

Madan Lal Vs. Additional Director Consolidation of Holdings and ors.

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Court : Punjab and Haryana

Decided On : Sep-20-2002

Reported in : (2003)133PLR399

Judge : Amar Dutt, J.

Acts : East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 - Sections 42

Appeal No. : Civil Writ Petition No. 11955 of 1999

Appellant : Madan Lal

Respondent : Additional Director Consolidation of Holdings and ors.

Advocate for Def. : Ashish Sharma, A.A.G., Punjab

Advocate for Pet/Ap. : Suresh Singla, Adv. for; Ashok Singla, Adv.

Disposition : Petition allowed

Judgement :

Amar Dutt, J.

1. Madan Lal petitioner has filed the present petition for quashing the order dated 18.9.1997, passed by the Additional Director, Consolidation of Holdings, Punjab.

2. The grouse of the petitioner is that prior to consolidation of holdings in village Hambran, tehsil and district Ludhiana, an area measuring 2 Acres 15 Kanals 6 Marlas was under mortgage with possession with Smt. Parvati Devi, mother of the petitioner and her sister Smt. Sharda Devi in equal shares from one Mali Aman Shah. During the process of consolidation, the staff had prepared a document known as Khatauni Istemal in which the mortgaged property situated in Khasra Nos. 3049 and 3057 was mistakenly shown as 1/6th share in favour of Smt. Parvati Devi and Smt. Sharda Devi and the remaining 5/6th share was shown to be of the Custodian Department, which error was apparent on the face of the record being contrary to Section 26 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act'). In view of this, the petitioner had filed Petition No. 148 of 1986 under Section 42 of the Act before the Additional Director, Consolidation, Punjab, for correction of the mistake and for showing the pre-consolidation entries of Parat Sarkar record regarding mortgage etc. in the new record prepared during the consolidation and after examining the record, the Additional Director, Consolidation, Punjab, had accepted the prayer and remanded the case to the Consolidation Officer, Mohali for making the necessary correction in the record. This correction was, accordingly, incorporated by the Consolidation Officer, Mohali, in his order dated 30th of December, 1987, Annexure P-1, according to which new Killa No. 131/12/2 and 13 were shown in the names of Smt. Parvati Devi and Smt. Sharda Devi. After the passing of the order Annexure P-1, the petitioner approached the Consolidation and Revenue authorities for implementation of the said order, where he came to know that the area allotted vide order Annexure P-1 stood in the name of the Central Government and was shown as 'Araji Maturka Billa Allot'. However, as per the actual facts, this area stood allotted by the Rehabilitation Department/Custodian Department to some other persons much before the passing of order Annexure P-1, which indicated a case of double allotment on account whereof it was not possible to implement the order Annexure P-1 at the spot. The petitioner thereupon was forced to approach the Tehsildar (Sales), Ludhiana, who made recommendations to the Government to the effect that the petitioner should be given an equivalent area. He was, however, not able to get any redressal of his grievance and was forced to approach the Additional Director,

Consolidation, Punjab once again. The said officer passed the impugned order Annexure P-4 dated 18.9.1997, by which he rejected the petitioner's claim on the ground that the same was barred by time. It is this order that the petitioner seeks to assail by way of this writ petition on the ground that the bar envisaged in relation to Section 42 of the Act is contained in Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 and it would not apply to petitions where the legality or validity of the scheme prepared or confirmed or re-partition made, is challenged

3. On the basis of these pleas, this Court had issued notice of motion and when despite notice having been served no written statement was filed, the writ petition was admitted to hearing with a direction that it should be heard within an year. In accordance with the direction of the admitting Bench, the case has been listed and till today no written statement has been filed.

4. I have heard Mr. Suresh Singla on behalf of the petitioner and Mr. Ashish Sharma, Assistant Advocate General, Punjab, on behalf of respondent Nos. 1 to 3 and with their assistance have gone through the record of the case.

5. The facts, as stated in this case, have not been controverted, which clearly indicates that the predecessor-in-interest of the petitioner is being denied the land which was found to have fallen to her share on re-partition, on the ground that Khasra numbers so allotted had already been allotted to the Central Government. When the petitioner after knocking at all the doors approached the Additional Director, Consolidation, Punjab, the said officer instead of trying to rectify the mistake of the department and fixing the responsibility for the mistake tried to cover up the lapse of the department by taking the matter out of the judicial scrutiny on the ground that the same is barred by limitation. This view cannot be sustained for what attains the finality on the basis of limitations a valid order, by which a scheme has been prepared or confirmed or a re-partition which has been carried out in accordance with the rules. The present case is one where on account of double allotment the petitioner has been denied his legitimate share of the holding and the Additional Directors, Consolidation of Holdings, should have endeavoured to resolve the tangle instead of approving a wrong and perpetuating

the mistake. The impugned order cannot be sustained.

6. For the reasons recorded above, the writ petition is allowed and the impugned order Annexure P-4 dated 18.9.1997 is quashed and the same is remanded to the Additional Director, Consolidation, Punjab, with a direction to look into the matter afresh and give necessary allotment to the petitioner as determined in Annexure P-1 by Consolidation Officer, Mohali.

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