

jurisdiction, the trial Court, as also the first appellate Court, committed an error of jurisdiction, as also of law. Consequently, R.S.A. 2712 of 1987 is allowed and the impugned judgments and decrees are set aside. As a necessary consequence, RSA No. 40 of 1984 is dismissed and judgment and decree passed in Civil Suit No. 24-C of 15th June, 1979 dismissing the suit by holding the jurisdiction of Civil Courts is barred and the judgment and decree dated 17th September, 1983 passed in Civil Appeal No. 421-C of 8th December, 1981, dismissing the appeal filed by the landowners are upheld.

(36) No order as to costs.

R.N.R.

Before Rajive Bhalla, J

GURNAM SINGH AND OTHERS,—Petitioners

versus

**ADDITIONAL DIRECTOR CONSOLIDATION OF HOLDINGS,
PUNJAB, CHANDIGARH AND OTHERS,—Respondents**

C.W.P. No. 3113 of 1984

13th August, 2008

Constitution of India, 1950—Art.226—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948—S.42—Principles of natural justice—Addl. Director, Consolidation of Holdings accepting application holding respondent No. 2 entitled to additional land—Petitioners co-sharers in Jumla Mushtarka Malkan Land—No notice to proprietors/co-shares issued—Addl. Director bound to issue notices to proprietors—Order passed without issuing notice to proprietors and co-sharers and in blatant disregard to jurisdiction conferred by Section 42 of the Act is illegal and void as it violates principles of natural justice—Petition allowed while directing Addl. Director Consolidation to adjudicate application afresh.

Held, that the order dated 31st July, 1981 (Annexure P-2) passed without issuing notice to the proprietors and the co-sharers, who constitute the body of owners of the Jumla Mushtarka Malkan, is illegal and void as it violates the principles of natural justice and was passed in blatant disregard to the jurisdiction conferred by Section 42 of the Act and is, therefore, set aside. As a necessary consequence, the orders dated 21st December, 1983 and 5th April, 1984 (Annexures P-5 and P-8) that were passed as a consequence of the order Annexure P-2 are also set aside. However, conscious of the fact that the petitioners claim, with respect to allotment may be genuine, the Additional Director, Consolidation, is directed to adjudicate the application Annexure P-1 afresh, within a period of three months from the receipt of a certified copy of this order, in accordance with law, after affording an opportunity to the petitioners and the entire body of co-sharers/proprietors, whether individually or in representative capacity. The Additional Director, Consolidation, may also examine the delay in filing of the petition under Section 42 of the Act.

(Para 12)

Rajesh Gupta, Advocate for legal representatives of petitioner No. 1.

Amarjit Markan and Jasdev Singh, Advocates *for the petitioners*.

N.S. Pawar, Addl. A.G. Punjab.

Ashok Singla, Advocate *for respondent No. 2*.

Arun Palli, Sr. Advocate with Jai Bhagwan, Advocate *for respondent Nos. 3 to 6*.

RAJIVE BHALLA, J. (ORAL)

(1) Prayer in this writ petition is, for issuance of a writ in the nature of *certiorari* for quashing the order dated 5th April, 1984, 21st December, 1983 and 31st July, 1981 (Annexures P-8, P-5 and P-2) respectively, passed by respondent No. 1, namely, the Additional Director, Consolidation of Holdings, Punjab, Chandigarh.

(2) Twenty five years after the conclusion of consolidation proceedings, respondent No. 2, filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act') praying that the deficiency in the land allotted to him be made good. Respondents No. 3 to 6 were arrayed as respondents. *Vide* order dated 31st July, 1981, the Additional Director, Consolidation of Holdings, Punjab, accepted the application and held that respondent No. 2 was entitled to additional land of 4 std. kanals and 1 std. marla. Respondents No. 3 to 6, though respondents in the application, were also held entitled to 3 std. kanals and 4 std. marlas. Consequently, Killa No. 94/21 measuring 7 kanals 12 Marlas and Killa No. 97/1 measuring 1 kanal and 10 marlas was allotted to respondent No. 2, whereas Killa No. 97/1 measuring 6 kanals 2 marlas was allotted to Darbara Singh, Ujagar Singh and Kessar Singh etc. respondents No. 3 to 6, from land reserved as "Jumla Malkan Wa Digar Haqdaran Deh".

(3) The petitioners, who are proprietors of the village and therefore, co-sharers in the "Jumla Mushtarka Malkan" land, filed a petition under Section 42 of the Act, praying that the order dated 31st July, 1981 be recalled, as it had been passed without service of any notice upon the body of proprietors that comprises the Jumla Mustarka Malkan land. The petitioners also urged that land could not be retrieved from the Jumla Mustarka Malkan. Despite service, respondents No. 2 to 6 chose not to appear and were, therefore, proceeded against *ex-parte*. The Additional Director, Consolidation,—*vide* order dated 5th November, 1982, accepted the petition filed by the petitioners and set aside the order dated 31st July, 1981. Respondents No. 2 to 6 thereafter filed two applications on 20th July, 1983 for setting aside this order. The Additional Director, Consolidation, accepted their prayer and set aside the *ex parte* order 5th November, 1982 and directed that the petition filed by the petitioners for setting aside the order dated 31st July, 1981 be heard afresh. The petitioners, thereafter, filed another application under Section 42 of the Act, praying that this order be set aside. The Additional Director,—*vide* order dated 5th April, 1984 dismissed this petition but while doing so, recorded an emphatic opinion that his order dated 31st July, 1981 was correct.

(4) Counsel for the petitioners submits that challenge in this writ petition is primarily to the order dated 31st July, 1981 (Annexure P-2). It is submitted that if there was any deficiency in the allotment to respondent No. 2, the Additional Director before arriving at any conclusion in respect thereof was required to issue and serve notices upon the proprietors, who are co-sharers, in the Jumla Mushtarka Malkan land. The impugned order Annexure P-2, discloses that no notice, whatsoever, was served upon any of the proprietors, whether collectively or individually. It is also submitted that pursuant to the application Annexure P-1, respondent No. 2 prayed for making good the deficiency, in his allotment. The Additional Director, Consolidation, however, allotted land to respondents No. 3 to 6, who were arrayed as respondents in the application and had not prayed for allotment. Reliance for the argument that the petitioners were required to be heard and a notice should, therefore, have been issued is placed upon **Bachan Singh and others versus The Director, Consolidation of Holdings, Punjab, Chandigarh, (1)**.

(5) It is further argued that the Additional Director, Consolidation, had no jurisdiction to recall the order dated 5th November, 1982, as the Act does not confer any power of review. While dismissing the petitioners application, praying that the order dated 21st December, 1983 be set aside, the Additional Director, Consolidation recorded an opinion with respect to the legality of the order dated 31st July, 1981, challenge where to is still under consideration.

(6) Counsel for respondent No. 2, on the other hand, submits that the Additional Director, Consolidation examined the allotment made to respondent No. 2 after repartition as there was shortage in the land allotted to him, directed that the shortfall be made good from land described as Jumla Mushtarka Malkan i.e. Bachat land. As regards the petitioners assertion that no notice was issued to or served upon proprietors/co-sharers, counsel for respondent No. 2 submits that respondents No. 3 to 6 are members of the proprietary body and were, impleaded as such, It is further argued that vide order

Annexure P-5, the Additional Director, Consolidation, has held that he would decide the application filed by the petitioners, challenging the order dated 31st July, 1981. The instant writ petition is, therefore, premature as the petitioners should have awaited the outcome of this adjudication.

(7) Counsel for respondents No. 3 to 6, adopts the arguments raised by respondent No. 2 but in addition asserts that there is no illegality in the order of Additional Director, Consolidation, directing allotment of land to respondents No. 3 to 6. As there was a deficiency in the original allotment, rectification of this factual error was a legitimate exercise of jurisdiction, by the Additional Director, Consolidation.

(8) I have heard learned counsel for the parties and perused the impugned orders.

(9) A basic tenet of any judicial or quasi judicial determination, is the presence before the judicial or quasi judicial Tribunal of all persons, likely to be effected by the outcome of the pending lis. Section 42 of the Act recognises this principle as it places an obligation upon the presiding officer to ensure that all persons interested or likely to be effected by the exercise of power under Section 42 of the Act are heard before any order is passed. The presence of all persons interested, is therefore, a *sine qua non* for the exercise of jurisdiction under Section 42 of the Act.

(10) A perusal of the order Annexure P-2 discloses that the Additional Director, Consolidation, accepted respondent No. 2's plea of deficiency in the land allotted to him and proceeded to retrieve land from the Jumla Mushtarka Malkan. The Additional Director, Consolidation, was bound, in law and in deference to the jurisdiction conferred, to issue notices to the proprietors, who constitute the body of co-sharers in the Jumla Mushtarka Malkan land. Admittedly, no notice, whatsoever, was issued to any proprietors much less the petitioners. Submission by counsel for respondent No. 2 that respondents No. 3 to 6, members of the proprietary body were arrayed as respondents and their presence would be deemed to represent the body of co-sharers

in the Jumla Mushtarka Malkan, cannot be accepted as service on the Jumla Mushtarka Malkan, as would be apparent from their conduct referred to hereinafter.

(11) Respondents No. 3 to 6 were arrayed as respondents. They did not file any petition for making good any deficiency in their allotment. The Additional Director, however, proceeded to allot land to them, out of the Jumla Mushtarka Malkan land. The reason for this allotment though not spelt out is not far to seek. Respondents No. 3 to 6 were impleaded to defend the case set up by respondent No. 2, but colluded with respondent No. 2 to concede his claim and obtain extra land for themselves. It is, therefore, apparent that respondents No. 3 to 6 did not represent the co-sharers, who constitute the Jumla Mushtarka Malkan, but represent their own private interest.

(12) In view of what has been held herein before, I have no hesitation in holding that the order Annexure P-2 passed without issuing notice to the proprietors and the co-sharers, who constitute the body of owners of the Jumla Mushtarka Malkan, is illegal and void as it violates the principles of natural justice and was passed in blatant disregard to the jurisdiction conferred by Section 42 of the Act and is, therefore, set aside. As a necessary consequence, the orders Annexures P-5 and P-8 that were passed as a consequence of the orders Annexure P-2 are also set aside. However, conscious of the fact that the petitioners claim, with respect to allotment may be genuine, the Additional Director, Consolidation, is directed to adjudicate the application Annexure P-1 afresh, within a period of three months from the receipt of a certified copy of this order, in accordance with law, after affording an opportunity to the petitioners and the entire body of co-sharers/proprietors, whether individually or in representative capacity. The Additional Director, Consolidation, may also examine the delay in the filing of the petition under Section 42 of the Act.

(13) Parties are directed to appear before the Additional Director, Consolidation, Punjab, Jullunder, on 6th October, 2008. In the meanwhile, parties would maintain status quo, with respect to possession, as also any entries in the revenue records.

R.N.R.