

Before Satish Kumar Mittal, J.

MOHINDER SINGH AND OTHERS,—*Petitioners*

*versus*

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

C.W.P No. 5063 of 1985

27th October, 2010

*Constitution of India, 1950—Art.226—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948-S.21—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949-Rl. 18—Confirmation of scheme of consolidation—Repartition—Objections filed—Consolidation Officer accepting objections & making changes in repartition order—Appeal against order of Consolidation Officer dismissed by Settlement Officer—Assistant Director partly accepting appeal—Changes in repartition made accordingly—Challenge thereto u/s 42 of 1948 Act after more than 25 years—Addl. Director allowing petition while holding that for challenging repartition order u/s 21(1) no limitation is prescribed—Failing to explain unreasonable & inordinate delay—Parties already settling their possession and making improvements in their lands—Order passed by Additional Director at belated stage is wholly without jurisdiction, illegal & arbitrary—Not sustainable in eyes of law—Petition allowed, order passed by Additional Director quashed.*

*Held*, that though it was alleged in the petition filed by respondents No. 5 to 8 under Section 42 of the Act that they were challenging the order of repartition passed by the Consolidation Officer under Section 21(1) of the Act, but actually they had been challenging the final order dated 27th January, 1960 passed by the Assistant Director, Consolidation under Section 21(4) of the Act. The Additional Director, Consolidation has committed grave illegality while observing that the petitioners were challenging the order of repartition passed under Section 21(1) of the Act. The said order passed by the Assistant Director, Consolidation was merged in the order of the

Consolidation Officer, which became final between the parties. Therefore, to challenge the said order, which was passed under the Act, the aggrieved party was required to file a petition within six months as prescribed under Rule 18 of the Rules.

(Para 9)

*Further held*, that only in one situation the order of repartition can be directly challenged in inherent power under Section 42 of the Act where parties had neither filed objections nor heard by the Consolidation Officer. In the present case, not only the objections were invited and confirmed but the parties were also heard by the Consolidation Officer. The said order of the Consolidation Officer had merged in the order of the Assistant Director, Consolidation. The Additional Director, Consolidation has unsettled the settled possession without any justification and reasonableness and has totally ignored the fact that the earlier partition order was challenged by the aggrieved party by filing the appeal and the said became final. Thus, the impugned order passed by the Additional Director, Consolidation at a belated stage was wholly without jurisdiction, illegal and arbitrary and the same cannot be sustained in the eyes of law.

(Para 9)

Jai Bhagwan, Advocate, *for the petitioners*.

Lalit Sharma, Advocate, *for respondent No. 5*.

### **SATISH KUMAR MITTAL, J.**

(1) The petitioners and respondents No. 5 to 8 are right holders of village Burj Sema, District Bathinda. In the said village, consolidation proceedings took place in the year 1960 under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act'). The draft Scheme of consolidation was published, objections invited and it was confirmed. Thereafter the issue of repartition of land in accordance with the Scheme of Consolidation among the right holders was considered under Section 21(1) of the Act. Under sub-section (2) of Section 21 of the Act, any person aggrieved by the repartition was entitled to file objections within fifteen days of the publication before the Consolidation Officer. The petitioners through Bachan Singh, father of

petitioners No. 32 to 34, filed objections against the repartition before the Consolidation Officer alleging that Nehri Land was allotted to them instead of Banjar Land. Secondly, the land comprising in Khasra No. 60 of Chand Singh, father of respondents 5 to 8, had been given to them, which was of lesser value and the land of higher value was taken away from them. It was also alleged that Chand Singh was allotted land of higher value in excess. The Consolidation Officer,—*vide* order dated 27th May, 1959 accepted those objections and made changes in the repartition order.

(2) Feeling aggrieved against the aforesaid order, Chand Singh, father of respondent No. 5 to 8, filed an appeal before the Settlement Officer under Section 21(3) of the Act. The said appeal was dismissed by the Settlement Officer, Consolidation,—*vide* his order dated 28th July, 1959. Thereafter, Chand Singh further challenged those orders by filing the appeal under Section 21(4) of the Act before the Assistant Director, Consolidation, to whom the power of the State Government was delegated. The Assistant Director, Consolidation,—*vide* his order dated 27th November, 1960 partly accepted the said appeal. In order to avoid bifurcation of 'C' grade land *Tak* of Chand Singh, Bachan Singh was given Killa Nos. 12/14, 12/17, 24/6, 24/7, 24/14, 24/15, 24/16, 24/17 and a part of Killa No. 24/24. Accordingly, the changes were made in the repartition Scheme. As a result of the said amendment in repartition, the watercourse was placed mostly on one side of the *Tak* of Chand Singh.

(3) The said order was accepted by both the parties as none of them further challenged the said order by filing a petition under Section 42 of the Act. According to the repartition made by the aforesaid order, the parties took possession and made improvements in their respective shares. In the meanwhile, Chand Singh and Bachan Singh expired.

(4) After 25 years of the order of the Assistant Director, Consolidation, the sons of Chand Singh (respondents No. 5 to 8 herein) filed a petition under Section 42 of the Act challenging repartition of the land. It was alleged that while allotting Block-wise area in the repartition, the consolidation authority had acted against the consolidation scheme. It was further alleged that they had been allotted less land of the lesser value and allotted more land of the higher value which has resulted into allotment of less land to them. It was further alleged that the watercourse was passing

through the middle of their *Tak*, which has bifurcated their *Tak* into two parts. Therefore, the repartition of the land was illegal as it was done by the Consolidation Officer totally in violation of the Consolidation Scheme.

(5) The petitioners opposed the said petition on the ground of limitation as well as on merits. The Additional Director, Consolidation,— *vide* impugned order dated 28th June, 1985 has allowed the said petition while observing that for challenging the repartition order under Section 21(1) of the Act, no limitation is prescribed. It was held that respondents No. 5 to 8 were not allotted land in Block 'C', whereby a great loss was caused to them. After accepting the petition, he remanded the matter to the Consolidation Officer with the direction to allot the land to the parties Block-wise according to their entitlement in accordance with the provisions of the Scheme. In nutshell, by the impugned order, the repartition made by the Consolidation Officer, which became final up to the Assistant Director, Consolidation, was set aside and the matter was remanded to the Consolidation Officer to make fresh partition of the holdings.

(6) Feeling aggrieved against the aforesaid order, the petitioners, have challenged the same in the instant petition. While admitting the writ petition on 18th October, 1985, the operation of the impugned order was stayed.

(7) I have heard the learned counsel for the petitioners and learned counsel for respondent No. 5 and gone through the impugned order.

(8) Learned counsel for the petitioners argued that the petition filed by respondents No. 5 to 8 under Section 42 of the Act before the Additional Director, Consolidation challenging the repartition made in the year 1960 was hopelessly time barred, and after expiry of more than 25 years, the Additional Director, Consolidation should not have set aside the repartition order passed by the Consolidation Officer. He further argued that the Consolidation Officer, after inviting objections to the proposed repartition, ordered the repartition under Section 21(1) of the Act in accordance with the Scheme of Consolidation. The said order became final between the parties with some modification made by the Assistant Director, Consolidation. Thereafter, none of the parties remained aggrieved against the repartition and challenged the final order passed by the Assistant Director. Learned counsel argued that when repartition became final, the Additional Director, Consolidation should not have entertained the petition under Section 42 of

the Act against the repartition at a belated stage as the petition filed by respondents No. 5 to 8 was hit by Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as 'the Rules'). Therefore, the impugned order is not sustainable in the eyes of law and the same is liable to be quashed.

(9) After considering the arguments of the learned counsel for the parties and the various orders passed by the consolidation authorities, which have been annexed with this petition, I am of the opinion that the impugned order passed by the Additional Director, Consolidation is liable to be quashed. Undisputedly, in the present case a scheme of consolidation was framed and published. Objections were invited and thereafter the scheme of consolidation was confirmed under Section 20 of the Act. After framing the Consolidation Scheme of the village, the Consolidation Officer proposed the repartition of the land in the manner set out in the said scheme. The objections were invited. The father of some of the petitioners filed objections to the said scheme. His objections were accepted and the repartition was ordered. While making the repartition of the holdings, every party, including the predecessor of respondents No. 5 to 8, were also heard. Thereafter feeling aggrieved against the said order, the predecessor of private respondents, filed an appeal under Section 21(3) of the Act. His appeal was dismissed. Still feeling aggrieved against the said order, he preferred second appeal under Section 21(4) of the Act before the State Government. The Assistant Director, Consolidation, exercising the powers of the State Government, dealt with the said appeal, partly allowed the appeal and some relief was granted to him. Accordingly, repartition order passed by the Consolidation Officer was modified. The order of the Consolidation Officer merged in the order of the Assistant Director, Consolidation and the said order became final as none of the parties challenged the said order. It appears to me that at the time of repartition the predecessor of the private respondents accepted the superior quality of land in order to get less land of superior quality so as to protect his land from being declared as surplus. That is why, after the repartition, he did not further challenge the said order. After accepting the final order of repartition, both the parties settled into possession of their respective shares and they have made improvements in their holdings. In these facts, in my opinion, the Additional Director, Consolidation should not have entertained the petition filed by respondents No. 5 to 8 under Section 42 of the Act challenging the order of repartition

passed by the Consolidation Officer, which had become final between the parties up to Assistant Director, Consolidation. Respondents No. 5 to 8 had not given any valid reasons justifying the filing of the petition under Section 42 of the Act at a highly belated stage. In his order, the Additional Director, Consolidation has simply observed that no limitation is prescribed under the Act to challenge the order of repartition. The Additional Director, Consolidation is referring to the Full Bench decision of this Court in **Jagtar Singh versus Additional Director, Consolidation of Holdings, (1)**. In the present case though it was alleged in the petition filed by respondents No. 5 to 8 under Section 42 of the Act that they were challenging the order of repartition passed by the Consolidation Officer under Section 21(1) of the Act, but actually they had been challenging the final order dated 27th January, 1960 passed by the Assistant Director, Consolidation under Section 21(4) of the Act. In my opinion, the Additional Director, Consolidation has committed grave illegality while observing that the petitioners were challenging the order of repartition passed under Section 21(1) of the Act. In my view, the said order passed by the Assistant Director, Consolidation was merged in the order of the Consolidation Officer, which became final between the parties. Therefore, to challenge the said order, which was passed under the Act, the aggrieved party was required to file a petition within six months as prescribed under Rule 18 of the Rules. In case it is taken that Rule 18 of the Rules is not applicable in the present case and no limitation is prescribed for challenging the order of repartition under Section 42 of the Act, even then the Supreme Court in **Gram Panchayat, Kakran versus Additional Director of Consolidation and another, (2)**, has held that the party aggrieved against the repartition order is required to move the appropriate authority within a reasonable time. When there is unreasonable and inordinate delay in invoking the jurisdiction under Section 42 of the Act and the aggrieved party is unable to explain the said delay, the Additional Director Consolidation should not have entertained the said application and ought to have rejected the same, particularly when during the said period of 25 years the parties had settled possession and made improvements in the lands allotted to them as per their respective shares. In my opinion, only in one situation the order of repartition can be directly challenged in inherent power under Section 42 of the Act where parties had neither filed objections

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(1) AIR 1984 P&H 216

(2) (1997) 8 S.C.C. 484

*(M. Jeyapaul, J.)*

nor heard by the Consolidation Officer. In the present case, not only the objections were invited and confirmed but the parties were also heard by the Consolidation Officer. The said order of the Consolidation Officer had merged in the order of the Assistant Director, Consolidation. The Additional Director, Consolidation has unsettled the settled possession without any justification and reasonableness and has totally ignored the fact that the earlier partition order was challenged by the aggrieved party by filing the appeal and the said order became final. Thus, in my opinion, the impugned order passed by the Additional Director, Consolidation at a belated stage was wholly without jurisdiction, illegal and arbitrary and the same cannot be sustained in the eyes of law.

(10) Consequently, the writ petition is allowed and the impugned order dated 28th June, 1985 (Annexure P-4) passed by the Additional Director, Consolidation is quashed with no order as to costs.

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**R.N.R.**