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Gram Panchayat and Another Vs State of Punjab and Others

Civil Writ Petition No. 259 of 2005

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 3, 2013

Citation: (2013) 172 PLR 69

Hon'ble Judges: Rekha Mittal, J; Rajive Bhalla, J

Bench: Division Bench

Advocate: Gurcharan Dass, for the Appellant; Sudeepti Sharma, D.A.G., Punjab for Respondent Nos. 1 to 8, Mr. M.L. Sarin and Mr. Hemant Sarin for Respondent Nos. 9 to 13, for the Respondent

Final Decision: Dismissed

Judgement

Rajive Bhalla, J.
By way of this order, we shall dispose of CWP Nos. 259 of 2005 and 9049 of 2010. The Gram Panchayat of Village

Sahni, Tehsil Phagwara, District Kapurthala, has filed CWP No. 259 of 2005, praying that orders dated 29.12.1988, 30.01.1989, 02.07.1997

and 19.08.2004, passed by the Additional Director Consolidation of Holdings, Punjab, Jalandhar, the Consolidation Officer, Jalandhar, the

Director, Consolidation, Punjab, Jalandhar, and the Director, Land Records, Punjab, Jalandhar, respectively, while exercising powers u/s 42 of the

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the ""Consolidation Act"") may be set

aside. Respondents No. 8 to 13 have filed CWP No. 9049 of 2010, praying that orders passed u/s 11 of the Punjab Village Common Lands

(Regulation) Act, 1961 (hereinafter referred to as ""the 1961 Act""), may be set aside.

2. Before proceeding to record our conclusions, it would be appropriate to set out, facts that have led to the filing of these petitions.

CWP No. 259 of 2005

3. Counsel for the Gram Panchayat submits that orders dated 29.12.1988, 30.01.1989 and 02.07.1997 passed by Consolidation authorities, are

null and void as neither the Additional Director Consolidation nor the Director Consolidation, much less, other officers had any jurisdiction to

entertain and allow the petitions, for exchange of Gram Panchayat land, filed by Sadhu Singh, Harjinder Kaur and office bearers of the then Gram

Panchayat. Vide order dated 0.07.1997, land measuring 56 kanals and 4 marlas belonging to the Gram Panchayat was exchanged with land

measuring 33 kanals and 1 marlas belonging to Sadhu Singh. Vide order dated 29.12.1988, land measuring 43 kanals and 8 marlas belonging to

the Gram Panchayat was exchanged with land measuring 23 kanals and 11 marlas belonging to Sadhu Singh and Harjinder Kaur. The then

Sarpanch colluded with Sadhu Singh and Harjinder Kaur and conceded their claim depriving the Gram Panchayat of its properly and, surprisingly,

also filed an application for exchange, which led to the exchanges recorded in the impugned orders. The orders passed, under the Consolidation

Act, reveal an exchange of Gram Panchayat property, which can only be allowed in terms of Rule 5 of the Punjab Village Common Lands

(Regulation) Rules, 1964 (hereinafter referred to as ""the Rules"") and that too if the exchange is for the benefit of the village community and wit prior

approval of the Government. It is further argued that order dated 19.08.2004, passed by the Director, Land Records, Jalandhar, refusing to recall

these illegal orders on the premise that he has no power of review, is misconceived as orders obtained by fraud or collusion can always be

recalled.

4. Counsel for the private respondents submits that the writ petition suffers from unexplained delay and laches. The impugned orders were passed

in years 1988, 1989, 1997 and 2004 whereas the writ petition has been filed in the year 2005. It is further contended that the Gram Panchayat

passed resolution, dated 24.12.1988 (Annexure R-9/2), conceding the claim of Sadhu Singh. The second petition was filed by the Gram

Panchayat. A change in officer bearers, of the Gram Panchayat, does not entitle the Gram Panchayat to challenge these orders. A petition u/s 42 of

the Consolidation Act is maintainable for rectification of errors. As Consolidation Authorities have corrected errors, the orders cannot be set aside.

It is further contended that the writ petition is, in essence, a public interest litigation, it cannot be filed at the behest of the Gram Panchayat. Even

otherwise, the writ petition should not be entertained after a delay of more than a decade and a half. It is also argued that the writ petition should

be dismissed as the Gram Panchayat has challenged separate orders by way of a single writ petition. It is also contended that the writ petition

should be dismissed as the Gram Panchayat has failed to disclose resolution dated 24.12.1988 (Annexure R-9/2) and even otherwise, this

resolution has never been challenged. It is also contended that the Gram Panchayat has not disclosed civil suits filed by private respondents where

an injunction has been issued against the Gram Panchayat.

5. Admittedly, the land, in dispute, is Shamilat Deh and was allotted to the Gram Panchayat, in the 1950s, during consolidation. After more than 30

years, Sadhu Singh, respondent No. 9, filed a petition u/s 42 of the Consolidation Act ostensibly to challenge re-partition proceedings, finalised

during consolidation, by praying that in lieu of Khasra Nos. 45//239 and 42//23, he should be allotted Khasra Nos. 63//20/2, 16, 11/2, 10/2,

11/1, 64//15/3 and 15/2, which are in his possession. Sadhu Singh also pleaded that the Gram Panchayat has no objection to this prayer and

appended copy of a resolution passed by the Gram Panchayat, acceding to his request. The then Sarpanch appeared on behalf of the Gram

Panchayat and conceded the petition. The Additional Director Consolidation, passed order dated 29.12.1988, accepting the request made by

Sadhu Singh and remanded the case to the Consolidation Officer, for making corrections in the record. The Consolidation Officer, vide order

dated 30.01.1989, allotted the land, in dispute, to Sadhu Singh and alternative land to the Gram Panchayat.

6. The Gram Panchayat, filed a petition for exchange of its land with Harjinder Kaur, respondent No. 10 and Sadhu Singh, respondent No. 9. The

Director, Consolidation of Holdings, Jalandhar, approved the exchange vide order dated 02.07.1997.

7. The exchange, recorded in these orders, was brought to the notice of the Commissioner, Jalandhar Division, Jalandhar. The file was summoned

and after perusal, the Commissioner opined that as Director Consolidation and the Additional Director Consolidation had no jurisdiction to

entertain these petitions, the officers were guilty of depriving the Gram Panchayat of its property. The Gram Panchayat, therefore, filed a petition

under Sections 42 and 43A of the Consolidation Act, before the Financial Commissioner praying that orders passed by the Director Consolidation

and the Additional Director Consolidation may be recalled. Vide order dated 19.08.2004, the Financial Commissioner forwarded the petition to

the Director Land Records, Jalandhar, who dismissed the petition for want of any statutory power to review orders passed by his predecessors.

8. Admittedly, consolidation proceedings concluded sometimes in the 1950''s. The land, in dispute, is, admittedly, Shamilat Deh. The land,

therefore, vests in the Gram Panchayat and was recorded as the ownership of the Gram Panchayat.

9. Sadhu Singh, filed a petition u/s 42 of the Consolidation Act, purportedly against re-partition proceedings, after more than 30 years, claiming

that as he was in possession of Khasra Nos. 45//2, 3, 9 and 42//23 and 63//20/2, 16,11/2, 10/2, 11/1, 64//15/3, 15/2, these khasra numbers

should be allotted to him. Sadhu Singh appended a resolution passed by the Gram Panchayat, accepting his claim. The then Sarpanch appeared

for the Gram Panchayat and promptly conceded the petition. The Additional Director Consolidation of Holdings, passed order dated 29.12.1988,

accepting the petition and transferred Gram Panchayat land to Sadhu Singh. The Additional Director Consolidation, did not record any finding that

there was an error in consolidation proceedings. In compliance with this order, the Consolidation Officer allotted Gram Panchayat property to

Avtar Singh son of Sadhu Singh and, in turn, allotted Sadhu Singh''s property to the Gram Panchayat. Apparently encouraged by this order, the

Gram Panchayat came forward with a petition of its own, u/s 42 of the Consolidation Act, praying that Khasra Nos. 45//16, 7, 13/2, 14, 15/1, 17,

18, 19, 20, 46// be given to party No. 2 and area of party No. 2 comprised in Khasra Nos. 69//5/2, 8/2, 4/2, 7/2, 7/1, 5/1, 8/1, 3/3, 4/1, 2, 3/2,

9, 64//3 be given to the Gram Panchayat. Party No. 2 are Harjinder Kaur and Sadhu Singh, who promptly admitted averments in the petition filed

by the Gram Panchayat. The Director Consolidation, once again obliged and without bothering to ascertain whether there was any error in

consolidation proceedings or whether he had jurisdiction to pass such an order, ordered exchange of Gram Panchayat property with property

belonging to Harjinder Kaur and Sadhu Singh.

10 The impugned orders, in our considered opinion, are the result of a malafide and arbitrary exercise of power, on the part of consolidation

officers and disclose collusion between the then Sarpanch of Gram Panchayat, Sadhu Singh and Harjinder Kaur. Upon conclusion of consolidation

proceedings, Consolidation Authorities are functus officio and may only pass orders with respect to pending appeals/revisions or in accordance

with powers conferred by Section 42 of the Consolidation Act. Section 42 of the Consolidation Act confers plenary power upon the State

Government to examine the correctness of consolidation proceedings and orders passed thereunder. The existence of an error or an illegality is a

sine qua non, for exercise of power u/s 42 of the Consolidation Act. The impugned orders do not record any error or illegality in consolidation

proceedings that would confer jurisdiction upon consolidation authorities to entertain a petition u/s 42 of the Consolidation Act. It would be

appropriate to point out that the only plea raised by Sadhu Singh and the Gram Panchayat, in their respective petitions, was that though Sadhu was

in possession of the land, in dispute, but documents prepared during consolidation record the ownership and possession of the Gram Panchayat.

The impugned orders do not refer to any document prepared or order passed during consolidation, containing such an error. The orders were

passed on the basis of resolutions passed by the Gram Panchayat, accepting that land should be transferred to Sadhu Singh and Harjinder Kaur,

and in exchange, their land should be allotted to the Gram Panchayat. The Gram Panchayat in its petition, filed before the Additional Director

Consolidation, blatantly prayed for exchange of land on the plea that land belonging to the private respondents is better located and would be for

the benefit to the village community. We would, at this stage, like to record that in the first order, passed by the Additional Director Consolidation,

56 kanals and 4 marlas, of Gram Panchayat land, was transferred to Sadhu Singh in exchange of 33 kanals and 1 marla of land whereas in the

second order, 46 kanals and 8 marlas of Gram Panchayat land was transferred to Harjinder Kaur and Sadhu Singh, in exchange of 23 kanals and

11 marlas of land. The second application was, surprisingly, filed by the Gram Panchayat.

11 The impugned orders, in our considered opinion, record nothing more than an exchange of Gram Panchayat property, between an obliging

Gram Panchayat and an unscrupulous landowner. The Consolidation Act does not confer any power upon Consolidation Authorities to affect an

exchange of Gram Panchayat land. An exchange of Gram Panchayat property can only be affected by following the procedure prescribed by Rule

5 of the Rules, with prior approval of the Government, and then also if the exchange is necessary for the benefit of the village community, which

reads as follows:-

5. Exchange of land. [Sections 5 and 15(2)(f) of the Act].- A Panchayat, if it is of opinion that it I necessary so to do for the benefit of the

inhabitants of the village may with the prior approval of the Government, transfer any land in shamilat deh by exchange with the land of an

equivalent [value].

12. We are of the firm opinion that the exchange reflected in the impugned orders is a nullity and reveals a degree of collusion, so brazen and

blatant, that it can neither be countenanced nor condoned.

13. As regards the plea raised by counsel for private respondents that delay in filing the writ petition has not been explained, suffice it to state that

where fraud or collusion is the foundation of a case particularly if it involves public property, a Court, exercising power under Article 226 of the

Constitution, may, in the exercise of its discretion and depending upon the facts and circumstances of a case, entertain a petition, so as to protect

public property from unscrupulous elements. The facts of the present case, in our considered opinion, reveal a degree of fraud and collusion so

blatant, as to reject the argument based upon delay and laches. Even otherwise, orders passed by Consolidation Authorities were challenged by

the Gram Panchayat before the Director Land Records but the petition was dismissed in 2004 for want of jurisdiction. The writ petition was filed in

2005 and, therefore, cannot be said to be belated so as to invite dismissal.

14. Another argument that four separate orders passed by consolidation authorities have been challenged, by way of a single writ petition, may

have been accepted but in view of the peculiar facts and circumstances of the case, particularly, as fraud and collusion pervade the impugned

orders, we reject this argument. The argument that the Gram Panchayat has not referred to resolution dated 24.12.1988 (Annexure R-9/2), in our

considered opinion, is entirely irrelevant.

15. An argument that consolidation authorities have merely rectified an error committed during consolidation, has to be summarily rejected as no

such error has been pointed out whether by consolidation authorities or by the private respondents.

16. The petitioners, who are respondents No. 9 to 13 in CWP No. 259 of 2005, pray for issuance of a writ of certiorari for quashing orders

passed u/s 11 of the 1961 Act, holding that the Gram Panchayat is owner of the land, in dispute. The Gram Panchayat filed a petition u/s 11 of the

1961 Act, which was consigned to records vide order dated 28.10.2002. The petitioners filed a civil suit which was decreed in their favour by

granting an injunction restraining the Gram Panchayat from dispossessing them except in due course of law. The Gram Panchayat, thereafter, filed a

petition u/s 11 of the 1961 Act, claiming ownership of the land, in dispute. The Additional Deputy Commissioner-cum-Collector, Kapurthala

allowed the petition by holding that the land, in dispute, vests in the Gram Panchayat. An appeal filed by the petitioners was dismissed.

17. Counsel for the petitioners contends that orders passed u/s 11 of the 1961 Act, holding that Gram Panchayat is owner of the land, in dispute,

are illegal and void. The land, in dispute, was transferred to the petitioners, by Consolidation Authorities. The mere fact that the Gram Panchayat

had conceded the petitioners'' claim or that the Gram Panchayat had itself filed a petition, does not raise an inference of collusion or fraud. It is also

argued that the Collector closed the evidence of the petitioners by order, on 08.11.2007, and decided the petition without giving them an adequate

opportunity to lead evidence. It is also argued that as the Gram Panchayat had filed a petition u/s 11 of the 1961 Act, the second petition is barred

by res-judicata. The Collector has decided the petition u/s 11 of the 1961 Act, in a summary manner.

18. Counsel for the Gram Panchayat submits that orders, passed u/s 11 of the 1961 Act, do not call for interference as the land is Shamilat Deh.

The claim set up by the petitioners is based upon illegal orders passed by Consolidation Authorities. The Collector and the Commissioner,

exercising powers u/s 11 of the 1961 Act, have, therefore, rightly ignored these orders and held that Gram Panchayat is the owner of this land.

19. We have heard counsel for the parties and perused the impugned orders.

20. The petitioners'' challenge to orders passed u/s 11 of the 1961 Act, holding that the Gram Panchayat is owner of the land, in dispute, is

primarily based upon orders passed by consolidation authorities. As we have already held that these orders are illegal and void, we find no reason

to hold that orders passed u/s 11 of the 1961 Act are in any manner illegal. The Collector and the Commissioner have rightly held that

consolidation authorities had no jurisdiction to decide any question of title much less order transfer of land belonging to the Gram Panchayat to the

petitioners. The land is, admittedly, Shamilat Deh and, therefore, vests in the Gram Panchayat.

21. The plea that these orders are non-speaking and sketchy, could have been accepted if the petitioners had placed before us any material to

show that they have a modicum of a right, in the land, in dispute. The plea that the second petition u/s 11 of the 1961 Act is not maintainable, as an

earlier petition filed by the Gram Panchayat was consigned to records, must also fail. The first petition filed u/s 11 of the 1961 Act, was consigned

to records without adjudication. The Gram Panchayat thereafter filed a petition before the Director Consolidation for recalling orders passed by his

predecessors. It was only alter the Director Consolidation rejected the petition that the Gram Panchayat filed a petition u/s 11 of the 1961 Act

while simultaneously challenging orders passed by the consolidation authorities in CWP No. 259 of 2005.

22. In view of what has been stated hereinabove, we allow CWP No. 259 of 2005, set aside orders dated 29.12.1988, 30.01.1989, 02.07.1997

and 19.08.2004, passed by the Additional Director Consolidation of Holdings, Punjab, Jalandhar, the Consolidation. Officer, Jalandhar, the

Director, Consolidation, Punjab, Jalandhar, and the Director, Land Records, Punjab, Jalandhar, respectively, and hold that the land, in dispute,

could not have been transferred to the private respondents, as it belongs to the Gram Panchayat. As a consequence, orders impugned, in CWP

No. 9049 of 2010, are affirmed and the writ petition is dismissed.