(1993) 1 ILR (P&H) 92

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 8147 of 1987

Bachan Singh and Others		APPELLANT
	Vs	
The Director Consolidation of Holdings and Others		RESPONDENT

Date of Decision: April 8, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226
- East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 - Section 42

Citation: (1993) 1 ILR (P&H) 92

Hon'ble Judges: N.K. Sodhi, J

Bench: Single Bench

Advocate: P.K. Palli and Aran Palli, for the Appellant; Amarjit Markan and V.K. Kataria, for the Respondent

Final Decision: Allowed

Judgement

N.K. Sodhi, J.

Petitioners Bachan Singh and others representing the body of Jumla Mushtarka Malkan Khewat Dharan Haqdharan and Hissadaran residents and proprietors of village Mavi Kalan, tehsil Samana, District Patiala have filed this petition under Article 226 of the Constitution of India challenging the orders dated 5th February, 1986, 21st July, 1986 and 11th August, 1987 passed by Respondents 1 and 2 on the ground that the proprietors of the village were neither impleaded nor heard in proceedings u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (referred to hereinafter as the Act) when land from their Khata was given to Labh Singh Respondent to make good his alleged deficiency.

2. The case of the Petitioners is that consolidation of holdings took place in village Mavi Kalan more than 25 years ago and the scheme of consolidation which was prepared was completely enforced by the authorities by allotting the lands to various landholders after hearing their objections and disposing of appeals and revisions arising therefrom. In the village, there exists a Khata which belongs to the body of Mushtarka Malkan and the Petitioners claim that they are the persons from the said body being the proprietors and share holders in the revenue estate. The Khata is in possession of the Gram Panchayat of village Mavi Kalan (Respondent No. 3) for purposes of management and the land is being leased out to different persons on Chakota from year to year basis by auction. Labh Singh Respondent moved a petition in the year 1985 u/s 42 of the Act alleging that at the time of repartition, land allotted to him was short to the extent of 6-10 Standard Kanals and the prayer made in the petition was that the shortage be made good. The Gram Panchayat was impleaded as a Respondent along-with one Amrik Singh son of Sucha Singh. On a notice being issued by the Director, Consolidation of Holdings, Punjab, the Gram Panchayat despite service did not put in appearance, though Amrik Singh son of Sucha Singh appeared. The learned Counsel strenuously urged before me that the Sarpanch of the Gram Panchayat was mixed up with Labh Singh and deliberately absented himself despite service. I am afraid I cannot give any finding in this regard without hearing the Sarpanch, howsoever suspicious this circumstance be. After hearing Labh Singh and the said Amrik Singh, the Director-Respondent No. 1 found that the area allotted to Labh Singh Respondent No. 4 was short by 6-10 Standard Kanals. The petition was accordingly accepted and the case was remanded as per order dated 5th February, 1986 to the Consolidation Officer with the following direction:

He should visit the spot, check up the record and make good the short fall in the area allotted to the Petitioner. He will, however, give an opportunity of being heard to the concerned parties before doing so.

On remand, the Consolidation Officer-Respondent proceeded ex parte against the Gram Panchayat whose Sarpanch Kashmir Singh die not appear. After hearing Labh Singh, who was the petitionei in the petition u/s 42 of the Act and Amrik Singh, Consolidation Officer by his order dated 21st July, 1986 allotted an area to Labh Singh bearing Khasra Nos. 59/12/2, 13, 18, 19/1, 24 and 57/20/6. This area was taken away from the Khata of the proprietors and the name of the owner of this area which was so given to Labh Singh has been mentioned as "Mushtarka Malkan and others of the village Hasab Rasad Rakba Khewat". Feeling aggrieved against the order of the Consolidation Officer, Bachan Singh and other writ Petitioners moved the Director u/s 42 of the Act challenging the order of the Consolidation Officer dated 21st July, 1986 on the ground that the area of Mushtarka Malkan had been given to Labh Singh without affording any opportunity of hearing to the proprietors by the Director, Consolidation of Holdings, Punjab while remanding the case and nor was any such opportunity afforded to them by the Consolidation Officer. After hearing the parties, the Director, Consolidation of Holdings, Punjab dismissed the petition as per order dated 11th August, 1987 holding that it was enough that the Gram

Panchayat was impleaded and the Sarpanch despite service not having appeared, the Petitioners representing the proprietors of the village had no right to claim any hearing since the Gram Panchayat was afforded such an opportunity. The Petitioners have challenged all the three orders in the present petition.

3. The grievance of the writ Petitioners is that when the petition u/s 42 of the Act was filed by Labh Singh before the Director, Consolidation of Holdings, Punjab, they though proprietors/owners were neither impleaded as Respondents therein nor was any opportunity of hearing afforded to them. Again, when the matter was remanded to the Consolidation Officer, they there too were not heard even though the Consolidation Officer in order to make good the deficiency of Labh Singh allotted him their area of Mushtarka Malkan. The contention is that since the area of Mushtarka Malkan was being allotted, the proprietors were necessary parties and they ought to have been heard.

4. Labh Singh Respondent has controverted the stand of the Petitioners and his case is that even though the owner of the area allotted to him was Mushtarka Malkan, it was not necessary to afford any opportunity of hearing to the proprietors as the land was admittedly in possession of the Gram Panchayat which was managing it and the latter had been served in the proceedings before the Director. It is further contended that even though the Gram Panchayat did not appear before the Director or before the Consolidation Officer, it had, however, challenegd both the orders dated 5th February, 1986 and 21st July, 1986 in this Court by filing Civil Writ Petition No. 2296 of 1987 which was dismissed in limine on 23rd April, 1987 and these orders, according to the learned Counsel had, therefore, become final and could not be challenged again by the Petitioners.

5. After giving my thoughtful consideration to the rival contentions of the parties, I find force in the case of the Petitioners. It is not in dispute that the Khata out of which the area has been allotted to. Labh Singh to make good his alleged deficiency belonged to Mushtarka Malkan and others of the village Hasab Rasad Rakba Khewat. No doubt, the Gram Panchayat was in possession of this land but it was only for the purposes of managing it. The possession of the Gram Panchayat for management of the land could not deprive the owners of the same of their right to be heard. In my opinion, notice to the proprietors from whose Khata the area was being taken away and allotted to Labh Singh was necessary. Notice to the Gram Panchayat could not be said to be a notice to any of the proprietors and the least that was required under the rules of natural justice was that persons whose area was being excluded from their khata should have been impleaded and heard. This not having been done, the impugned orders are liable to be quashed on this short ground. The earlier writ petition was filed by the Gram Panchayat against the orders dated 5th February, 1986 and 21st July, 1986 and the dismissal of that petition cannot debar the proprietors of the village from challenging the orders on the ground that they were neither impleaded as parties nor heard by the Consolidation authorities before an area from their khata was taken out to make good the alleged shortage of Labh Singh.

6. The learned Counsel for the Petitioners also disputed that Labh Singh had at all any shortage in his allotment at the time of repartition proceedings while Labh Singh Respondent has placed some documents on the record to show that the area allotted to him was short which shortage was ordered to be made good by the Consolidation authorities. All these are disputed questions of fact which cannot be allowed to be raised in proceedings under Article 226 of the Constitution. Since I am remanding the case back to the Director, Consolidation of Holdings, Punjab, Chandigarh, it will be open to the parties to raise these questions there.

7. In the result, the writ petition is allowed and the orders dated 5th February, 1986, 21st July, 1986 and 11th August, 1987 passed by Respondents 1 and 2 are quashed and the case is remanded back to the Director (Respondent No. 1) with a direction that he should decide afresh the petition filed by Labh Singh after hearing the Petitioners and other affected persons, if any. The parties through their counsel have been directed to appear before Respondent No. 1 on May 13, 1991. No costs.