

**Gram Panchayat Through Its Sarpanch Dalip Singh Vs. the Director, Consolidation of Holdings and ors.**

**Gram Panchayat Through Its Sarpanch Dalip Singh Vs. the Director, Consolidation of Holdings and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/624110](http://sooperkanoon.com/624110)

**Court :** Punjab and Haryana

**Decided On :** May-18-2005

**Reported in :** (2005)141PLR276

**Judge :** Rajive Bhalla, J.

**Acts :** East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 - Sections 42; Punjab Village Common Lands (Regulation) Act, 1961 - Sections 2 and 11; [Constitution of India](#) - Articles 226 and 227

**Appeal No. :** Civil Writ Petition Nos. 13323 and 19469 of 1996 and 3649 and 7294 of 1997

**Appellant :** Gram Panchayat Through Its Sarpanch Dalip Singh

**Respondent :** The Director, Consolidation of Holdings and ors.

**Advocate for Def. :** Satinder S. Randhawa, A.A.G. for Respondent No. 1,; Surjit Singh, Sr. Adv. and;

**Advocate for Pet/Ap. :** Gurcharan Singh, Adv.

**Disposition :** Petition allowed

**Judgement :**

Rajive Bhalla, J.

1. This judgment shall dispose of Civil Writ Petition Nos. 13323 of 1996, 19469 of 1996, 3649 of 1997 and 7294 of 1997, as common questions of law and fact are involved therein. In C.W.P. Nos. 13323 of 1996, 7294 of 1997 and 3649 of 1997, challenge is to the legality of the impugned order dated 6.8.1996, passed by the Director Consolidation of Holdings, Punjab, Jalandhar. In C.W.P. No. 19469 of 1996, challenge is to the validity of the impugned order, dated 28.5.1996, passed by the Additional Director, Consolidation of Holdings. For the sake of convenience facts are being extracted from C.W.P. No. 13323 of 1996.

2. The petitioner-Gram Panchayat, by way of the present writ petition, filed under Article 226/227 of the [Constitution of India](#), prays for the issuance of a writ of ceitiorari for quashing the order dated 6.8.1996 (Annexure P-3), passed, by the Director, Consolidation or Holdings, (Respondent No. I) on the plea that the Director Consolidation or Holdings, exercising powers under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short herein after referred to as 'the Consolidation Act'), had no jurisdiction to decide whether the land, in dispute, vested or did not vest in the Gram Panchayat and thereafter direct re-distribution thereof amongst the alleged co-sharers, a few of whom are respondents No. 2 to 34 herein. The right to adjudicate such a dispute vests in the Collector, exercising powers, under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short herein after referred to as '1961 Act').

3. Pursuant to a scheme of consolidation, sanctioned in the year 1953-54, the land in dispute, measuring 361 kanals 17 marlas, bearing Khewat No. 59, Khatauni Nos. 135 to 139, was allocated to the Gram Panchayat as Shamlat Deh Hasab Rasad Arazi Khewat. On the basis of a letter, addressed by the Deputy Commission, dated

12.4.1956, the revenue authorities entered mutation No. 106, recording the Gram Panchayat as the owner of the land in dispute.

4. Respondents No. 2 to 34 filed an application on 29.3.1996, pleading therein that the land had been wrongly shown to be the ownership of the Nagar Panchayat. They, as proprietors of the village, continued to be owners of the aforementioned land and, therefore, were entitled to distribution of land, in accordance with their shares. The Director Consolidation of Holdings, after issuing notice to the Gram Panchayat, arrived at a conclusion that the land in dispute did not fall within the definition of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short herein after referred to as '1961 Act') and, therefore, did not vest in the Gram Panchayat. The mutation, sanctioned, without issuance of notice to the petitioner, had no legal value. It was also held that the land, prescribed in the schedule appended to the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short herein after referred to as 'Consolidation Act') and, therefore, should revert back to the right holders. Consequently, the Director Consolidation Officer, Patiala for partition and distribution of the land in dispute amongst respondents No. 2 to 34, according to their share and entitlement, after deducting land, required for common purposes, as per schedule attached to the Consolidation Act.

5. Aggrieved by the aforesaid order, the Gram Panchayat preferred the present writ petition.

6. Counsel for petitioner contends that the scheme of consolidation having been sanctioned, re-partition effected, land allotted to the respective share holders, as also to the Gram Panchayat, the authorities, under the Consolidation Act, were functus officio and had no jurisdiction to deal with the land allotted to the Gram Panchayat. Mutation in respect thereof stood sanctioned in favour of the Gram Panchayat, which was reflected in the subsequent jamabandis. Any alteration in the status of the Gram Panchayat vis-a-vis the ownership of land would, in essence, be an exercise of powers conferred upon the Collector, under 1961 Act, which the Director Consolidation of Holdings was not competent to exercise. It is further contended that the Director Consolidation of Holdings adjudicated a dispute regarding right, title and interest in land vested or deemed to have vested in the Gram Panchayat. The sole authority to adjudicate such a dispute is the Collector, exercising power under 1961 Act and, therefore, the order, passed by the Director Consolidation of Holdings, is without jurisdiction. Reliance, for the above proposition, is placed upon Gram Panchayat Nurpur v. State of Punjab and Ors., : (1998)8SCC672 , Gram Panchayat Village Sidh v. Additional Director Consolidation of Holding, 1998(9) S.C.C. 270, Jit Singh and Ors. v. Joint Development Commissioner, Punjab and Ors., (2004-2)137 P.L.R. 438, Gram Panchayat of Village Mahadian and Anr. v. The Additional Director, Consolidation, Punjab and Ors., 1989(2) P.L.J. 282, Balkar Singh and Ors. v. Director, Land Records, Punjab and Ors., 2000(2) P.L.J. 352, Gram Panchayat Tangrala v. Additional Director, Consolidation of Holdings, Punjab ana Ors., 2000(2) P.L.J. 540, Gram Panchayat of Village Chandu Khurd v. Director, Consolidation of Holdings, Punjab, Jullundur, (1997-3)117 P.L.R. 623 and Gram Panchayat, Phull, Tehsil Shahkot, Distt. Jalandhar v. State of Punjab 2003(3) R.C.R. (Civil) 497.

7. The next contention, raised in support of challenge to the order of the Director of Holdings that the application for modification of the scheme was filed 43 years after its sanction. This unexplained delay should have invited summary rejection of the application. Reliance for the aforementioned proposition is placed upon the following judgments :-

(1) Gram Panchayat Kakran v. Additional Director of Consolidation and Anr., : (1997)8SCC484 .

(2) Mange Ram v. Financial Commissioner and Ors., 2003(1) R.C.R. (Civil) 551.

8. Counsel for respondents No. 2 to 34, on the other hand contends that the only authority to amend, alter, or revise the scheme of consolidation is the Director Consolidation of Holdings, exercising powers under Section 42 of the Consolidation Act. Section 42 of the Consolidation Act, envisages exercise of powers by the Director Consolidation of Holdings to amend, alter or vary a scheme, as and when an illegality is brought to the notice of the Director. In the present case, respondents No. 2 to 34 brought to the notice of the Director that land,

shown to be the ownership of the Gram Panchayat, had been reserved in excess of that prescribed in the schedule appended to the Consolidation Act. The Director Consolidation of Holdings rightly ordered modification of the scheme and directed the Consolidation Officer to identify land to be reserved for common purposes, and distribute the balance land amongst right holders, in accordance with law.

9. It is further contended that no question of title, whatsoever, arose and none has been adjudicated upon by the Director Consolidation of Holdings, as ownership continued to vest in the respondents and the mere fact that the revenue authorities committed an error in allotting the land to the Gram Panchayat and thereafter sanctioned a mutation of ownership in favour of the Gram Panchayat, would not, in any manner, divest the respondents of their ownership. The land continues to vest in the right holders even today and, therefore, the Director Consolidation of Holdings was well within his rights to pass the impugned order,

10. In so far as the question of delay, counsel for the private respondents contends that Section 42 of the Consolidation Act does not prescribe any limitation for approaching the Director to redress a grievance against a scheme of consolidation. If a special statute does not prescribe limitation, a period of limitation cannot be read into the statute. It is further contended that a Full Bench of this Court and the Hon'ble Supreme Court have consistently held that there is no limitation for approaching the Director seeking redress against an illegality committed in a scheme for consolidation. Reliance for the above proposition is placed upon the following judgments:-

1. Shri Jagtar Singh v. Additional Director, Consolidation of Holdings, Punjab and Anr., 1984 P.L.J. 223 (F.B.).

2. The Gram Panchayat, Village Kanonda v. Director, Consolidation of Holdings and Ors., 1990 P.L.J. 213.

11. I have heard the learned counsel for the parties, perused the pleadings, as also judgments cited for and against the respective contentions.

12. Before proceeding to adjudicate the matter, it would be appropriate to refer to the provisions of 1961 Act. Section 11 of 1961 Act reads as under:-

'11. Decision of claims of rights, title or interest in shamlat deh.- (1) Any person or a Panchayat claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat under this Act, or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1), may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner, as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.'

13. Section 11 of 1961 Act lays down, in no uncertain terms, that any person, who claims a right, title or interest in any land vested or deemed to have been vested in the Gram Panchayat may submit to the Collector within such time as may be prescribed, a statement of his claim in writing and the Collector shall have jurisdiction to decide such claim. Section 11 of 1961 Act uses two expressions 'vested or deemed to have vested in a Panchayat...' and '...any land has not so vested in a Panchayat...'. Thus, any person, who claims that land vests in or is deemed to have vested or has not so vested in a Gram Panchayat, must seek adjudication of such claim before the Collector, under Section 11 of 1961 Act.

14. The legislature in its wisdom, with the object of providing a single forum to determine questions regarding right, title or interest in Shamlat Deli, conferred jurisdiction in respect thereof upon the Collector, Legislative intent being clear and unambiguous brooks no exception and, thus, must be read to exclude the jurisdiction of all Courts and Tribunals to determine questions of title qua land vested or deemed to have vested in a Gram Panchayat. To hold otherwise would result in judicial anarchy, with different

Tribunals/Courts determining questions of right, title or interest and arriving at different conclusions qua the same land. The above conclusions are fortified by the judgments of the Hon'ble Supreme Court in Gram Panchayat Nurpur's case (supra) and Gram Panchayat Village Sidh's case (supra). While dealing with a similar controversy, in Gram Panchayat Nurpur's case (supra), where the entry in the Jamabandi for the year 1944-45 was Shamlat Deh, Hasab Rasad Khewat, Mazbooza Malkan, the Hon'ble Supreme Court held as follows:-

'5. We are of the view that the Additional Director, Consolidation, had no authority to go into the question whether the land in dispute was shamlat deh or not. This is a question which could only be decided by the authorities under the Regulation Act. We, therefore, allow the appeal, set aside the impugned order of the Additional Director, Consolidation and also the order of the High Court and send the matter before the Collector, Kapurthala for decision in accordance with law under the Regulation Act'

15. In the case of Gram Panchayat Village Sidh (supra), where the entry in the revenue record prior to and post consolidation was Shamlat Deh Hasad Rasad Raqba Khewat, the Hon'ble Supreme Court held that the Additional Director Consolidation had no jurisdiction to decide whether the land vested in the Gram Panchayat or the right holders on the plea that the land was bachat land. The Hon'ble Supreme Court set aside the order of the Additional Director Consolidation, as also the order of this High Court and remanded the case to the Collector, exercising the powers under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 for a fresh decision, in accordance with law.

16. In Jit Singh and others case (supra), a Division Bench of this Court, while dismissing the writ petition on another point, observed as follows:-

'9. We have heard learned counsel representing the parties and examined the records of the case. As on today, it may be correct and- it is, indeed, so that the authorities constituted under the Act of 1948 have no jurisdiction to determine the question of title and wherever there is a plea of a party that the land, subject matter of dispute, belongs to the proprietors and not the Gram Panchayat or vice versa, it is only the authorities constituted under the Act of 1961, which would have jurisdiction to determine the question. No doubt, judgments of Hon'ble Supreme Court in Gram Panchayat, Nurpur and Gram Panchayat Village Sidh 's case (supra) do support the contention of learned counsel for the petitioners. However, in the facts and circumstances of this case, in our considered view, this writ petition deserves to be dismissed.'

17. Thus, a perusal of the provisions of Section 11 of 1961 Act, as also the judgments of the Hon'ble Supreme Court and this Court, leave no manner of doubt that where a question is raised claiming that land has or has not vested or is deemed to have or not deemed to have vested in the Gram Panchayat, the Sole authority to decide such a dispute would be the Collector, exercising powers under Section 11 of 1961 Act. To hold otherwise, as observed above, would lead to judicial anarchy with the Director Consolidation of Holdings deciding on his own understanding of the matter and the Collector adjudicating as per his perception of facts and law.

18. The private respondents, by filing an application before the Director Consolidation, raised a plea that the land in dispute did not vest in the Gram Panchayat as pro-rate cut, applied during consolidation proceedings, was in excess and in violation of the provisions of the schedule appended to the Consolidation Act. The respondents, in essence, sought a declaration that the land which had vested in the Gram Panchayat and which the revenue authorities had mutated in the name of the Gram Panchayat, had not so vested. The Director Consolidation of Holdings was, thus, called upon to decide, on the basis of the legality of pro-rata cut, whether the Gram Panchayat or the private respondents were the owners of the land in dispute. Applying the aforementioned principles of law, enunciated in the judgments, referred to herein before, the private respondents sought adjudication of a question of title, namely, whether the Gram Panchayat or the right holders were the owners of the land in dispute though by impugning legality of the pro-rata cut, imposed during consolidation. Adjudication of a question, as to the legality of a pro-rata cut, imposed during consolidation, would, as a natural corollary, result in the affirmation, or negation of the Gram Panchayat's

title. The final result, as has happened in the present case, would be to determine whether the land vests in the Gram Panchayat or not. In the present case, as is apparent from the impugned order, the Director Consolidation of Holdings held that the pro-rata cut, imposed during consolidation, was in excess and, thus, the land did not vest in the Gram Panchayat. The Director Consolidation of Holdings, thus, adjudicated a pure question of title, which he had no jurisdiction to adjudicate. Consequently, the order dated 6.8.1996 (Annexure P-3), passed by the Director Consolidation of Holdings, being without jurisdiction, is null and void and is, therefore, set aside.

19. On the second point, though adjudication, in-view of what has been held above, may not be necessary, suffice to say that there is no limitation for impugning a scheme, framed under the Consolidation Act. However, as held by the Hon'ble Supreme Court in the Gram Panchayat village Kanonda's case (supra), the scheme must be impugned within reasonable time. I do not propose to dilate any further on this point, as laches may be a factor to be considered by the authorities, as and when and if, the respondents deem it proper to approach them under 1961 Act.

20. Before parting with the judgment, it would be appropriate to notice that in C.W.P. No. 3649 of 1997, the petitioners allege that the Director Consolidation of Holdings could not have confined relief to the applicants before him, but should have granted relief to all the right holders. As the order of the Director Consolidation of Holdings (Annexure P-3) has been set aside, this writ petition has been rendered infructuous and is dismissed as such.

21. In view of what has been stated above, C.W.P. Nos. 13323 of 1996 and 7294 of 1997 are allowed and the orders dated 6.8.1996 impugned therein are set aside. Similarly, C.W.P. No. 19469 of 1996 is also allowed and the impugned order dated 28.5.1996 is set aside. The parties would be at liberty to seek adjudication of their respective rights before an appropriate forum, in accordance with law.

No order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**