

Kartar Singh v. Lal Singh, etc. (Narula, J.)

resettlement of tenants on the surplus land of a landowner, the Circle Revenue Officer is required to issue notice and hear the landowner. Admittedly, in the instant case, such a course was not adopted with the result that the impugned action of resettling the tenant on the surplus land of the petitioner cannot legally be sustained.

(10) No other point was urged.

(11) For the reasons recorded above, I allow these petitions and quash the impugned orders dated May 24, 1971, June 4, 1971 and June 5, 1971 (copies Annexures 'B', 'C', and 'D' to the petition) respectively. However, it may be observed that the authorities under the Act shall be at liberty to utilize the surplus area of the petitioner and resettle the tenants in the light of the observations made by me above. In the circumstances of the case, I make no order as to costs.

B. S. G.

APPELLATE CIVIL

Before R. S. Narula and R. N. Mittal, JJ.

KARTAR SINGH,—Appellant

versus

LAL SINGH, ETC.—Respondents.

Letters Patent Appeal No. 157 of 1970.

March 7, 1972.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Sections 23 (2) and 24 (1)—Punjab Land Revenue Act (XVII of 1887)—Section 122, requiring application for possession being made within a specified period of limitation—Whether applies to proceedings under section 23 (2) or 24 (1) of the Consolidation Act.

Held, that there is no express provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 or in the rules framed thereunder prescribing any period of limitation for moving the Consolidation Officer for delivering possession of the land allotted to any landowner under the consolidation scheme either under section 23 (2) or under

section 24(1) thereof. The provisions of section 122 of the Punjab Land Revenue Act, 1887 consist of three distinct parts and it is only the third part referring to the power of Revenue Officer which is transplanted into sections 23(2) and 24(1) of the Consolidation Act. The right to obtain possession as a result of repartition under a scheme of consolidation is expressly declared in sections 23 and 24 of the Consolidation Act and these sections do not enjoin that the possession will be changed or delivered only on an application being made by the party entitled to obtain possession. On the other hand, they impose a duty on the Consolidation Officer to get the possession changed irrespective of whether an application is or is not made by the party entitled to obtain possession of any particular land. In none of the three eventualities contemplated by sections 23(1), 23(2) and 24(1) of the Consolidation Act for change of possession is a landowner or a tenant required to make an application as a condition precedent for obtaining possession under the scheme of repartition. Hence section 23(2) as well as section 24(1) of the Consolidation Act merely confer on the Consolidation Officer the power to deliver possession which is otherwise vested in a Revenue Officer under section 122 of the Revenue Act, but the procedure prescribed in this section requiring an application for possession being made within a specified period of limitation is not applicable to proceedings under section 23(2) or section 24(1) of the Consolidation Act for delivery of possession.

Letters Patent Appeal under Clause X of the Letters Patent, against the judgment of Hon'ble Mr. Justice Prem Chand Jain, passed in Civil Writ No. 2437 of 1969, on 18th December, 1969.

Satya Parkash Goyal, Advocate.

Baldev Singh, Jawanda, Advocate, for respondents 1 to 4.

Gurbachan Singh, Advocate, for Advocate-General, Punjab, for respondents 5 to 8.

JUDGMENT

Judgment of the Court was delivered by:—

NARULA, J.—These three Letters Patent Appeals (L.P. As. 157 and 187 of 1970, and L.P.A. 582 of 1971) arise out of the decision of two different writ petitions by a learned Single Judge of this Court.

(2) The consolidation scheme of village Balian Khurd, tahsil Malerkotla, district Sangrur, was published on December 27, 1955. An amended scheme was published on April 26, 1957, and was confirmed on September 11, 1957. The repartition under sub-section (1) of section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (hereinafter called

Kartar Singh v. Lal Singh, etc. (Narula, J.)

the Consolidation Act) was published on January 18, 1958. Possessions were thereafter transferred and after this had been done, the consolidation record was consigned to the record room. Bhag Singh, father of Karnail Singh writ-petitioner (respondent No. 4 before us) filed an appeal under sub-section (4) of section 21 of the Consolidation Act before the Assistant Director which was decided on July 28, 1959. The Assistant Director ordered some changes to be made effecting the *Kurrah* of the writ-petitioners and of Kartar Singh etc. Kartar Singh did not get possession of the *Kurrah* which was allotted to them under the order of the Assistant Director, dated July 28, 1959. They made an application to the Consolidation Officer for getting the possession of the land to which they were entitled under the order of the Assistant Director delivered to them. Notice of that application (Annexure 'A' to the writ petition) was issued by the Consolidation Officer to Lal Singh and others (writ-petitioners) requiring them to vacate the illegal possession of the *Killa* numbers in question within 15 days from the date of the notice (August 11, 1969), or to file objections, if any, against the delivery of possession. In the notice it was further stated that if neither any objections were filed, nor possession delivered, proceedings under section 23(2) of the Consolidation Act would be taken against Lal Singh, etc.

(3) Written objections, dated September 12, 1969 (copy Annexure 'B'), are claimed to have been filed by Lal Singh, etc. before the Consolidation Officer in response to the said notice. In paragraph 6 of the objections it was stated that the Consolidation Authorities could have changed possession just after the order of the Assistant Director within a reasonable time and before consigning the record, and that in any case action could not be taken after the expiry of more than three years as provided in section 122 of the Punjab Land Revenue Act (17 of 1887) (hereinafter called the Revenue Act). The case of the State is that the objections Annexure 'B' were never filed. Be that as it may, the fact remains that Lal Singh and others moved this Court by writ petition, dated September 17, 1969, for quashing the notice Annexure 'A' calling upon them to deliver possession of the land in dispute. The writ petition was contested by Sohan Singh and Kartar Singh as well as by the State. It was contended in the State's return (affidavit of the Consolidation Officer, Bhatinda, dated October 31, 1969) that there was no restriction as to time for ordering change of possession in implementation of the scheme of consolidation. The writ petition was, however, allowed by the judgment of the learned Single Judge,

dated December 18, 1969, on one of the two grounds urged before him. It was held that there is no provision in the Consolidation Act which prescribes some specific procedure which may be adopted by a Consolidation Officer for delivering possession, or which may impose some time limit for giving effect to the changes which may be ordered under the provisions of sub-sections (2), (3) and (4) of section 21, or under section 36 or 42 of the Consolidation Act. The learned Judge observed that the only provision in the Consolidation Act which deals with the right to possession of new holdings is section 23. It was further held that the Consolidation Officer had been permitted to exercise the powers of a Revenue Officer under section 122 of the Revenue Act to deliver possession to a landowner or a tenant in partition proceedings. On account of the phraseology of section 122 of the Revenue Act, it was held "that a Consolidation Officer can deliver possession of a holding to a rightholder or a tenant within three years of the order passed under the provisions of sub-sections (2), (3) and (4) of section 21 or an order passed under section 36 or 42 of the Act, in pursuance of which change is made." It was consequently decided that "the Consolidation Officer had no jurisdiction to issue the impugned notice in September, 1969, after the lapse of ten years requiring the writ-petitioners to deliver possession." The learned Judge further observed that there is no provision of law which authorises the Consolidation Officer to have unlimited power to deliver possession of a holding to a rightholder as a Revenue Officer, because a Consolidation Officer can exercise only those powers which are vested in a Revenue Officer under the Revenue Act. The second argument advanced before the learned Single Judge by the writ-petitioner-respondents was that the order of the Assistant Director was itself invalid. This contention was turned down on the ground that they had not challenged the legality of the order passed under section 21(4) of the Consolidation Act earlier and they could not be permitted to do so after about ten years of the passing of that order. Aggrieved by the judgment of the learned Single Judge, Kartar Singh has filed L.P.A. 157 of 1970. The State of Punjab and the Consolidation Authorities who were respondents in the writ petition have filed L.P.A. 187 of 1970, against the same judgment. The prayer in both the appeals is that the writ petition of Lal Singh, etc. should be dismissed.

(4) The writ petition of Bhola Singh, etc. (Civil Writ 1340 of 1968) was based on somewhat similar facts. By order, dated December 24, 1955 (Annexure 'A' to that petition), certain changes

were ordered by the Consolidation Officer on an application of Khem Singh appellant. It is claimed on behalf of the writ-petitioner-respondents that order Annexure 'A' was passed *ex parte* against them. On February 13, 1968, Khem Singh appellant filed a petition under section 42 of the Consolidation Act for the implementation of the order passed by the Consolidation Officer on December 24, 1955. That application was allowed by the order of the Additional Director, Consolidation of Holdings, dated March 6, 1968 (Annexure 'C'). The objection of the writ-petitioner-respondent as to the application for implementation of the order for giving possession being barred by time was repelled by the Additional Director on the ground that there was no limitation for the implementation of the order of a competent authority for delivering possession. It was to get the order of the Additional Director quashed that Bhola Singh filed Civil Writ 1340 of 1968, in this Court. The writ petition was allowed by the same learned Single Judge following his earlier judgment in *Lal Singh and others v. The State of Punjab and others* (1), which is the subject-matter of the connected appeals. On the view taken by the learned Judge of that main question, the other points sought to be urged by the writ-petitioners were not decided by him. L.P.A. 582 of 1971 has been filed by Khem Singh against the grant of that writ petition. (Bhola Singh having died during the pendency of the writ petition, Inder Kaur, etc., his legal representatives have been impleaded as respondents in his place). Arguments have been mainly addressed in the two appeals in Lal Singh's case and the same have been adopted by the counsel for both sides in Khem Singh's appeal.

(5) The common question which calls for decision in these three appeals is whether the limitation of three years prescribed under section 122 of the Revenue Act for making an application for possession to a Revenue Officer does or does not apply to the proceedings for delivery of possession under section 23(2) or section 24(1) of the Consolidation Act. Section 122 of the Revenue Act reads as follows :—

“An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue Officer shall, on application

(1) 1970 P.L.J. 291.

made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.¹

Sections 23(1) & (2) and 24 of the Consolidation Act may also be quoted at this stage for ready reference :—

“23(1) If all the owners and tenants effected by the repartition as carried out under sub-section (1) of section 21 agree to enter into possession of the holdings allotted to them thereunder, the Consolidation Officer may allow them to enter into such possession forthwith or from such date as may be specified by him.

(2) If all the owners and tenant as aforesaid do not agree to enter into possession under sub-section (1), they shall be entitled to possession of the holdings and tenancies allotted to them from such date as may be determined by the Consolidation Officer and published in the prescribed manner in the estate or estates concerned; and the Consolidation Officer shall, if necessary, put them in physical possession of the holding to which they are so entitled including standing crops if any, for doing so may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887.

(3)

(4)

24. (1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings, respectively allotted to them, the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of consolidation, or, as the case may be, by repartition shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2), (3) and (4) of section 21 or an order passed under section 36 or 42 of this Act.

(2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 (Act XVII of 1887), for

purposes of compliance with the provisions of sub-section (1).”

It is not disputed that there is no express provision in the Consolidation Act or in the rules framed thereunder prescribing any period of limitation for moving the Consolidation Officer for delivering possession of the land allotted to any land-owner under the consolidation scheme either under section 23(1) or under section 24(1) of that Act. The restriction as to limitation is sought to be spelt out from the provisions of sections 23(2) and 24(2) of the Consolidation Act, inasmuch as the power of a Revenue Officer is vested in the Consolidation Officer for purposes of delivery of possession, and such a power is vested in a Revenue Officer only under section 122 of the Revenue Act and that provision in turn prescribes a period of three years limitation for making an application for possession.

(6) It has been contended by Mr. Gurbachan Singh for the State, by Mr. S. P. Goyal for the private applicant in Lal Singh's case, and by Mr. L. S. Wasu on behalf of Khem Singh, that section 122 of the Revenue Act consists of three distinct parts, namely (i) declaration of a right of a party to partition proceedings to obtain possession of land allotted to him in such proceedings against the other parties to those proceedings; (ii) the duty of a Revenue Officer to give effect to the instrument of partition so far as it concerns the applicant on an application being made to him for the purpose by such applicant within three years from the date recorded in the instrument of partition; and (iii) the power to enforce the order for delivery of possession contained in the instrument of partition like a decree for possession of immovable property. Counsel for the appellants have contended that it is only the third ingredient of section 122 of the Revenue Act (which refers to the power of the Revenue Officer) which has been transplanted into sections 23(2) and 24 (1) of the Consolidation Act, and not the earlier two parts of section 122. So far as the right to obtain possession as a result of repartition proceedings under a scheme of consolidation is concerned, the same is expressly declared in sections 23 and 24 of the Act. No provision is made either in section 23 or in section 24 of the Act for possession being changed or delivered only on an application being made by the party entitled to obtain possession. There seems to be force in the argument of the appellants that sections 23 and 24 of the Consolidation Act enjoin on the Consolidation Officer a duty to get the possessions changed irrespective of whether an application is or is not made by the party entitled to obtain possession of

any particular land. We have not been shown any provision in the Consolidation Act requiring any application being given by a land-owner or a tenant for possession of the land allotted to him in the consolidation proceedings being delivered to him. A plain reading of sub-section (1) of section 24 of the Consolidation Act shows that the scheme of consolidation comes into force as soon as the persons entitled to possession of holdings under the Act have entered into possession of the lands allotted to them. Change of possessions between owners or tenants effected by the repartition as carried out under section 21 appears to be envisaged at three stages, namely :—

- (i) under section 23(1) immediately after the repartition is carried out under sub-section (1) of section 21 or from a date specified (under section 23(1)) by the Consolidation Officer ;
- (ii) in case all the owners and tenants do not agree to enter possessions forthwith or on the date specified by the Consolidation Officer, then under section 23 (2) possessions have to be changed from a date determined and published in the prescribed manner by the Consolidation Officer ; and
- (iii) after possessions have been entered into and the scheme has come into force under sub-section (1) of section 24, possessions may still have to be changed for implementing any order passed by the appropriate authorities under sub-sections (2), (3) and (4) of section 21 or under section 36 or 42 of the Consolidation Act.

In none of the three eventualities is a land-owner or a tenant required to make an application as a condition precedent for obtaining possession under the scheme of repartition. The question of prescribing any period of limitation for making any such application does not, therefore, appear to arise. Though reference has been made to section 23(2) of the Consolidation Act in the notice, dated August 14, 1969 (Annexure 'A' to Civil Writ 2437 of 1969) it appears that section 23(2) had no application to the case as possession was claimed by Sohan Singh and Kartar Singh in pursuance of an order which had been passed by the Assistant Director under sub-section (4) of section 21 of the Act. In that situation possession had to be delivered to Sohan Singh and Kartar Singh under section 24(1) and not under section 23(2) of the Act as it is the admitted case of both sides that the consolidation of holdings in the village had been completed in every respect in 1958, the land-owners and the parties had

already been put into possession of the lands allotted to them and the authorities concerned had even handed over whole of the record relating to the village in question to the Revenue Department in 1958 (paragraph 2 of the writ petition and the corresponding paragraph of the written statement). The question of Lal Singh and Kartar Singh unvoking section 23(2) of the Consolidation Act did not, therefore, arise in this case. This would not, however, make any material difference as the Consolidation Officer is authorised to exercise the powers of a Revenue Officer even for delivering possession under sub-section (1) of section 24 of the Act by virtue of the provisions made in sub-section (2) of that section. In these circumstances we are of the opinion that section 23(2) as well as section 24(1) of the Consolidation Act merely confer on the Consolidation Officer the power to deliver possessions which is otherwise vested in a Revenue Officer under section 122 of the Revenue Act, but the procedure prescribed in section 122 requiring an application for possession being made within a specified period of limitation is not applicable to proceedings under section 23(2) or section 24(1) of the Consolidation Act for delivery of possession.

(7) It was further contended by the counsel for the appellants that even if the period of limitation prescribed under section 122 of the Revenue Act could be held to be applicable for moving the Consolidation Officer for delivering possession under section 23(2) of the Consolidation Act, the period would commence from the date for delivering possession which may be specified under section 23(2) as section 122 clearly states that the period of three years is to start from the date "recorded in the instrument of partition" which should in the circumstances of the consolidation proceedings be equated to the date specified for change of possessions under section 23(2) of the Consolidation Act. In the view we have taken of the first contention of the appellants, it is not necessary to go into this question. But *prima facie* there seems to be some force in this contention also.

(8) In this view of the matter, all the three appeals are entitled to succeed as we have not been able to uphold the only ground on which both the writ petitions were allowed by the learned Single Judge. Mr. Baldev Singh Jawanda, learned counsel for the writ-petitioner-respondents in Kartar Singh's appeal, has, contended that the decision of the learned Single Judge refusing to set aside the order of the Assistant Director, Consolidation should be reversed as mere delay in asking for the quashing of an order passed by an Assistant Director without jurisdiction is no ground for refusing relief under Article 226 of the Constitution. On the merits of that

point he has submitted that the Assistant Director had no jurisdiction to grant relief under sub-section (4) of section 21 of the Consolidation Act to a person who had not approached him under that provision but was a mere respondent in an application moved by the other side. It has not been disputed before us that the Assistant Director had passed his order in question on an application of Bhag Singh father of Karnail Singh writ-petitioner and not on the application of Kartar Singh. Mr. Jawanda has relied on my judgment in *Nazar and others v. Additional Director and others* (2) and the judgment of R. S. Sarkaria, J., in *Hazara Singh and another v. The Punjab State and others*, (3) in support of this proposition. He has also referred to the judgment of A. N. Grover, J; in *Mussaddi and others v. The State of Punjab and others* (4), in support of his submission to the effect that mere delay in approaching the Court in a case of violation of fundamental rights does not disentitle a petitioner from obtaining relief to which he is otherwise entitled. Our difficulty in this respect, however, is that none of the parties has produced before us the order passed by the Assistant Director under section 21 (4) of the Consolidation Act. We are, therefore, unable to find out whether the effect on the holding of Kartar Singh resulted from some relief granted to Bhag Singh or if no relief was granted to Bhag Singh (who had approached the Assistant Director) but relief was only granted to Kartar Singh who was a respondent before the Assistant Director. Nor were definite and clear facts in this respect pleaded in the writ petition which could have elicited a clear reply to those allegations in the written statement. Moreover, in the writ petition no prayer was made to quash the order of the Assistant Director. The only prayer made was to quash the notice Annexure 'A' requiring the writ-petitioners to deliver possession. In these circumstances we are unable to consider the question of quashing an order which was neither placed before the learned Single Judge nor before us and for quashing which no specific prayer was made in the writ petition. That being the situation, the appeals of the State of Punjab and of Kartar Singh against the order of the learned Single Judge must succeed and the writ petition of Lal Singh etc. dismissed. We order accordingly.

(9) So far as Khem Singh's appeal is concerned, the writ petition was allowed by the learned Single Judge only on one point

(2) 1966 Curr. L.J. (Pb.) 755.

(3) 1969 Curr. L.J. (Pb. & Hr.) 96.

(4) 1961 P.L.R. 474.

Mehar Singh, Sarpanch v. The Director of Panchayats etc. (Tuli, J.)

which has not found favour with us. The learned Judge had observed that in view of his finding on that point he was not dealing with the other contentions of the writ-petitioner. That being the case, we allow Khem Singh's appeal, set aside the judgment and order of the learned Single Judge on the point which has been disposed of therein, and direct that the writ petition shall now be heard by any Single Bench on the other contentions sought to be raised by the writ-petitioner-respondents. We leave the parties in all the three appeals to bear their own costs throughout.

B. S. G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MEHAR SINGH, SARPANCH,—Petitioner.

versus

THE DIRECTOR OF PANCHAYATS ETC.,—Respondents.

Civil Writ No. 4692 of 1971.

March 8, 1972.

Punjab Gram Panchayat Act (IV of 1953)—Section 102(2)—Enquiry under—Enquiry Officer submitting report—Director Panchayats without taking any disciplinary action ordering fresh inquiry on the same charges—Such fresh inquiry—Whether barred.

Held, that a disciplinary proceeding is not complete till some action is taken by the punishing authority on the basis of the Enquiry Officer's report. The mere submission of the report by the Enquiry Officer is not enough to hold that the enquiry is complete. Until disciplinary action is taken by the punishing authority, either by imposing punishment or by exonerating the person proceeded against, another inquiry can be held. Hence where an inquiry is held against a sarpanch under section 102(2) of Punjab Gram Panchayat Act, 1952, and the Enquiry Officer submits his report but the Director of Panchayat is not satisfied with the enquiry, he can order a fresh inquiry on the same charges. Such an inquiry is not barred under section 102(2) of the Act. The likely harassment by successive inquiries is not conclusive to hold that the Director is not competent to hold the second inquiry.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued restraining respondent No. 4 from conducting the enquiry in pursuance of the orders of respondent No. 1, dated 8th September, 1971 intimated by respondent No. 4, dated 21st October, 1971 (Annexure 'C').