(1991) 04 P&H CK 0091

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4680 of 1989

Dholposh Sharma Shastri		APPELLANT
	Vs	
Richhpal Singh		RESPONDENT

Date of Decision: April 23, 1991

Citation: (1991) PLJ 337 : (1991) 2 RRR 349

Hon'ble Judges: V.K Jhanji, J

Advocate: Yogesh Goel, Advocate, Ashok Aggarwal, Sr. Advocate,, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. The petitioner has filed the present writ petition challenging the order dated 8.3.1988 passed by the Director, Consolidation under Section 42 the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter reference as the Act) and order, Annexure P5 whereby the Consolidation Officer provided path to respondents No. 1 to 3 in pursuance of the order dated, 8.3.1988.

2. Briefly, the facts as stated in the petition, are that the petitioner alongwith of sharers has been in possession since more than 100 years as Dholidars of the land bearing Khewat No. 34, Khata No. 64, Rectangle No. 25, Killa No. 9/2 situated in the revenue estate of village Kharkheri, Tehsil and District Gurgaon. It is not in dispute that, the consolidation proceedings were completed in the village in 1953 and repartition was announced on 5.5.1953 and possessions were changed in July 1 1953. On 30.5.1977, respondent No. 1 filed petition under Section 42 of, the Act, against the petitioner asking that he be provided path from the land of the petitioner sharers. The petition was dismissed by the Director, Consolidation on 3.8.77 Petition was not only dismissed with the remark that the same was filed after 24 years when repartition was announced but also on merits. Again on 21.1.87, respondent No. 1 filed a petition under Section 42 of the Act asking for the same relief but the said petition was dismissed on 27.5.87. The

Director, Consolidation was of the opinion that no review was maintainable and as such petition under Section 42 of the Act is not competent. Thereafter, a third application was filed by respondent No. 3 i.e. son of respondent No. 1 under Section 42 of the Act before the Director, Consolidation. In that application it was prayed that at the time of Consolidation of Killa Nos. 24/6/1/15, 25/1/2/10, 11 no path was given to the applicants and the same be, given to them now. On this petition, the Director remanded the case to the Consolidation Officer with the direction that respondent No. 3 be provided path after hearing both the parties and keeping in view the provisions of Section 21(2) of the Act. On remand, the Consolidation Officer found that if respondent No. 3 is provided path of 2 Karams from Killa No. 23/9/2 i.e. the land of the petitioner, he can have easy access to his land and equivalent area of land be given to the petitioner from Killa No. 25/10 so as to compensate him. The petitioner on coming to know of the order dated 22.7.88 wrote a registered letter dated 18.8.88 to the Director protesting about passing of the order dated 22.7.88. On this letter, the Settlement Officer, vide letter dated 20.9.88 informed the petitioner that in case he has any objection, he can file appeal under Section 21(3) of the Act for the settlement of his claim. The petitioner made a detailed representation to the Director, Consolidation of Holdings vide letter dated 16.12.88 wherein he not only gave history of the entire case but also attached revenue record. Petitioner''s grievance was that he was kept in dark and he was purposely not made a party, he being an affected party, as the passage is being provided to the respondents No. 1 to 3 from his land, he ought to have been heard before any order was passed adverse to his interest. However, the petitioner was informed by the Director, Consolidation of Holdings vide letter dated 28.12.1988 that no action can be taken on his miscellaneous application and in case the petitioner is aggrieved, he should take suitable action under the law.

3. The petition is being contested by respondent Nos. 1 to 3. They have taken certain preliminary objections like that the petitioner has already filed appeal under Section 21(3) of the Act and as such the present writ petition is not competent. The second objection is that the petitioner has suppressed the material facts inasmuch as he has not disclosed in the writ petition that he had filed a civil suit challenging the order providing path to the respondents. In the said suit, the petitioner had filed an application for grant of adinterim injunction which initially was granted to him but was vacated later on and it was observed in the order dated 25.2.1989 passed by the Sub Judge 2nd Class, Gurgaon that the petitioner shall not be dispossessed except in accordance with law.

4. Mr. Ashok Aggarwal, Senior Advocate, learned counsel for the petitioner has contended that orders, Annexures P4 and P5 are without Jurisdiction inasmuch as in the presence of earlier order dated 3.8.1977 and 27.5.1987, the Director, Consolidation of Holdings had no jurisdiction to pass an order under Section 42 of the Act for providing path to respondents No. 1 to 3. He has also challenged the order dated 2.7.1988 on the ground that path was provided to respondents No. 1 to 3 but before deciding the matter, he was not made a party to the proceedings nor any opportunity was given to him. He has also contended that the order dated 8.3.1988, Annxure P4 and in pursuance thereof

order dated 22.7.1988 passed by the Consolidation Officer amounts to review and no review is permissible under the Act and thus the order dated 8.3.1988 and order dated 22.7.1988 are absolutely without jurisdiction. He has also submitted that Civil Court had no jurisdiction to go into the matter and thus mere filing of the suit will not estop him from filing the present writ petition. About the appeal filed under Section 21 (3) of the Act, he has explained that the same has been kept pending by the concerned authorities and no order is being passed. In support of this, he has placed reliance on :

(i) Deep Chand v. Additional Director, Consolidation of Holdings, Punjab, Jullundur 1964 PLR 318 (Full Bench).

(ii) The Gram Panchayat of Village Jawahari v. Shri Dharma, 1979 PLJ 223 (DB).

(iii) Charanjit Singh v. Additional Director, Consolidation, 1985 RRR 567 (P&H) : 1985 PLJ 18.

5. On the other hand, Mr. V.K. Jain, Senior Advocate, counsel for the respondents No. 2 and 3, has contended that during consolidation in the land which was allotted to the respondents no path was provided which was the bounded duty of the Consolidation Department. He has further submitted that the first order dated 3.8.77 was not passed on merits inasmuch as the respondents were offered path on the eastern and northern side of Killa No. 25/9 but since the respondents did not accept the offer, the petition was dismissed. However, he has not denied that the order dated 8.3.1988, Annexure P4 and order dated 22.7.1988, Annexure P5 were passed in the absence of the petitioner and he was not heard by the Director, consolidation or by the Consolidation Officer, who provided path to respondents No. 1 to 3 in pursuance of order dated 8.3.1988 of the Director, Consolidation.

6. After hearing learned counsel for the parties, I find that order dated 8.3.1988, Annexure P4 andorder dated 22.7.88, Annexure P5 cannot be sustained in law on the short ground that the petitioner was neither made a party to the third petition filed by respondents No. 1 to 3 under Section 42 of the Act before the Director, Consolidation nor any opportunity was given to him by the Consolidation Officer, who provided path to respondents No. 1 to 3 from the land of the petitioner. Admittedly, first and second petition under Section 42 of the Act were decided only after hearing the petitioner but for the reasons best known to respondents No. 1 to 3, they did not choose to implead the petitioner as party to the third petition under Section 42 of the Act. It is the settled principle of law that an opportunity of hearing must be given to a person, who is going to be affected by the order.

7. Consequently, the writ petition is allowed. Orders dated 8.3.88, Annexure P4 and dated 22.7.88, Annexure P5 are hereby quashed. The Director., Consolidation of Holdings, Haryana, at Chandigarh is directed to decide the petition under Section 42 of the Act filed by respondents No. 1 to 3 in accordance with law after giving an opportunity of hearing to the petitioner. It would be open to the petitioner to raise all possible pleas available to him

including that the third petition under Section 42 of the Act is not maintainable as order if passed on this petition would amount to review. Parties through their counsel are directed to appear before the Director, Consolidation of Holdings,. Haryana, Chandigarh, on 20.5.1991. However, parties are left to bear their own costs.