

The Indian Law Reports

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

KAPUR CHAND AND OTHERS,—Petitioners.

versus

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

C. W. 1617 of 1964.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—Areas from Shamilat reclaimed by co-owners in excess of their respective shares—Whether can be allowed to be retained by such co-owners till value is adjusted by payment of rent—Consolidation Authorities—Whether competent to effect partition of Shamilat lands.

1965

May, 12th

Held, that the Director of Consolidation of Holdings acted rightly in legalising the possession of the reclaimed areas from the shamilat land in so far as they were equivalent to the lands to which they were entitled as co-owners. But he erred in directing that they owners who had reclaimed areas more than they were entitled to would retain them till their value was adjusted by payment of rent.

Held, that the Director exceeded his jurisdiction in saying that the individual right-holders who have reclaimed land in excess of their rightful possession should be allowed to retain possession on payment of certain dues.

Held, that the partition of shamilat land does not fall within the province of the Consolidation authorities and the parties should be left to have this done by civil Courts of the land. The Director has no power to effect partition of the excess shamilat land possessed by the landowner even if he adds a rider that the aggrieved parties will be free to have proper remedy in a Court of law.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order dated 29th March, 1964, passed by Respondent No. 1. Costs be allowed to the petitioners against the Respondents.

DALIP CHAND GUPTA, ADVOCATE, for the Petitioners.

K. S. KWATRA for the ADVOCATE GENERAL, AND V. P. SARDA,
ADVOCATE, for the other Respondents.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—Kapur Chand and 137 other rightholders of Village Moonak in Sangrur District, have questioned under Article 226 of the Constitution of India the validity of the order passed by the Director of Consolidation of Holdings on 29th of March, 1964, making certain alterations in the scheme of repartition as sanctioned by the Consolidation Officer.

Against the scheme which was framed by the Consolidation Officer, many objections were filed, some of which were disposed of on merits by the Settlement Officer. Repartition also had been effected and many appeals under section 21 have also been disposed of while some appeals under sub-section (4) of section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, are still pending with the Assistant Director of Consolidation. Fifty-three rightholders during the course of repartition made an application under sub-section (1) of section 19 of the Act to have the scheme revised and it is the order, passed by the Director, under section 42 of the Act that is now the subject-matter of challenge.

In the impugned order, the Additional Director has given directions on three matters and the decision given on all these matters is being objected to in these proceedings.

It appears that some land has been affected by varying degree of 'sailab'. The Director of Consolidation has tried to classify the 'sailab' area in certain categories. Mr. Dalip Chand Gupta, the learned counsel for the petitioners, submits that the Director instead of categorising the land which is impossible to classify should have dealt with the grievance in a pragmatic manner by dealing with each case individually. I do not think that I would be inclined to disturb the order of the Director on this score, but as the other two points appear to me to have been wrongly decided, it would be just as well if the Director were to reconsider the matter in the light of the observations which I am shortly going to make.

The second point decided by the Additional Director relates to reclaimed area from the *shamilat*. It is common

ground that the right-holders have reclaimed certain *shamilat* areas which have been in their possession. In many cases the right-holders have reclaimed areas which are in excess of the lands to which they are entitled as co-owners. What the Director has done is to legalise the possession of the reclaimed areas so far as they are equivalent to the lands to which they are entitled as co-owners. This is unexceptionable. The Director, however, has erred in saying that the owners, who have reclaimed areas more than they are entitled will retain them till their value is adjusted by payment of rent. This is directly opposed to the principle laid down by Sir George Rankin in a Division Bench, case of *Solaiman Moosaji Asmal v. Jatindra Nath Mondal* (1). The learned Judge, observed at page 556 thus:—

Kapur Chand
and others
v.
The Director,
Consolidation of
Holdings,
Punjab
and others

Shamsher
Bahadur, J.

“I am prepared to assent to the proposition that where a person has expended money upon a joint property and a time comes to partition, it, it is reasonable and right to endeavour to give him such an allotment as may enable him to reap the advantage of what he has expended upon improvements. But when we are asked to go beyond that and to say that it is the *prima facie* right of such a co-owner expending money to improve the whole or a greater portion of the joint land to have in one way or another recouped to him by his co-owners the value of the improvements which they got in the shares which are allotted to them, then I say that that is not the law.....In such a case, as that, it may be right enough to give to the person, who has made the improvement not only his one-third of the purchase money but such a further sum as represents improvements which he has made. But in a case, which is not such, in a case where the improvements have been made by a co-owner at his own will I do not say improperly, in any way, but at his own will, it is a very different matter; *prima facie* it is not a thing which the Court will do to endeavour to make sure that the owner, who has improved the property will get every penny to himself of the advantage which his money has created.”

(1) A.I.R. 1929 Cal. 553.

Kapur Chand and others
v.
The Director,
Consolidation of
Holdings,
Punjab
and others

The Director, therefore, has clearly exceeded his jurisdiction, in saying that the individual right-holders who have reclaimed land in excess of their rightful possessions should be allowed to retain possession on payment of certain dues.

Shamsher
Bahadur, J.

Equally untenable is the decision of the Director, on the question of partition of *shamilat* land. The Director has sought to evolve a formula of his own in effecting partition of the excess *shamilat* lands possessed by the landowners. It is true that the Director has added a rider that the aggrieved parties would be free to have a proper remedy in a Court of law, but he was clearly in error in deciding a question which he had no jurisdiction to entertain. The partition of *shamilat* land does not fall within the province of the Consolidation authorities and the parties should be left to have this done by Civil Courts of the land. This is exactly what the Consolidation Officer had done and the Director should not have taken a different course by making adjustments in the scheme under section 42 of the Act.

In the result, this petition would be allowed and the order passed by the Director of Consolidation of Holdings on 29th of March, 1964, quashed. In the circumstances, I would make no order as to costs.

R. S.

CIVIL MISCELLANEOUS

Before S. S. Dulat, Acting Chief Justice and Shamsher Bahadur, J.
H. E. DARUWALLA,—Petitioner.

versus

INDIAN AIRLINES CORPORATION, AIRLINES HOUSE,
NEW DELHI.—Respondent.

Civil Writ 178—D of 1965.

1965
August, 9th

Air Corporation Act (XXVII of 1953)—S.45—Rules framed under—Rule 12—Interpretation of—Employees of the Corporation—Whether entitled to continue in service as a matter of course till they attain the age of 58—Rule 12—Whether ultra vires the Act.

Held, that in view of Rule 12 framed by the Corporation under section 45 of the Air Corporation Act, 1953, an employee has to retire at the age of 58 but the competent authority may require him to retire after he has attained the age of 55 years on being given three months' notice and no reason need be assigned by the