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Ram Saroop Vs. Ram Nath and anr.

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Court : Delhi

Decided On : May-09-1989

Reported in : 38(1989)DLT473

Judge : S.S. Chadha and; P.N. Nag, JJ.

Acts : East Punjab Holdings (Consolidation and Prevention of Fragmentations) Act, 1948 - Sections 21

Appeal No. : Letter Patent Appeal No. 143 of 1983

Appellant : Ram Saroop

Respondent : Ram Nath and anr.

Advocate for Pet/Ap. : S.S. Vats,; O.N. Vohra and; P.S. Saxena, Advs

Judgement :

P.N. Nag, J.

(1) This Letters Patent Appeal is directed against the judgment of the learned single Judge dated 18th July, 1983 in Cw 1829182 setting aside the order of the Consolidation Officer (For short 'CO') dated 16th December, 1981 vide which he has taken away land from respondent No. I, Ram Nath, from killas 41/16 (2 bighas 9 biswas) and 41/17 (3 bighas) and allotted the same to the appellant, Ram Saroop, and also the order of Shri D. K. Das, Financial Commissioner dated 10th

May, 1982 upholding the order of Co in the revision petition filed before him.

(2) The relevant facts set out in the pleadings are that as a result of the consolidation proceedings having taken place in village Sannoth under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act'), Ram Nath, respondent No. I, was allotted and from killas 47/12 (4 bighas Ii biswas) and 47119 (2 bighas 7 biswas) situated in the revenue estate of village Sannoth, Delhi and that he entered into possession of such holding under Section 24 of the Act in the year 1976 and since then he has been in peaceful allotment and possession of the said land and no objection under Section 21(2) of the Act was ever filed by the appellant, Ram Saroop, or anybody else in the village against the allotment to Ram Nath, respondent No. 1. It appears that the Co vide his orders dated 31st January, 1981 and 10th March, 1981 on remand order passed by the Settlement Officer in Rati Ram vs. Mahabir etc., withdrew the land from killas 4712 (42 bighas Ii biswas')and 47/19 (2 bighas 7 biswas) from Ram Nath respondent No. I', and allotted it first to Gaon Sabha and later on to the appellant. Ram Saroop. Against these orders of Co dated 31st January, 1981 and 10th' March, 1981, Ram Nath, respondent No. I, filed revision petition before the Financial Commissioner on two grounds: that the orders passed by the Co dated 31st January, 1981 and 10th March, 1981 were massed behind his back and that' he was not a party to these proceedings and consequently he had entered into possession of the holding after re-partition under Section 24 of the Act and. which order has become final insofar as the Co is concerned and that 're-partition cannot be disturbed unless 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. The Financial Commissioner on 24th September, 1981 accepted the revision of respondent No. I, Ram Nath, and restored killas 47 12 and 47jl9 to Ram Nath. He further remanded the case to the Co to appropriately make up the deficiency of Ram Saroop accruing on account of restoration of aforementioned killas to Ram Nath.

(3) On remand by the Financial Commissioner. Shri W. Shaiza. what the Co vide his order dated 16th December. 1981 again did was that he again withdrew another niece of land from killas 41/16 (2 bighas 9 biswas) and 41/17 (3 bighas)

from Ram Nath, respondent No. I, and gave the same to Ram Saroop. appellant, under the. garb of making up the deficiency to him as a result of restoration of killas 47/12 and 47/19 to Ram Nath, respondent No. 1. as according to him Ram Nath had been allotted land in Block No. 4 to the extent of Rs, 20. 'whereas he has got his demand' in this Block of Rs. 13. i.e.. Rs. 7 more than that of his demand. Ram Nath filed a revision against this order of the' Co and Shri D. K. Das. Financial Commissioner, vide his order dated 10th May, 1982 did not find any justification to interfere with the orders of Co with the result the order passed by the Co dated 16thDecember, 1981 withdrawing land from killas 41/16 and 41/17 from Ram Nath became final. It is this order of the Co dated 16th December, 1981 and the order of the Financial Commissioner dated 10th May, 1982 which have been challenged by the petitioner respondent No. I, Ram Nath, in Cw 1829182. Avadh Behari. J. allowed the writ petition and quashed the orders of the Co dated 16th December, 1981 and of the Financial Commissioner dated 10th May, 1982 on the ground that once the re-partition of the land had taken place and Ram Nath had been put in possession in 1976, under Section 24 of the Act, finality was attached to the re-partition under Section 24 which took place. in 1976 and it shall remain undisturbed until fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-sections (2) to (4) of Section 21 or an order passed under Section 36 or 42 of the Act and as such the Co had no jurisdiction to pass the order dated 16-12-1981. Even otherwise on the facts also it was found by the learned single Judge that there was no justification for the Co even on mints to take away another piece, of land from killas 4116 and 41/l7 from Ram Nath. Being aggrieved from this judgment dated 18th July, 1983 of the learned single Judge, Ram Saroop has preferred this Letters Patent Appeal.

(4) Learned counsel for the, appellant, Shri Vats, vehemently contended at the time of hearing that the learned single Judge has erred in law in holding that the Co had no jurisdiction to make the order dated 16th December, 1981. According to him it is the statutory duty of the Co to allot or take away land from the landholders if they are found to have been allotted less or more land respectively till the consolidation proceedings come to an end and the records are consigned to the record room and-in this case' he has placed a document at the appellate stage to show that the consolidation records, were consigned to Tehsil Office on 7th July,

1982. He has further contended' very strenuously that if Sections 21 to 24 are read together the only reasonable interpretation that can be put is that for the purpose of conferring right to possession of the new holding affected by the re-partition as carried out under Section 21, stage can necessary arise only when- all objections; appeals and farther appeals against, re-partition under Section 21 are disposed of. Since appeals by some aggrieved persons under Section 21 of the Act were not disposed of and were still pending at the relevant time when the order of Co dated 16th December, 1981 was passed, scheme cannot be deemed to be in force under Section 24 and no finality can be attached to re-partition effected in 1976, and as such the Co had every right and jurisdiction to pass such an order. In order to appreciate the contention of the learned counsel for the appellant it is necessary to critically examine Sections 20 to 24 of the Act.

(5) After the confirmation of the scheme under sub-section (2) or (3) of Section 20 the Scheme shall be published in the prescribed manner under Section 20 of the Act. The Co under Section 21 has a duty to carry out re-partition in accordance with the scheme of consolidation of holdings confirmed under Section 20 and the boundaries of the holdings as demarcated shall be shown on the shajra which shall be published in the prescribed manner in the state or estates concerned. Section 21(2) provides for a remedy for a person who is aggrieved by the re-partition and he has been conferred' a right to file a written objection within 15 days of the publication before the Co who shall after hearing the objector pass such orders as he considers proper confirming or modifying the re-partition. Sub-section (3) of Section 21 provides that if a person is aggrieved by the order of Co under Section 21(2), he may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the appellant pass such order as he considers proper. A person aggrieved by the order of Settlement Officer (Consolidation) under Section 21(3) can within 60 days of that order appeal to the Chief Commissioner. Section 22 empowers the Co to cause to be prepared a new record-of-rights in accordance with the provisions contained in Chapter 1V of the Punjab Land Revenue Act, 1887. Section 23 provides that If all the owners and tenants affected by the scheme of consolidation or, as the case may be, re-partition, as finally confirmed, agree to enter into possession of holdings allotted to them there under, the Consolidation Officer may allow them to enter into such

possession forthwith or from such date as may be specified by him. Sub-section (2) of Section 23 then concerns an eventuality in which all the owners and tenants do not agree to enter into possession under sub-section (1), and it provides that, in that case. they shall be entitled to possession of holdings and tenancies allotted to them from the commencement of the. agricultural year next following the date of the publication of the scheme under sub-section (4) of Section 20. or, as the case may be. Of the preparation of the new record-of-rights under sub-section (1) of Section 22 and the Co is then enjoined, if necessary, to put them in physical possession of the holdings to which they are so entitled including standing crops, if any, and for doing so he may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887.

(6) It is very pertinent and relevant to point out here and as has been noticed earlier also that no objections were either filed by the appellant or anybody else in the village as required under Section 21(2) of the Act. This has been pointed out by Mr. Shaiza, Financial Commissioner, in his order dated 24th September, 1981. Further it has been averred in the petition in paras I and 2 that no objections whatsoever under Section 21(2) were ever filed by any person expressing grievance against the allotment of killas 47112 and 471,19 to Ram Nath when re-partition took place in 1976 and this has been admitted by Tara Chand son of Shri Ram Saroop, appellant, wherein it has been stated and admitted that nobody else filed the objections to the consolidation holdings. Since no objections were filed before the Co, nobody including the appellant was aggrieved. It is obvious that after complying with the. requirements of Section 23 of the Act, the Co put respondent No. I, Ram Nath, into possession of the allotted land and accordingly he entered into possession under Section 24 of the Act. Learned counsel for the appellant conceded at the Bar that he. did not file objections before the Co under Section 21 of the Act. However, other landholders in the village had filed such objections under Section 21 which were pending and not disposed of at the time when the order dated 16th December, 1981 of the Co was passed- or the time when the consolidation record was consigned to the record room. thereforee, the. resort, to Section 23 could only be had by the Co after the objections, appeals etc. of all the landholders contemplated under Section 21 were finally over and disposed of and till then the partition could not be effected and respondent No. I,

Ram Nath. could not be put in possession of his land-holdings under Section 24 as the stages under Section 21 itself were not exhausted. During the pendency of these objections by the landholders before the Co or pendency of appeal under Section 21 of the Act the Co had every jurisdiction to pass an order ana no finality could he attached to the re-partition under Section 24 which took place in 1976. In this connection reliance was placed on certain observations of the Full Bench of Punjab High Court in Chahat Khan Bahadur Khan and others v. The State of Punjab and others AIR 1966 Pun. 3,(1) relevant portion of which is reproduced below:

'The expression used in sub-section (1) of Section 23 is all the owners and tenants', and it means all such persons and not batches of such persons. So, for the operation of sub-section (1) of Section 23 ali the owners and tenants have to agree. It follows that that stage must necessarily arrive only after the stage of the second appeals under sub-section (4) of Section 21 is over, for if there is one single person who has his second appeal pending under sub-action (4) of Section 21, he will not be agreeing to the exchange of possession, with the result that all the owners and tenants affected' will not be agreeing to the delivery and exchange of possessions.'

In that case the question which was examined and decided by the Full Bench was the jurisdiction of the Settlement Officer for varying or revoking the scheme of consolidation of holdings under Section 36 of the Act and its interpretation and not the scope, jurisdiction and interpretation of Sections 21 and 24 of the Act and as such this authority is of no help or consequence to the appellant. Further in the present case, as already pointed out, no objections/appeals either by the appellant or other land-holders of the village were pending before the Co or other authorities under Section 21 of the Act and as such after complying with the requirements of Section 23 Ram Natb. respondent No. I, entered into possession of the land allotted to him and as such the scheme was deemed to have come into force and his possession by means of re-partition could not be disturbed. In view thereof the contention of the appellant has no force in the eyes of law and is rejected.

(7) A similar question arose before Punjab High Court in Nazar and others v. Additional Director and others 1966 Cur. L.J. 755(2) whether the Co or higher authorities specified in Section 21 of the. Act can suo motu re-allot and change the holdings of the landholders after re-partition even if no objections have been filed before the Co or appeals filed before the higher authorities by the aggrieved persons. The question For consideration in that case was whether the appellant under Section 21(3) could not be deprived of what he had already' got. Nor could he be meted out treatment which was adverse to his interest without his asking for it, merely in order to benefit some of the respondents, who were not aggrieved by the order of the Co and who never preferred any appeal. The Court observed in that context as under:

'No suo motu power has been conferred by sub-section 2, 3 and 4 of section 21 of the Act on the authorities mentioned therein to pass any order relating to the scheme as they may like. It is significant to note that wide powers are vested in the State Government under Section 42 of the Act to pass any order suo motu or on a petition being moved by any person. In contradistinction to those wide powers the authority of the Settlement Officer under subsection 3 of section 21 appears to be extremely limited. There is no doubt that an appeal is normally a rehearing of the whole case and the continuation of the original proceedings. But an appeal under sub-section 3 of section 21, can at best be called a rehearing or a continuation of the proceedings under sub-section 2 of Section 21, the scope of which is again limited. I do not think there is any force in the argument of the learned counsel for the State that while hearing an appeal under sub-section 3 of section 21 of the Act. the Settlement Officer may refuse to grant the entire relief claimed by the appellant, but may still vary the order under appeal to the detriment of the appellant, himself and for the benefit of some other respondent alone. Such a course would result in complete chaos and would give unfettered jurisdiction to authorities under sub-sections 3 and 4 of the Act, which does not appear to have been vested in them by the Legislature.'

This Judgment was followed by R. S. Sarkaria, J. in Hazara Singh and another v. The Punjab State and others 1969 Curr. L.J. P&H; 96 (3) We are in respectful agreement with the views expressed by Narula. J. in Nazar and others v.

Additional Director and others (supra) and followed by Sarkaria, J. in Hazara Singh and another's case. In other words, it follows that if the aggrieved persons have not filed objections before the Co or preferred appeals before the higher authorities specified in Section 21, such authorities do not have. suo motu power to change the scheme or the holdings allotted to landholders' in re-partition and does not confer any jurisdiction in such authorities to do so.

(8) Viewed from another angle, after the scheme has been confirmed and re-partition has been carried oat under Section 21(1) by the Co and Ram Nath, respondent No. I, has entered into possession as a result of re-partition under Section 24 in respect of killas 41/16 and 41/17, the withdrawal of such killas by the Co from respondent No. I, Ram Nath vide order dated 16th December, 1981 amounts to a review of his own order which is not permissible under the law as no review has been provided under Section 21 or 24 or any other provision of the law. In this case I am fully fortified by taking this view in the case of Harbhajan Singh v. Karam Singh and others : [1966]1SCR817 where their Lordships have held:

'There is no provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act granting express power of review to the State Government with regard to an order made under S.4l of the Act. In the absence of any such express power, the Director, Consolidation of Holdings. cannot review his previous order of dismissing the application of the petitioner under S. 42 of the Act. Hence, the subsequent review order of the Director is ultra virus and without, jurisdiction. The High Court is right in quashing that order by the grant of a writ under Art. 226 of the Constitution.'

Keeping the above principle in view and since no review has been provided in the Act itself, as already mentioned, the Co had no jurisdiction to pass the order dated 16th December 1981.

(9) Furthermore, it may be stated that although in the pleadings of the parties it has been specifically admitted that nobody else had filed objections/appeals under Section 21 yet attempt was made by the learned counsel for the appellant to show that this position factually was incorrect arid should be ignored. Such a point of fact cannot 'be permitted to be raised at the appellate stage. However, assuming

that a few objections might he discovered to be pending at the time when Co passed the order dated 16th December, 1981 or for some reason or other these might, be pending otherwise or there is some legal infirmity in putting respondent No. I, Ram Nath.in possession after re-partition, that will not itself, in our opinion, empower the Co to pass the' impugned order suo motu and center jurisdiction in him. In such a situation even if somebody who has supposed grievance is not without remedy and he can move either under Section 36 of the Act or under Section 42 of the Act.

(10) Learned counsel for the appellant further submitted that the Co passed the order dated 16th December, 1981 in compliance with the order of remand passed by W. Shaiza, Financial Commissioner, dated 24th September, 1981 and restored the land in Killas 47/12 and 47/l9 to the respondent No. I, Ram Nath, and withdrew, excess land from Ram Nath by retrieving killas 41/16 and 41/17 from him and allotted the same to the appellant, Ram Saroop. for two reasons, namely, that the appellant had his reconsolidation land in killas 41/16 and 41/17 and secondly by allotting these two killas to the appellant the shape of chak of the appellant will be corrected. The learned single Judge, has dealt with this matter and he'd that under the garb of this order no land from Ram Nath could be taken away as no question of deficiency arose insofar as the land of the appellant, Ram Saroop, was concerned. Had there been any deficiency the question ought to have been raised at the time of re-partition by him as an aggrieved person. Furthermore, in the interest of justice, to satisfy himself the learned Judge called the Co as well as the Settlement Officer in Court and examined the. matter. His Lordship found as a matter of fact as under :-

'The record shows that in Block 4 Ram Nath has a joint khata with his brother Mohan Lal. Ram Nath made a demand for Rs. 12 and Mohan Lal made a demand of Rs. 8-13 annas. The aggregate demands of the two were for Rs. 20 and 13 annas. The allotment, was made of Rs. 20 only. This is not in excess of the holdings in the joint khata of Ram Nath and Mohan Lal. If there was any person who had any objection to this allotment of land to the extent of Rs. 20 to Ram Nath. he could only be his brother Mohan Lal. At the time of repartition Mohan Lal must have agreed that land to the extent of Rs. 20 in the joint khata be allotted to

his brother Ram Nath alone. From 1976 till today Mohan Lal has not made any complaint. It is' only the Consolidation Officer who seems to have taken up this point, himself.'

We do not find any legal or factual infirmity in such a finding of the learned single Judge. Furthermore, the Financial Commissioner in his remand order had restored killas 47112 and 47/19 to respondent No. I, Ram Nath, for the reason that no aggrieved person had filed objections under Section 21 of the Act and in these circumstances the question of excessive allotment did not arise. As such the order of remand of the Financial Commissioner dated 24th September, 1981 cannot be construed to confer power in Co to take away another piece of land from killas 41;16 and 41117 vide his order dated 16th December, 1981 from respondent No. I, Ram Nath. The order of Co was, thereforee, beyond the scope of remand order and cannot be sustained in the eyes of law.

No other point was urged. In the result the appeal fails and is dismissed with costs: Counsel's fee : Rs. 500.

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