

(1996) 05 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11565 of 1992

Bachittar Singh and Others

APPELLANT

Vs

Director of Land Records and
Others

RESPONDENT

Date of Decision: May 3, 1996

Acts Referred:

- East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 -
Section 42

Citation: (1996) 113 PLR 555 : (1996) 3 RCR(Civil) 666

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Vikas Singh, for the Appellant; V.K. Sharma, for the Respondent

Judgement

V.K. Bali, J.

Petitioners, 13 in number, through present petition filed by them under Article 226 of the Constitution of India have prayed for issuance of a writ of Certiorari so as to quash the order dated 12th May, 1992 passed by the Director Consolidation (Annexure P-4) vide which petition preferred against the order of respondent No. 1 u/s 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 was allowed and the land in dispute which was earlier mentioned in revenue records as Shamlat Deh Hasad Rasad Khewat was ordered to be distributed amongst the right holders as per their shares.

2. There is no need to go into details of this case as it is only one contention which has been raised and it is in that context only that the brief facts need to be noticed. Respondents Nos. 4 to 15 so arrayed in the present petition filed an application u/s 42 of the Act. They claimed that they were proprietors of the village and that inasmuch as in the revenue records the land was entered as Shamlat Deh Hasab Rasad Mundarza Shajra Nasab, the land ought to have been distributed amongst

them and other proprietors. They succeeded in their petition and were allowed the relief, as mentioned vide orders passed on that behalf by Director of Consolidation on 12th of May; 1992. This order has been challenged by the petitioners who claim that they were the tenants on the land in dispute and were a necessary party. Inasmuch as they were not arrayed as respondents in the application filed u/s 42 of the Act nor they were heard as thus the impugned order deserves to be set aside. In support of this contention the learned counsel representing the petitioner cites the judgment of the Apex Court in Swaran Singh and others Vs. State of Punjab and others, in which the view expressed in Joginder Singh and Others Vs. Director, Consolidation of Holdings, Punjab, Chandigarh and Others, was reversed. Mr. Sharma learned counsel representing the respondents, however, vehemently contends that but for Badhitter Singh none of the petitioner herein was tenant on the land in dispute, it is the name of Bachitter Singh alone which has been mentioned in some of the revenue records and inasmuch as he too was a tenant for a year only i.e. year 1988-89 he had no locus standi. It was, thus not incumbent upon the Director of Consolidation of Holdings to hear him.

3. After hearing the learned counsel for the parties and going through the records of the case the Court is of the view that from the pleadings and documents that have been annexed with the petition it could not be proved that the petitioners but for Bachitter Singh were ever tenants on the land in dispute. In support of the assertion that the petitioners were tenants on the land in dispute, the only revenue record that has been placed on record is Jamabandi for the year 1988-89. The name of Bachittar Singh is mentioned in the column of cultivator. In the column of rent it is clearly mentioned that the same is Rs. -9,000/- per year. From the records of the case, it is also clear that Bachitter Singh alongwith his brother Titar Singh was given 66 kanals and 11 marlas of land for cultivation on the yearly rent of Rs. 9,000/-. Even though the lease was for a period of only one year but from the records and in particular the document Annexure R-I, attached by respondent No. 3 it is clear that Bachitter Singh continued to be in possession till such time possession was taken from him and others by the order of the Director Consolidation impugned in this petition. It is, thus, clear that none other than Bachitter Singh was tenant on a piece of land measuring 66 kanals 11 marlas. Once it is proved that Bachitter Singh was tenant at the time when the petition u/s 42 of the Act was filed and he continued to be holding the land upto the time he was evicted from the land under the orders of Director Consolidation, it shall be wholly immaterial as to whether he was initially given land for cultivation only for a period of one year. That part, the Division Bench while holding that tenant had no locus standi to be heard in Joginder Singh's case (supra) was dealing with the tenant who was given possession of the land for a period of one year. As mentioned earlier, the view taken by this court in Joginder Singh's case (supra) has been reversed by the Supreme Court in Swaran Singh's case (supra). It has been now authoritatively held that tenant is a party interested within the contemplation of the proviso to Section 42 and therefore, he has to be

heard even though it be a petition for determination of ownership between the Gram Panchayat and the proprietors of the village. This Court is bound to follow the view taken by the Supreme Court. This petition on behalf of Bachitter Singh atleast deserves to succeed. There is no choice in the matter but to quash the order dated 12.5.1992 (Annexure P-4) passed by the Director of Consolidation and remit the matter to the same authority for deciding the matter afresh after hearing Bachitter Singh petitioner No. 1. The parties through their counsel have been directed to appear before the Director Consolidation on 5th June, 1996. No order as to costs.