears to be correctly. We fully agree with the reasoning adopted by the Bench.

15. Apart from this, the petitioners could have approached the Director of Consolidation for passing a fresh order after affording them an opportunity of hearing. In *Shivdeo Singh and others v. State of Punjab and others*[11]*,* the Supreme Court held as under :-

> "Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and therefore, the second order of Khosla, J. was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order to Khosla, J., affected the interest of persons who were not mad parties to the proceedings before him. It was at their instance and for giving them a hearing that Khosal, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla. J."

These observations though relate to the courts, may on general principles equally apply to judicial and quasi-judicial tribunals. The inherent powers of re leaving the suitors from the mistake of courts/tribunals may legitimately be invoked for promoting the cause of justice.

16. The petitioners got the property for cultivation in auction for a year. They had a right to remain the possession for the auctioned period. After the expiry of the period, they were unauthorised occupants and had to surrender possession to the Gram Panchayat.

17. The writ petition is dismissed. However, we leave the parties to bear their own costs. C.M. No. 2372 of 1987 is allowed. The other C.M. Nos. 2116, 2371 and 2906 of 1987 and 5230 of

1988 are rendered infructuous in view of our decision in the main case.

V. Ramaswamy, C.J.

18. I agree.

Petition dismissed.

Cases Referred.

1CWP No. 147/1986
2AIR 1964 SC 477
31955-1 SCR 1104
41958 SCR 1240
5AIR 1960 SC 1168
61984 PLJ 222 : 1984 R.R.R. 31
7 1982 PLJ 243
81971 PLR 1009
9AIR 1973 Pun and Har page 93
10CWP 2820/1986
11AIR 1963 SC 1909