

(26) Eventually Hon'ble the Supreme Court found that the opinion as expressed by the High Court cannot be sustained and while setting aside the same, the matter was remitted to the High Court for consideration afresh.

(27) From the above, the inference which could have been easily drawn is that the industrial alcohol cannot be subject matter of any regulation or control by a State, it being not alcoholic liquor for human consumption.

(28) Accordingly, it is held that the impost imposed by the State Government under Rule 22 of the Rules whereby the permit fee for issue of permit for denatured spirit has been enhanced from 30 paise per bulk litre to 60 paise per bulk litre is bad. As a corollary, the respondents are directed to refund the permit fees collected by them on denatured spirit purchased by the petitioner under the amended rules. The writ petition stands allowed in the above terms.

V. Suri

Before K. Kannan, J.

SARUP SINGH SON OF ROLLA SINGH & OTHERS,—
Petitioners

versus

ADDL. DIRECTOR, CONSOLIDATION OF HOLDINGS,
PUNJAB AND OTHERS,—Respondents

C.W.P. No.11442 of 1991

2nd September, 2011

Constitution of India - Art. 226 - East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act of 1948 - Ss. 21(1) & 42 - Punjab Village Common Lands (Regulation) Act of 1961 - S. 2(g) - Petitioner claiming to be lessees on property from Gram Panchayat - Plea before Consolidation Authority that property entered as Shamlat Deh Hasab Rasad Zar Khewat and has vested with right holders and thus mutation ordered by Gram Panchayat was wrong and required to be set aside and property should be allowed to be partitioned amongst right holders - Plea accepted by Addl. Director - Order challenged before Director who rejected

petition on ground that he has no power to review - Whether law of limitation applies for maintaining an action before Consolidation Authority and whether a joint petition is maintainable.

Held, That on the first issue of whether the petitioner could have maintained an action before the Consolidation Authority in the year 1990, the point to be noticed is not whether there is any law of limitation for the same. In view of judgment rendered in 1984 PU 223(FB), there is no doubt that if the scheme is under challenge, there is no bar of limitation as such. The bar of limitation is not the same thing as declining to writ jurisdiction under Article 226 on the ground of laches. The various portions of the property which each one of the sharers claim, had not been even brought about clearly before the Director and that was why he had even caused a remand to be made to the Consolidation Officer by directing a fresh enquiry. The Consolidation Officer again attempted to interpret the entry in the revenue record found as *shamilat deh hasab rasad zar khewat* to mean that Section 2(g) defining '*shamilat deh*' could itself not apply. This, in my view, again conflicts with the settled position brought through several pronouncements. In the judgment given in *Brij Mohan Versus State of Punjab-2010(S) RCR (Civil) 77*, the Court had an occasion to deal with the effect of such an entry and it held that the reference to *hasab rasad zar khewat* itself is superfluous and it cannot detract from a position that the property became vested with the Gram Panchayat unless partition among co-sharers is proved. *Kheri Maian's case (supra)* is an authority for the fact that the Consolidation Officer himself has no jurisdiction to decide on the issue of ownership after the Village Common Lands Act came into effect. The effect of these entries was considered by a Division Bench of this Court in *Rama Sarup and others Versus State of Haryana and others- 2006 (4) RCR (Civil) 350*, where a Division Bench of this Court held that the nature of land that stands entered in revenue records as *Shamilat Deh Hasab Rasad Raqba Khewat* is still *Shamilat Deh* vesting in Panchayat unless a partition or exclusive individual cultivation of proprietors is shown.

(Para 5)

Further held, That the petitioners are not making their claim as independent owners to the exclusion of the Gram Panchayat. The reference to a judgment in *Joginder Singh's case (supra)*, where the Bench held that

there was no locus standi for the lessee to challenge an order of the Director of Consolidation, must be understood in the manner which the Bench itself considered in paragraph 14 that such lessees, who had not approached the Director of settlement for passing a fresh order, cannot challenge the same by means of Article 226.

(Para 6)

Further held, that so long as the petitioners have a joint cause of an action of the Consolidation Authority in directing the consideration of the claims of persons, who could not have staked their claims, they were surely aggrieved and their right to join together cannot be doubted. A joint petition that the law would frown upon would be instances where there is a mis-joinder of not merely the parties but also of the causes of action. Multifariousness which would cause embarrassment at the trial or which can create a confusion by diverse interest of persons forcing an adjudication, ought to be treated in a different manner from a situation when persons, who have a joint right to contend that a particular order passed was erroneous and their joint interests as such lessees are liable to be prejudiced by the impugned order. The jointness of action could be either of joint interest in the land or a common character in relation to the land.

(Para 7)

Kanwaljit Singh, Senior Advocate, with Ms. Harpreet Kaur,
Advocate, *for the petitioners*.

Jai Bhagwan, Advocate, and Mr. K.V.S. Kang, Advocate, and
Tushar Sharma, Advocate, for Mr. Arun Palli, Senior Advocate,
for the respondents.

K. KANNAN, J. (ORAL)

(1) The writ petition is filed at the instance of persons, who claim to be lessees of certain portions of the property from the Gram Panchayat. Intervention was sought in relation to the proceedings of the Additional Director, Consolidation on a petition filed by several persons, who are the private respondents here, under Section 42, against the repartition made under Section 21(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948.

(2) The contention of the petitioners therein before the Consolidation Authority was that the property had been entered in the village records as *shamilat deh hasab rasad zar khewat* and had vested with the rightholders of the village and the mutation ordered in the name of the Gram Panchayat by the proceedings dated 03.07.1956 and consequent upon such proceedings, the mutation actually effected on 16.07.1956, were wrong and they were required to be set aside and the property allowed to be partitioned amongst the rightholders. The Additional Director accepted the contention partially and held that the mutation effected without giving notice to the rightholders was liable to be ignored as non est and the prayer for partition though cannot be granted, the case was required to be remanded to the Consolidation Officer so as to enable determining the shares of the rightholders and appropriate order to be passed taking into account the latest jamabandi. All these proceedings came about in the year, 1990 that is, nearly 34 years after the consolidation proceedings. The petitioners here, feeling aggrieved by this order, sought to challenge the same before the Director, who rejected the petition stating that he had no power to review. The petitioners' claim was that they were lessees of the property from the Gram Panchayat and the direction for consideration of the respective shares of the proprietors would seriously prejudice their actual possession of the property and their rights as such lessees.

(3) Before me, it is vehemently contended by the learned senior counsel appearing on behalf of the petitioners that the issue of alleged wrong mutation cannot be a subject for an adjudication before a Consolidation Officer. The character of property and the ownership could not also be a point of adjudication before the Consolidation Officer especially after the coming into force of the Punjab Village Common Lands (Regulation) Act of 1961. The counsel would rely on the judgment of this Court in **Gram Panchayat, Village Kheri Maian versus Director, Consolidation of Holdings, Punjab and others (1)**, that held that the authorities under Consolidation Act have no jurisdiction to adjudicate an issue of the nature and ownership of land reserved for common purposes at the time of consolidation. The counsel would also rely on a judgment of this Court in **Piara Singh versus Additional Director, Consolidation of Holdings, Punjab and others (2)**, to contend that persons, claiming as proprietors

(1) 2005 (3) R.C.R. (Civil) 640

(2) 2005 (2) PLR 675

and seeking for partition, cannot approach before the Consolidation Authority under Section 42 after two decades and if there was a delay and laches, it shall not be competent for Consolidation Authorities to reopen the order already passed and the scheme effected thereon. Yet another judgment that supports the similar issue of the effect of delay and laches was **Joginder Nath alias Joginder Pal versus Sat Pal (3)**.

(4) The learned counsel appearing on behalf of the respondents has three contentions to make: (i) There is no period of limitation for a challenge to the consolidation scheme, as laid down by a Full Bench of this Court in **Shri Jagtar Singh versus Additional Director, Consolidation of Holdings, Punjab and another (4)**. (ii) The petitioners claiming to be lessees from Gram Panchayat, have no *locus standi* to file the petition under Section 226 when the Gram Panchayat itself has not chosen to challenge the order passed by the Additional Director, Consolidation, as held in **Joginder Singh and others versus the Director, Consolidation of Holdings, Punjab and others (5)** and (iii) That a joint petition at the instance of the lessees, who do not have a joint claim in respect of the whole property, is not tenable and cite the decision in **The Prem Ex-Servicemen Cooperative Tenants' Farming Society Limited, Bakhli and others versus the State of Haryana and others (6)**.

(5) On the first issue of whether the petitioner could have maintained an action before the Consolidation Authority in the year 1990, the point to be noticed is not whether there is any law of limitation for the same. After the pronouncement of the Full Bench, there is no doubt that if the scheme is under challenge, there is no bar of limitation as such. The bar of limitation is not the same thing as declining to writ jurisdiction under Article 226 on the ground of laches. If some reasons were given as to why the petitioners had not approached earlier, then it should have been possible for the authority to take notice of the same. If there was anything inherently wrong about the scheme that was framed and the reservation of the property as *shamilat deh* for the benefit of the villagers was wrongly cast, then a

(3) 2010 (2) RCR (Civil) 217

(4) 1984 PLJ 223

(5) 1988 PLJ 535

(6) 1977 PLJ 211

challenge to such a scheme could still be possible. However, if a petition under Section 42 East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948 were to be filed stating that the property was wrongly reserved as 'common' when he should have been allowed to be retained in the names of the proprietors, then the authority himself could have no competence if the mutation had been effected and a different mode of enjoyment came into existence. I have not seen anywhere in the order passed by the Additional Director that he has noticed actual physical possession of the property after the consolidation was effected. It is in this context that the issue of the effect of the action of persons, who had not sought to vindicate their rights immediately after the particular mutation was done, assumes significance. The various portions of the property which each one of the sharers claim, had not been even brought about clearly before the Director and that was why he had even caused a remand to be made to the Consolidation Officer by directing a fresh enquiry. The Consolidation Officer again attempted to interpret the entry in the revenue record found as *shamilat deh hasab rasad zar khewat* to mean that Section 2(g) defining 'shamilat deh' could itself not apply. This, in my view, again conflicts with the settled position brought through several pronouncements. In the judgment given in **Brij Mohan versus State of Punjab (7)**, the Court had an occasion to deal with the effect of such an entry and it held that the reference to *hasab rasad zar khewat* itself is superfluous and it cannot detract from a position that the property became vested with the Gram Panchayat unless partition among co-sharers is proved. **Kheri Maian's case (supra)** is an authority for the fact that the Consolidation Officer himself has no jurisdiction to decide on the issue of ownership after the Village Common Lands Act came into effect. The effect of these entries was considered by a Division Bench of this Court in **Rama Sarup and others versus State of Haryana and others (8)**, where a Division Bench of this Court held that the nature of land that stands entered in revenue records as *Shamilat Deh Hasab Rasad Raqba Khewat* is still *Shamilat Deh* vesting in Panchayat unless a partition or exclusive individual cultivation of proprietors is shown. The Additional Director's reading of the law on this itself was faulty and the direction for the remand and for an enquiry simply did not arise. Section 2(g) of the Punjab Village Common Lands

(7) 2010(5) RCR (Civil) 77

(8) 2006 (4) RCR (Civil) 350

(Regulation) Act which defines '*shamilat deh*' is both inclusive and exclusive. It includes 5 categories of properties which fall within *shamilat deh* and excludes certain categories, which, inter alia, are *pattis, pannas and tholas* which was not used for the benefit of village community. In this case, evidence brought through the contentions of the petitioners was that the property had been dealt with by the Panchayat and put in the possession of persons belonging to the lower strata of the society including persons of Scheduled Castes as lessees. The user of the property by the proprietors before 1950 was not also brought before this Court in order to exclude the property from the definition of Section 2(g)(5)(iii). I have, therefore, no doubt in my mind that the order of the Additional Director was clearly erroneous.

(6) The *locus standi* of the petitioners to maintain the action should be seen from the fact that the petitioners are not making their claim as independent owners to the exclusion of the Gram Panchayat. The Gram Panchayat itself has been arrayed as a party as a 3rd respondent in this case. The reference to a judgment in *Joginder Singh's case (supra)*, where the Bench held that there was no *locus standi* for the lessee to challenge an order of the Director of Consolidation, must be understood in the manner which the Bench itself considered in paragraph 14 that such lessees, who had not approached the Director of settlement for passing a fresh order, cannot challenge the same by means of Article 226. In this case, the lessees have made that attempt for recall of the order passed by the Director. It was refused to be entertained and, therefore, they have challenged the same before this Court. I will not, therefore, entertain the plea that it was not properly instituted or that they have no *locus standi* to institute the same.

(7) The contention that the joint petition is not maintainable is a stale contention, for, so long as the petitioners have a joint cause of action, namely, the rights as lessees are threatened by an action of the Consolidation Authority in directing the consideration of the claims of persons, who could not have staked their claims, they were surely aggrieved and their right to join together cannot be doubted. A joint petition that the law would frown upon, would be instances where there is a misjoinder of not merely the parties but also of the causes of action. Multifariousness which would cause embarrassment at the trial or which can create a confusion by diverse

interest of persons forcing an adjudication, ought to be treated in a different manner from a situation when persons, who have a joint right to contend that a particular order passed was erroneous and their joint interests as such lessees are liable to be prejudiced by the impugned order. The jointness of action could be either of joint interest in the land or a common character in relation to the land. In this case the common character envisaged is that they were lessees of different portions of land and they surely have right of challenge to the correctness of the order.

(8) The order impugned is erroneous and liable to be quashed and is, accordingly, quashed.

(9) The writ petition is allowed on the above terms.

A. AGG

Before Ram Chand Gupta, J.

CHARAN SINGH & ANOTHER,—Appellants

versus

AMAR SINGH AND OTHERS,—Respondents

RSA No.1609 of 2005

31st October, 2011

Code of Civil Procedure 1908 - S. 11 - Hindu Succession Act, 1956 - S. 15(2) - Indian Evidence Act, 1872 - Indian Succession Act, 1925 - S. 63 - Execution of Will - Whether valid - Appellant failed to prove executants was suffering from major diseased - Will registered - Finding of Court below not illegal - Appeal dismissed.

Held, That it has been rightly observed by learned courts below that simply by finding 'S KAUR' on the copy of passport, it cannot be said " that Smt. Sodhan was only signing the documents and that she was not putting her thumb impressions and that the Will does not contain her thumb impression. Moreover, no other fingerprint expert has been examined to discard testimony of Shri Sardara Singh Armar, fingerprint expert.

(Para 23)