

HIGH COURT OF PUNJAB & HARYANA**Bench: Justice Sureshwar Thakur and Justice Lalit Batra****Date of Decision: 10.01.2024**

CWP-6936-1995

CHUHAR CHAND AND ORS.**.....Petitioners****Versus****ADDL. DIRECTOR CONSOLIDATION, PUNJAB AND ORS.****....Respondents****Legislation:**

Section 42 of the East Punjab Consolidation of Holdings Act, 1948

Subject: Land dispute related to the dismissal order under Section 42 of the Consolidation Act, 1948, and the jurisdiction of Consolidation Authorities in redistributing or repartitioning disputed lands amongst estate holders.**Headnotes:**

Land Dispute - Challenge to dismissal order under Section 42 of the Consolidation Act, 1948 - Disputed lands and question of title - Jurisdiction of Consolidation Authorities - Necessity to raise the question of title before a competent civil court - Impugned order found to be in alignment with legal precedent. [Para 1-4]

Legal Mandate - Prohibition against redistributing or repartitioning disputed lands amongst estate holders after the finalization of the consolidation scheme - Remedy for redistribution through declaratory suit before competent Civil Court - Reference to 'Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others' case. [Para 3-4]

Dismissal of Writ Petition - Lack of merit in the petition - Reserving liberty for private respondents to pursue remedies as per legal precedent - Challenge to Annexure P-7 regarding auction of Grass becomes infructuous due to earlier court order. [Para 5-10]

Referred Cases:

- Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others' reported in 2014 (2) R.C.R. (Civil) 721.

Representing Advocates:

Ms. G.K.Hundal, Advocate for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. Vikas Singh, Advocate for respondents No. 2 to 4.

SURESHWAR THAKUR , J. (Oral)

1. Through filing of the instant petition, the petitioners have laid a challenge to Annexure P-6, whereby the petition filed by the petitioners under Section 42 of the East Punjab Consolidation of Holdings Act, 1948 (hereinafter for short called as the 'Consolidation Act, 1948') for repartition of the disputed lands, rather became dismissed, through an order drawn thereons, on 02.03.1995. The operative part of the said order is extracted hereinafter.

'I have heard the counsel for the parties and examined the revenue record, and consolidation record, with the help of Halqa Patwari from the record of Jamabandi 1950-51, it is clear that the land is the ownership and possession of shamlat Deh Hasab Rasad Raqba Khewat and letter on the same has been mutated in the name of Gram Panchyat of the village and since then Gram Panchyat is in possession of the same, and now the question of title is involved whether Gram Panchyat is the owner or right holders are the owner, this question is yet to be decided by a competent court. Secondly, no mistake has been committed by the Consolidation Authorities, neither in the scheme nor in the repartition, petition under Section 42 of the Consolidation of Holding Act can be filed only against a scheme of Consolidation, repartition, or any order, under the circumstances there is no merit in the petition, the same is dismissed.'

2. A reading of the above extracted order reveals, that the Additional Director Consolidation, has held that since in the making of an order of re-partition of the lands, as became assigned respectively, to the estate holders concerned or became reserved in favour of the village propriety body, rather through the Gram Panchayat concerned, thus would result in the re-opening of the consolidation scheme besides also would result in his deciding a question of title. Therefore, when the said question of title was required to be raised

before civil Court of competent jurisdiction or before the statutory authority concerned, Resultantly, thereby a dismissal order was made on the relevant petition.

3. After going through the above factual position, and perusing the record, this Court finds no error in the impugned order (Annexure P-6), and, concurs with the view taken by the Additional Director Consolidation. Significantly, the said view falls in alignment with the mandate recorded by this Court, in case titled as '**Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others**' reported in **2014 (2) R.C.R. (Civil) 721**. The relevant paragraphs of the verdict recorded by this Court in **Parkash Singh's case (supra)**, becomes extracted hereafter, wherein, there is a complete interdiction against the authority exercising jurisdiction under Section 42 of the 'Consolidation Act, 1948', to after the finalization of the consolidation scheme, by the consolidation officer rather re-distribute or re-partition, the disputed lands amongst the estate holders concerned. Contrarily, it is mandated therein, that the remedy to ask for redistribution or re-partition of the disputed lands amongst the estate holders concerned, after the completion of the finalized consolidation scheme, is through, the makings of a challenge to the purported untenable allotment(s) made either to the estate holders or to the Gram Panchayat concerned, rather through a declaratory suit being filed, before the jurisdictionally competent Civil Court concerned.

46. We, therefore, have no hesitation in recording that it is beyond debate that, if a question arises, before an officer exercising power under the Consolidation Act, regarding any right, title or interest in "Shamilat Deh" "vested" or deemed to have vested in a Gram Panchayat, a Consolidation Officer, the State or its delegate exercising plenary power under Section 42 of the Act, are not empowered, while examining the correctness of any scheme prepared during consolidation or order passed thereunder to record a finding on such a question of title or to hold that land is or is not "Shamilat Deh" and as a consequence whether any right, title or interest vests or does not vest in the Gram Panchayat. The only authority empowered to answer such a question is the Collector, exercising power under Section 11 of the 1961 Act. As a necessary corollary an order passed under Section 42 of the

Consolidation Act, holding that the land vests or does not vest in a Gram Panchayat would be illegal and nonest for assumption of jurisdiction where there is none, as opposed to a mere erroneous exercise of jurisdiction or may, at best be construed to be an order passed by a tribunal of limited jurisdiction, in the exercise of its limited powers to correct errors in the scheme or orders passed during consolidation and nothing more. The latter conclusion would require a degree of explanation.”

4. In the wake of the above expostulations of law made in **Parkash Singh's case (supra)**, this Court finds does not find any merit in the instant writ petition and is constrained to dismiss the same.
5. The writ petition is dismissed. However, this Court reserves liberty to the private respondents concerned to access the legally permissible remedies in terms of **Parkash Singh's case (supra)**.
6. Further, in the instant writ petition, a challenge is made to Annexure P-7, annexure whereof is a notice regarding auction of Grass (Baggar) standing over the land in dispute.
7. However, the said challenge becomes infructuous, as through, an order made on 17.10.1995 by this Court, it was specifically ordered that the stay would not operate, inasmuch as, qua cutting of grass is concerned.
8. The relevant part of the order is extracted hereinafter. *“Admitted. Respondent No. 2 is restrained from cutting the trees. However, the stay would not operate as regards cutting of grass is concerned.”*
9. Furthermore, the sale proceeds of the trees or grass, if any, lying deposited with the Gram Panchayat concerned may be utilized in accordance with law.
10. Since the main case itself has been disposed of, thus, all pending applications, if any, are also disposed of.

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