LETTERS PATENT APPEAL

Before Harbans Singh. C.J. and Ranjit Singh Sarkaria, J.

STATE OF PUNJAB, ETC.—*Appellants*

Versus

SARMUKH SINGH, ETC.—*Respondents.*

Letters Patent Appeal No. 179 of 1969.

January 3, 1972.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—Order passed under without notice and to the detriment of an interested party—Such order—Whether can be reviewed at the instance of that party.

Held, that no doubt power under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, cannot be exercised more than once in respect of the *same matter*, but where the Additional Director seeks to replace his earlier order by another at the instance of a person who was not party to the earlier proceedings, the matters determined by the two orders are distinct and different and not the same. The Additional Director does not become *functus officio* and will have power to grant relief under section 42 to the person who comes subsequently to the decision of the first case and who was not party thereto. A judicial tribunal has the inherent right to review its previous orders passed to the detriment of a person who, though interested in that controversy, was not impleaded.

(Paras 8, 10 and 11)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice H. R. Sodhi passed in C.W. No. 2505 of 1964 on 31st October, 1969.

S. P. Goyal Advocate, for Advocate-General, Punjab,—*for the appellants.*

N. L. Dhingra, Advocate, for Respondent No. 1.

M. M. Punchhi, Advocate, for Respondent No. 2.

Nemo for other respondents.

JUDGMENT

Judgment of this Court was delivered by Sarkaria, J.—(1) Common questions of law and fact arise in Letters Patent Appeals Nos. 179 and 286 of 1969. They will, therefore, be conveniently disposed of by the common judgment.

(2) The land in question is out of Killa Nos. 16 and 17/1 of Rectangle No. 47 of the revenue estate of Sureshwala, Tehsil Fazilka, District Ferozepore. Consolidation proceedings started in this village when a notification under section 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act) was issued on April 12, 1960. The scheme of consolidation was finally published on January 15, 1961. It was confirmed under section 20(3) of the Act on February 21, 1961. In repartition, aforesaid Killa Nos. 16 and 17/1 of Rectangle No. 47 were allotted to Sarmukh Singh (Respondent No. 1 in the appeals before us) on April 11, 1960. Lal Singh, Respondent, filed objections under section 21(2) of the Act before the Consolidation Officer, who dismissed the same by an order dated September 1, 1961, against which Lal Singh went in appeal under section 21(3) before the Settlement Officer. The latter dismissed the appeal on January 10, 1962. Lal Singh preferred a second appeal before the Assistant Director, who accepted the same by an order, dated April 29, 1962, whereby an area of 7 Kanals 8 Marlas out of field No. 16 and 4 Kanals out of field No. 17/1, totalling 11 Kanals 8 Marlas, was excluded out of the allotment of Sarmukh Singh and included in that of Lal Singh. Aggrieved by that order of the Assistant Director, Sarmukh Singh preferred a petition under section 42 of the Act before the Additional Director, who by his order of October 9, 1962 (copy Annexure 'A' to Writ Petition No. 2505 of 1964) set aside the order of the Assistant Director and restored the whole area of Field Nos. 16 and 17/1 of Rectangle No. 47 to Sarmukh Singh subject to the latter relinquishing certain other fields that had been given to him under the order of the Assistant Director.

(3) Bhag Singh, Respondent No. 2, also filed objections against the allotment on repartition, before the Consolidation Officer. The latter dismissed the same on August 31, 1961. Against that order, Bhag Singh went in appeal before the Settlement Commissioner, who dismissed the same on October 12, 1961 (copy of that order is Annexure 'B' to the writ petition).

(4) Hazur Singh, Respondent, also preferred objections before the Consolidation Officer, who dismissed the same on September 1, 1961. His appeal was allowed by Settlement Officer by order, dated July 10, 1962, and the case was remanded. After the remand, the Consolidation Officer by his order dated January 15, 1963, made certain changes and re-adjustments in the respective holdings of Bhag Singh, Hazur Singh and Maghar Singh. Dissatisfied with that order, Bhag Singh went in appeal under section 21(3) before the Settlement Officer, who dismissed the same by an order, dated June 20, 1963. Sarmukh Singh was a party to these proceedings. In second appeal filed under section 21(4) of the Act before the Assistant Director, it was ordered on November 22, 1963, by the latter that Killa No. 17/1 of Rectangle No. 47 be taken out of the allotment of Sarmukh Singh and included in that of Bhag Singh. Sarmukh Singh made a petition under section 42 of the Act which was dismissed by the Additional Director on February 15, 1964. To impugn that order of the Additional Director, Civil Writ No. 553 of 1964 was instituted. Bhag Singh also preferred a petition under section 42 of the Act, which was allowed by the Additional Director per his order, dated September 25, 1964 (copy of which is Annexure 'F'). Sarmukh Singh was a respondent in these proceedings before the Additional Director. By his order dated September 25, 1964, the Additional Director withdrew 2 Kanals and 1 Marla of land out of Killa No. 16(N) of Rectangle No. 47 from the allotment of Sarmukh Singh and gave the same to Bhag Singh. He also withdrew 2 Kanals and 3 Marlas out of Killa No. 17/1-min (SW) of Rectangle No. 47 from the allotment of Bhag Singh and included the same in that of Sarmukh Singh. This order of the Additional Director was impugned in Civil Writ No. 2505 of 1964. Both these writ petitions preferred by Sarmukh Singh were allowed by the learned Single Judge on October 31, 1968, and the impugned orders of Additional Director and the Assistant Director in so far as they affected the rights of the writ-petitioner, Sarmukh Singh, acquired under the former order of the Additional Director passed on the 9th October, 1962, were quashed. Against that order dated October 31, 1968, of the learned Single Judge, these two appeals under Clause 10 of the Letters Patent have been jointly filed by the State of Punjab and the Consolidation Authorities concerned.

(5) The main ground on which the judgment of the learned Single Judge proceeds is, that once an order is passed under section 42 of the Act by the Additional Director, he becomes *functus officio* and

cannot subsequently replace it by another order even if it be at the instance of a person who was not a party to the proceedings, which culminated in the previous order; and consequently the impugned orders, dated February 15, 1964, and September 25, 1964, of the Additional Director amounted to an illegal review of his previous order, dated October 9, 1962 (hereinafter referred to as the 'formal order'). In reaching this conclusion, support was sought from a Division Bench judgment of this Court in *Sadha Singh Lambardar and others* v. *The State of Punjab and others* (1), which, in turn, purports to apply the principle settled by the Full Bench in *Deep Chand and another* v. *Additional Director, Consolidation of Holdings, Punjab* (2).

(6) In *Deep Chand's case* (*ibid*) the Full Bench ruled that the Additional Director Consolidation or any other judicial or quasi-judicial tribunal has no inherent power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up on the ground that it is later considered to be erroneous on the merits. The reason underlying the rule is one of public policy, according to which, there should be finality of judicial decisions. If a judgment is to be lightly reviewed at the sweet-will of the tribunal, it will lead to judicial lawlessness and disconcerting unpredictability in the administration of justice—a reproach which all judicial process must scrupulously endeavour to avoid.

(7) In *Roop Chand* v. *State of Punjab and another* (3), their Lordships of the Supreme Court, while deciding that the State Government is not entitled under section 42 of the Act to call for and examine the records of a case disposed of by its officer acting as its delegate, also laid it down that "the power under section 42 can not be exercised more than once *in respect of the same matter*".

(8) The crucial words are those that have been underlined. What then, is the true import of the expression "same matter" within the contemplation of the above rule? And how is it determined? Answer to these questions will, to a large extent, depend upon the circumstances of each case. However, a two-fold broad test can be indicated. Ordinarily, not only the sameness of the issues in controversy but also the sameness of the parties furnishes an important key for an answer to these questions. This test is a necessary corollary deducible from the fundamental concept that judgments and

(1) I.L.R. (1968) 1 Pb. & Hr. 378.

(2) I.L.R. (1964) 1 Pb. 665.

(3) A.I.R. 1963 S.C. 1503.

orders (excepting those *in rem*) are binding on and final between parties and privies only. The observations in *Sadha Singh's* **case** (*ibid*) to the effect, that in determining this matter, the question whether the parties in the earlier and subsequent petitions under section 42 were the same is an irrelevant consideration, are, in my opinion—if I may say so with respect—not intended to govern all cases and all situations. They have to be construed in relation to the exceptional circumstances of that case. In the widest sense, every order making allotment of land out of the common pool to a right-holder, affects not only the parties to the case but however remotely, all the right-holders of the village. From this viewpoint, every order concerning allotment passed by the Additional Director under section 42 will be good and absolute 'gainst the whole body of right-holders. If such were the case, the process of section 42 will become an instrument of abuse and a perverted version of the principle 'first come first served' in which the cleverest and the trickiest will have the most advantage. The result would be that after passing one order under section 42 at the instance of one party, the Additional Director would become *functus officio* and will be powerless to grant relief under section 42 to an applicant who comes subsequently to the decision of the first case and who was not a party to the former proceedings. Such an extreme and wide application of the rule was not intended either by the Supreme Court in *Roop Chand's case* or by the Full Bench in *Deep Chand's case* (supra). Ordinarily, for an application of the rule in the aforesaid cases, it will be necessary to first determine, whether or not the prior and the subsequent orders of the Additional Director were between the same parties and pertain to the same subject-matter. It is significant to note that in *Roop Chand's case* as well as in *Deep Chand's case* (supra), both the prior and subsequent proceedings which culminated in two conflicting orders being passed with regard to the same subject-matter, were between the same parties.

(9) Of course, we should not be understood as laying down any invariable rule that in no case in which the parties are not the same in the former and the subsequent proceedings, can the subsequent order of the Director amount to a review of the former one. Cases are conceivable where the tidal wave unleashed by a decision may be of such a magnitude and intensity that its effect is not confined to the parties to the petition but also completely washes away the foundation of the previous decisions not inter-parties. Such cases are rare and *Sadha Singh's case* (supra) was one of them. With the above broad test in view, we have to see whether the impugned orders

relate to the same matter which was the subject-matter of the former adjudication. The instant case, therefore, resolves itself into this proposition : If the former order was a determination that as against 'L', 'S' had a better right to the allotment of plots 'X' and 'Y' and 'B''s claim regarding those plots never came up for consideration on account of his not having been made a party to those proceedings, can the subsequent impugned order deciding that qua 'S', 'B' had superior right to the allotment of the same plots, be said to be a review or redecision of the same matter which was in controversy in the former proceedings ?

(10) In the light of the above discussions, the answer to this question must be in the negative. It will bear repetition that the former order was not a determination *in rem* which would hold good against the whole world. It did not settle the allotment of Field Nos. 16 and 17/1 of Rectangle 47 absolutely in favour of Sarmukh Singh. It only decided—at the back of Bhag Singh—as to who out of the then contending parties had a preferential right to the allotment of the whole or part of these plots on repartition in consolidation proceedings. The rights of Bhag Singh vis-a-vis Sarmukh Singh were not in issue in the former proceedings. There was no *lis* between them and the question of its having been adjudicated by the former order, therefore, did not arise. Thus considered, the matters determined by the former order and the impugned orders, were distinct and different, and not the same. The impugned orders, therefore, did not amount to a review of the former order.

(11) Assuming (but not holding) for the sake of argument, that the impugned orders amounted to a review of the former order, then also the instant case would be covered by one of the well-recognised qualifications to which this rule against review, is subject. The Full Bench in *Deep Chand's case* (supra) noticed with approval the law summed up in Halsbury's Laws of England (Hailsham Ed.) Vol. 19 p. 263, that if an order or judgment is entered without notice to a party who has a right to be heard, the Court may set it aside. As an illustration of this point, the Full Bench referred to *Shivdeo Singh* v. *State of Punjab* (4) wherein the Supreme Court seems to have extended the scope of this qualification and recognised a judicial tribunal's inherent right to review its previous orders passed to the detriment of a person who, though interested in that controversy, was not impleaded. In that case, on a writ petition by 'A' for cancellation of the

(4) A.I.R. 1963 S.C. 1909.

order of allotment passed by the Director of Rehabilitation in favour of 'B', G. D. Khosla, J. (as he then was) had cancelled the order, though 'B' was not a party to the writ proceedings. Subsequently on 'B''s filing a petition under Article 226 for impleading him as a party to 'A''s writ petition and re-hearing the whole matter, Khosla J. allowed his petition. On appeal, the Letters Patent Bench also affirmed this order. The Supreme Court on further appeal held that there was nothing in Article 226 to preclude a High Court from exercising the powers of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Court then proceeded to observe :—

> "Here the previous order of Khosla, J., affected the interests of persons, who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

(12) In the present case, Bhag Singh though vitally interested in the allotment of Fields Nos. 16 and 17/1, was not made a party in the previous proceedings, which led to an order being made in favour of Sarmukh Singh to the detriment of Bhag Singh. Thus, even on the principle enunciated in *Shivdeo Singh's case,* the Additional Director was competent on the petition of Bhag Singh to undo—after due notice to Sarmukh Singh—the injustice that had been caused to Bhag Singh at his back by the former order.

(13) The facts of *Sadha Singh's case* were entirely different. There, the petitions under section 42 of the Act, had been filed previously by the right-holders for removal of individual grievances relating to particular allotments made under the scheme of consolidation. Some of these petitions were accepted while others were rejected, with the result that the repartition made on the basis of the proceedings became final between the parties to these petitions. It

was also undisputed that if the impugned order was allowed to stand, the entire scheme would have to be re-framed from the valuation stage and consolidation proceedings in the village would start *de novo* and all the repartitions made so far including those in respect of which petitions under section 42, had been decided by the Additional Director, would be automatically set aside.

(14) In the present case, however, the impugned orders do not have the effect of setting at naught the entire scheme of consolidation from any stage whatever. Nor do they affect the entire body of right-holders. They affect only the persons who were parties to those proceedings culminating in them. The rule in *Sadha Singh's case*. therefore, has no application to the facts of the case before us.

(15) Thus from whatever angle the matter may be looked at, the finding of the learned Single Judge to the effect, that the impugned orders amount to review of the former order, and as such were without jurisdiction, cannot be sustained. We would, therefore, reverse the same.

(16) Mr. Dhingra next contended that even if the impugned orders did not amount to a review of the former order, then also on merits, the impugned orders were highly arbitrary and unjust, being contrary to the scheme of consolidation.

(17) This point was canvassed before the learned Single Judge also, but was not decided. A perusal of the impugned order, dated February 15, 1964 (Annexure 'E' to Civil Writ No. 2505 of 1964) shows that before the Additional Director, the demand of Sarmukh Singh was that his two blocks may be consolidated and given at one place in the reserved area. As noted by the Additional Director in his impugned order, the first major Portion of Sarmukh Singh in this area was in Killa No. 47/3/8. The Additional Director has further noted that he had offered to Sarmukh Singh that his two *kurrahs* could be consolidated there. But he (Sarmukh Singh) was not prepared to accept that offer.

(18) Study of the impugned order dated September 25, 1964 (Annexure 'F') shows that the contention of Bhag Singh before the Additional Director was that the second *tak* (block) given to him (Killa No. 47/17/1) be cancelled and he be given, instead, land at his Second Major Portion in Field No. 483/1, which is covered by Killa No. 47/

16. The Additional Director noticed that allotment of Sarmukh Singh (then respondent) at his Second Major Portion also did not include in it a large part of his own Major Portion. He consequently ordered that the *taks* of the parties at the second Major Portion be amalgamated into one pool and partitioned afresh by a line drawn from the West to the East and in this way an area measuring 2—16 standard Kanals be given to Bhag Singh towards the North and the remaining out of this pool to Sarmukh Singh towards the South. According to this arrangement both the parties would be receiving land near their own wells and most of the area in their own Major Portions formerly belonging to them, would be included in their new allotments. Nothing could be fairer and more equitable. Even if this order amounted to an amendment of the scheme *pro tanto,* the Additional Director was fully competent to do so. In any case, there was no equity in favour of Sarmukh Singh.

(19) For the foregoing reasons, we would allow these appeals and dismiss both the writ petitions Nos. 2505 and 553 of 1964, leaving the parties to bear their own costs throughout.

N. K. S.

APPELLATE CIVIL

Before Man Mohan Singh Gujral, J.

CHANCHAL KUMARI,—*Appellant*

versus

KEWAL KRISHAN,—*Respondent.*

First Appeal From Order No. 48-M of 1966.

January 6, 1972.

Hindu Marriage Act (*XXV of* 1955)—*Section* 12(1)(*a*)—*Consummation of marriage—Emission of semen in the wifes body—Whether necessary.*

Held, that the expression "consummation" means *vera capula* or conjunction of bodies which is achieved as soon as full entry and penetration has been made. What follows goes merely to the likelihood or otherwise of conception. Having regard to this meaning of the expression "consummation" the potency in the case of males means the power of erection of the male organ and its full penetration. The discharge of semen in the wife's body is not necessary for a complete coitus and the consummation of marriage.

(Paras 7 and 9)