

the land if it falls under any of the clauses of Section 2(g), it is sufficient to bring the land within the definition of the word Shamilat Deh and the requirement of clause (1) is applicable to the said land and no further reference to any other clause is necessary to treat the land as Shamilat Deh. Therefore, the land having been described as Shamilat Deh, it would come within the ambit of clause (1) of Section 2(g) of the 1961 Act and vests in the Gram Panchayat by virtue of Section 4(1) thereof.”

(13) In view of the above discussion and observations, petitions filed by the petitioners/landowners are dismissed, however, petitions filed by the Panchayat are allowed.

(14) No order as to costs.

Photocopy of this order be placed on the files of connected cases.

A. AGG

Before Gurdev Singh, J.

**GRAM PANCHAYAT, KAKARWAL
DISTT. SANGRUR,—Petitioner**

versus

**ADDL. DIRECTOR OF CONSOLIDATION OF HOLDING,
PUNJAB & ANOTHER,—Respondents**

CWP No.7200 of 1991

9th May, 2011

Constitution of India, 1950 -Art. 226/227 - East Punjab(Holding & Prevention of Fragmentation) Act, 1948 - S. 21, 42 - East Punjab(Holding & Prevention of Fragmentation) Rules, 1948 - Rl.18- Punjab Village Common Lands(Regulation) Act, 1961 - Writ filed for quashing orders passed by Addl. Director Punjab & Director Consolidation of Holdings, Punjab - Consolidation proceedings in Revenue Estate of village took place in year 1955-56 - No objection filed after re-partition process - Petition u/s 42

of Act, 1948 accepted and area recorded as gair mumkin maran handed over - Held, unreasonable delay of 40 years in filing petition - Gair mumkin maran could not be partitioned amongst proprietors of village - Orders liable to be set aside - Petition accepted.

Held, That having considered the facts of the case and keeping in view the ratio of the above said judgments, I am of the considered view that there was unreasonable and inordinate delay in filing the petition by respondents No.2 and 3 and the same was liable to be dismissed on that score alone.

(Para 13)

Further held, That by virtue of the provisions of the Punjab Village Common Lands(Regulation) Act, 1961, this land became vested in the Gram Panchayat. It has recently been held by this Court in Sadhu Singh versus State of Punjab and others 2010(2)RCR(Civil) 761, that such a land cannot be partitioned amongst the proprietors of the village. In such a situation, this land could not have been allotted to respondents No.2 and 3 for making up deficiency in the value of the land to be allotted to them at the time of consolidation. On that ground also, the impugned orders are liable to be set aside. The writ petition is accepted accordingly.

(Para 14 & 15)

Jai Bhagwan, Advocate, *for the petitioner.*

Amarjit Markan, Advocate, for respondents No.2 and 3.

GURDEV SINGH, J. (ORAL)

(1) The petitioner-Gram Panchayat aggrieved by the order passed by the Additional Director, Punjab, dated 7.3.1989 (Annexure P/1) and order dated 30.11.1990 passed by the Director, Consolidation of Holding, Punjab (Annexure P/2) has filed the present writ petition under Articles 226/227 of the Constitution of India, invoking the extra-ordinary writ jurisdiction of this Court, for quashing those orders.

(2) The consolidation proceedings in the revenue estate of village Kakarwal took place in the year 1955-1956 and after implementation of the scheme framed during those proceedings, the right-holders, including

Mukhtiar Singh and Harnek-respondents No.2 and 3, were settled on their respective holdings. After completion of the re-partition process, respondents No.2 and 3 did not file any objection/appeal or revision till the year 1988. In 1989, they moved a petition under Section 42 of the East Punjab (Holdings & Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act') claiming that they had inherited the property of one Rur Singh and as per order dated 23.7.1958 passed under Section 21 (4) of the Act, the area to the tune of 61/3/6 was withdrawn from the Khata and in lieu thereof area to the tune of 56/3/6 was allotted, resulting in a shortage of Rs. 5/-. That land was mortgaged by Rur Singh with one Gurdev Singh and out of that khata, Rs. 3-12-9 was given, thereby giving excess area of 9 to Rur Singh. In the petition, those respondents alleged that shortage of Rs. 5/- be made good. That petition was accepted, vide order dated 7.3.1989 (Annexure P/1), in the absence of the parties. The Gram Panchayat, writpetitioner, filed an application for setting aside that ex-parte order and that application was dismissed, vide order dated 30.11.1990 (Annexure P/2). According to the petitioner, it appears that the Sarpanch colluded with respondents No. 2 and 3 and did not contest their claim, thereby causing loss to it. No service was ever effected upon it in that petition. While making up the deficiency in the area of respondents No.2 and 3, the area vested in it and recorded as *gair mumkin marian* was taken out and handed over to those respondents, which could not have been done. The petition was highly belated, having been filed after 40 years of the completion of the re-partition process and no reason whatsoever was given for that delay. There was no challenge to the scheme or any provision thereof; nor to the re-partition process. Therefore, the same was not maintainable. There was arbitrary use of jurisdiction by the authorities, while making good the deficiency of land of respondents No. 2 and 3 from the land reserved for common purposes. The shortage, if any, could have been made good, from the bachat land or from the khata of *jumla malkan*. The land which was being used for common purposes, became vested in it and it cannot be divested of that land by passing of the impugned orders.

(3) Respondents No. 2 and 3 in their written statement pleaded that their father Rur Singh was not settled in accordance with the scheme framed during the consolidation proceedings, which caused deficiency in the area of the land and the same could have been made good under Section

42 of the Act at any time. Gurnam Singh, Sarpanch of the petitioner/Gram Panchayat was personally served on 16.2.1989 for 23.3.1989 but he did not appear during the proceedings and the ex-parte order was correctly passed against the petitioner. During the consolidation proceedings, list of reserved area was prepared by the consolidation staff and as per that list, Khasra Nos. 2161/1236 and 1237 were never reserved for the purpose of *marian* and the same have been wrongly shown as *gairmumkin marian* in the jamabandi for the year 1986-1987 Annexure P/3. In fact, those khasra numbers were withdrawn from the right-holders by imposing cut during the consolidation proceedings and the same was bachat land shown in the name of the Gram Panchayat. That jamabandi being against the factual position cannot be looked into. The deficiency in their area of the land was rightly made good from those two khasra numbers and the same could have been done at any point of time. There was no question of any limitation. Sukhdev Singh Panch, who filed the present writ petition on behalf of the Gram Panchayat, himself got allotted Khasra No. 1236, vide order dated 7.10.1983 in order to make good deficiency in his land. Therefore, the petitioner is estopped from challenging the nature of the land which has been allotted to them to make up deficiency in their area of the land.

(4) I have heard learned counsel for both the sides.

(5) It has been submitted by the learned counsel for the petitioner that there was inordinate delay in filing the petition under Section 42 of the Act by respondents No. 2 and 3 and it should have been dismissed on that ground alone. The consolidation process was completed in the year 1955 whereas the present petition was filed in the year 1989 i.e. after expiry of period of 34 years. It was for the respondents to give some explanation for the delay and the Additional Director was bound to incorporate in his order that there was sufficient cause for condoning that delay. He tried to support that submission by citing the following judgments.

- (i) Gram Panchayat Karkan versus Additional Director of Consolidation and another (1).
- (ii) Fauja Singh versus State of Punjab and others (2).

(1) 1997 (8) SCC 484

(2) 2009 (3) RCR (Civil) 227

(6) He further contended that the deficiency, if any, in the land of respondents No. 2 and 3 was to be made good from *bachat land* and not from khasra numbers in dispute, which were reserved for common purposes of the village and were recorded as such in the revenue record and became vested in the petitioner. The consolidation authorities had no jurisdiction to divest the petitioner of that land.

(7) On the other hand, learned counsel for respondents No. 2 and 3 tried to justify the impugned orders by contending that the petition was filed against the scheme framed during the consolidation proceedings itself and for such a petition no limitation has been prescribed. Such petition could have been filed at any time. There was no opportunity with the Additional Director to adjudicate that point of delay as the same was never raised before him. He tried to support those arguments by relying upon the following judgments.

- (i) **Additional Director (1) Consolidation of Holdings, Punjab and another versus Bhagwant Singh and others (3) ;**
- (ii) **Shri Jagtar Singh versus Additional Director, Consolidation of Holdings, Punjab and another (4) ;**
- (iii) **Gram Panchayat, village Kolar Khurd versus Additional Director Consolidation (5) ;**
- (iv) **Prem Chand (deceased) through his legal heirs versus Additional Director Consolidation, Punjab and others (6) ;**
- (v) **Gram Panchayat of village Hari Nagar Kheriki versus Director, Consolidation of Holdings, Punjab and others (7).**

(8) He also submitted that the land from which deficiency was made good was never reserved nor used for any common purposes of the village and was a part of *bachat land*. Therefore, the consolidation authorities under the Act had every jurisdiction to allot that land to respondents No. 2 and 3 in order to make the deficiency good.

(3) 1970 P.L.J. 134

(4) 1984 R.R.R. 31

(5) 2000 (4) R.C.R. (Civil) 246

(6) 2004 (1) L.J.R. 686

(7) 2005 (1) P.L.R. 212

(9) Admittedly, there is delay of 34 years in filing the petition before the consolidation authorities. It is very much clear from the order Annexure P/1 that the challenge in the petition was not to any scheme framed during the consolidation proceedings under the Act. The prayer made by respondents No. 2 and 3 was that there was shortage of 12 annas of land, which was against the scheme and that shortage was bound to be made good. In **Jagtar Singh's** case (*supra*), so cited by the learned counsel for the respondents No. 2 and 3, it was held by the Full Bench of this Court that the period prescribed under Rule 18 of the Rules framed under the Act, will apply only in respect of orders, which were passed under the Act and have no application to a scheme, which is framed or re-partition which has been effected under the Act. While dealing with that Full Bench decision, it was held by the Hon'ble Supreme Court in **Gram Panchayat Kakran's** case (*supra*) that the same cannot be understood as enabling the party, who is aggrieved by the scheme or by repartition, to make an application under Section 42 after unreasonable long lapse of time. Even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. Reference in that judgment was made to the previous judgment of the Hon'ble Apex Court in Gram Panchayat v. Director, Consolidation of Holding (9) on the same point. In that case it was held that when no limitation is prescribed for an application under Section 42 of the Act, dealing with confirmation of the scheme, the application should be made within a reasonable time and that question will have to be decided on the facts of each case. In that case, delay of three years and eight months in filing the application was held to be not unreasonable. However, in the case in which that judgment was discussed, there was delay of 40 years, which was held to be unreasonable. That judgment was followed by this Court in **Gram Panchayat of village Hari Nagar Kheriki versus Director Consolidation of Holdings, Punjab and others** (10) and **Fauja Singh versus State of Punjab and others** (11). In Gram Panchayat of CWP No. 7200 of 1991 7 village **Hari Nagar Kherki's** case (*supra*), it was held that even where no period of limitation is provided, the application ought not be entertained after lapse of 25 years. In **Fauja Singh's** case (*supra*), it was held that the aggrieved person can file an application under Section 42 of the Act within reasonable time and

(9) 1989 Supp. (2) SCC 465

(10) 2005 (1) P.L.R. 212

(11) 2005 (3) RCR (Civil) 227

not with inordinate delay and where the application is made after inordinate delay, the same is not to be entertained. In the judgments, cited by the learned counsel for the respondents No. 2 and 3, though a reference was made to **Gram Panchayat Kakran**'s case (supra), but the ratio thereof was not applied rigidly. The facts of those cases were different. In **Prem Chand**'s case (supra), a mistake was committed by the consolidation officer at the time of consolidation and no land was allotted to the predecessor of respondent No.2, though he was entitled for a share, as per the *naqsha Hakdarwar*. That mistake was corrected after an application was filed under Section 42 of the Act after delay of 37 years. While keeping in view the ratio of **Gram Panchayat, Karkran**'s case (supra), it was laid down that the question whether the application has been made within a reasonable time is to be decided on the facts of each case, it was held as under:-

“...Since the dispute pertains to a very small piece of land i.e. land measuring 1 kanal, therefore, it will not be appropriate to set aside the impugned order in exercise of the discretionary power of this Court under Articles 226/227 of the Constitution of India, particularly when a mistake which was committed by the consolidation authorities was corrected by respondent No.1. The impugned order is a just and reasonable order and the same should not be interfered by this Court on the ground that respondent No.1 has corrected the aforesaid mistake after an inordinate delay of 37 years.”

(10) In **Gram Panchayat, village Kolar Khurd**'s case the matter, which was re-opened after lapse of 30 years, was not held to be barred on account of unreasonable or inordinate delay, keeping in view that it was wholly iniquitous and unfair to perpetuate the wrong and deprive the landowner of his property, which was retained by the Gram Panchayat for a long time. It was in the peculiar circumstances of that case that delay was not considered sufficient to defeat the rights of the parties.

(11) In **Raghwant Singh**'s case (supra), the facts were altogether different. The question of limitation was not raised before the Additional Director and it was held that the same having not been done, it was not open to the writ petitioner to raise the same for the first time in the writ petition. The relevant portion of the judgment is re-produced as under :-

“...If the objection had been raised before the Additional Director, the applicant under section 42 of the Act might have applied for condonation of delay, and if the applicant was able to show sufficient cause for not filing the application within time, the delay might have been condoned. In the alternative, the applicant might even have convinced the Additional Director that the application had been filed within time...”

(12) In the present case, the petitioner was proceeded against *exparte* and the plea of delay was never raised before the Additional Director Consolidation. It was for the respondents No. 2 and 3 to give some explanation for the delay in filing the petition under Section 42 of the Act and it was for that Additional Director to record a finding that the cause so disclosed by those respondents was sufficient to condone the delay. Even in the written statement, the respondents have not given any explanation for that delay and they pleaded therein that such type of deficiency can be made good at any time.

(13) Having considered the facts of the case and keeping in view the ratio of the above said judgments, I am of the considered view that there was unreasonable and inordinate delay in filing the petition by respondents No. 2 and 3 and the same was liable to be dismissed on that score alone. It is also to be noted that the land so allotted to respondents No. 2 and 3 to make up the deficiency was recorded as *gairmumkin marian* in the *jamabandi*.

(14) As per Section 2(bb)(iii) of the Act, “common purpose” means:-

“XXX XXX XXX

Village roads and paths; village drains, village wells, ponds or tanks, village watercourses or water-channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar, Janj Ghar, grazing grounds; tanning places; *mela* grounds; public places of religious or charitable nature; and

XXX XXX XXX”

As per this definition, it is to be held that this land was being used for common purpose. Therefore, by virtue of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961, this land became vested in the Gram Panchayat. It has recently been held by this Court in *Sadhu Singh versus State of Punjab and others* (11), that such a land cannot be partitioned amongst the proprietors of the village. In such a situation, this land could not have been allotted to respondents No. 2 and 3 for making up deficiency in the value of the land to be allotted to them at the time of consolidation. On that ground also, the impugned orders are liable to be set aside.

(15) The writ petition is accepted accordingly. The impugned orders are hereby set aside. No order as to costs.

A. AGG

Before K. Kannan, J.

JASMINDER SINGH,—Petitioner

versus

**ADDL. REGISTRAR(I), COOP. SOCIETIES, PUNJAB
& ANOTHER,—Respondents**

CWP No.10820 of 1990

6th May, 2011

Constitution of India, 1950 -Art. 226/227 - Punjab State Cooperative Financing Institutions Service(Common Cadre) Rules, 1970-71 - Financing Institutions Service Rule, 1958 - Reversion made from Senior Accountant to Junior Accountant - Reversion order of M.D. quashed by Addl. Registrar Coop. Societies - Case remanded for consideration afresh in all respect by Administrative Committee under Common Cadre Rules - Subsequently amendment made to Common Cadre Rules empowering Managing Director along with General Manager of Apex Bank and Addl. Registrar of Coop. Societies to use such powers which the Administrative Committee