

The Indian Law Reports

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

NAZAR AND OTHERS,—Petitioners.

versus

ADDITIONAL DIRECTOR, CONSOLIDATION, PUNJAB AND OTHERS,—

Respondents

Civil Writ No. 2773 of 1964

July 19, 1966

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L. of 1948)—S. 21—Settlement officer hearing appeal—Whether competent to pass order in favour of a person who has not appealed—Sua motu power—Whether vested in authorities under S. 21 (2)(3) and (4).

Held that, in an appeal under sub-section (3) of section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, the Settlement Officer cannot while refusing to grant the entire relief claimed by the appellant, vary the order under appeal to the detriment of the appellant himself, merely for the benefit of some respondent who was not aggrieved by the order under appeal. Such a course would result in complete chaos and would give unfettered jurisdiction to authorities under sub-sections (3) and (4) of section 21 of the Act, which has not been vested in them by the Legislature. A person who has not filed objections against the scheme nor any appeal against the order of the Consolidation Officer cannot be granted any relief by the appellate authority hearing the appeal of an aggrieved person. An appeal under sub-section (3) of section 21 can at best be called a re-hearing or a continuation of the proceedings under sub-section (2) of section 21, the scope of which is again limited.

Held, that no *sua motu* power has been conferred by sub-sections (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.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the orders of respondent Nos. 1, 2 and 3, and restoring the order of respondent No. 4 which was passed under section 21(1) and 21(2) of the Act.

K. K. CUCCRIA, ADVOCATE, for the Petitioner.

M. R. AGNIHOTRI, ADVOCATE, for the ADVOCATE-GENERAL AND K. K. CHOPRA, ADVOCATE, for the Respondents.

ORDER

NARULA, J.—Nazar, Saudagar and Resham, three brothers were aggrieved by an order of the Consolidation Officer, dated 23rd April, 1962, under section 21(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 50 of 1948 (hereinafter called the Act) and, therefore, filed an appeal against that order under subsection (3) of section 21 before the Settlement Officer (Consolidation). In his appellate order, dated February 7, 1963 (Annexure 'A'), the Settlement Officer observed as follows:—

“As regards first objection, appellant's major portion has not been covered to the full extent. Most of his area has been given to Mehnga Singh whose major portion is on the other side of the well. There is some area of Karam Charid. In order to include his own area of major portion following changes are made. As regards objection of first grade area the appellant was given a proposal that he could be given area of 14 annas which has been given to Karam Chand. To this he does not agree. The village panchayat says that the area given to him on the northern side is of better quality. He is satisfied with the present allotment. As regards objection of Mand area the appellant was given one plot and under section 21(2) of the Consolidation of Holdings Act, Consolidation Officer gave him some area of better quality in Mand which resulted in two plots. He wants one plot. He was given a proposal that position of 21(1) regarding Mand area could be restored. to this he does not agree. The allotment has correctly been made. The points are ruled out”.

The petitioners before me are not aggrieved by the order of the appellate authority quoted above excepting so far as it relates to a direction of making certain changes thereafter mentioned. The changes in the order under section 21(2) directed to be made by the Settlement Officer have been ordered in pursuance of the following observations:—

“The remaining area is lying *bachat* and in order to give him area of his possession following changes are made;

The village panchayat has represented that the path has been given to well No. 20/26. It should be made

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straight as it passes through the plot of Baga Singh, son of Utra, Jita, son of Baga Singh. So the path is made straight as adjusted below:—

The changes made by the impugned order have affected the holdings of the petitioners and respondents Nos. 5 and 6 besides other persons. Not satisfied with the order of the Settlement Officer, the petitioners went up in further appeal under sub-section (4) of section 21 of the Act to the Assistant Director of Consolidation. Annexure 'C' to the writ petition is a copy of the grounds of appeal. Ground No. 2 therein reads as follows:—

"2. That the appellant is affected on his own appeal Killa No. 18,5.2.6, 15/1, 14/1, area wrongly withdrawn. These be restored and the area in 11/3 be given along with 15, 14. Area under trees garden and abadi is withdrawn. The spot be inspected."

The Assistant Director rejected the appeal of the petitioners on all the five points mentioned therein by his order, dated June 25, 1963 (Annexure 'B'). We are concerned with the 4th and the 5th points raised by the petitioners before the Assistant Director, namely (4) that Mehnga Singh had been given wrong share in the well and he should have been given share only in one of the persian wheels, and (5) that the path to the station should be changed. The request of the petitioners in the second appellate Tribunal was not acceded to on the ground that though the amendments made were not to the liking of the petitioners, there was nothing wrong in them and the petitioners had been given more of their major portion in area by the impugned amendment. Regarding the path, it was observed by the Assistant Director that it could not be changed "as it was provided in the Scheme."

Thereafter the petitioners went up to the State Government under section 42 of the Act, but met no better fate. By order, dated 7th March, 1964, the Additional Director observed as follows—

"The main contention of the petitioner is that the amendment carried out by the Settlement Officer on their appeal should be cancelled and the position as prevailed before that and ordered under section 21(2) should be restored. Records were examined and parties heard. There is nothing wrong

with the amendment as ordered by the Settlement Officer and this was done at the instance of the petitioner. Hence the petition is rejected."

On September 11, 1964, this writ petition was filed, but was returned by the registry for removing certain defects. It appears to have been re-filed on the 10th of December, 1964, and again returned and finally refiled on the 21st of December, 1964. Meanwhile, the petitioners filed C.M. 3650 of 1964, under Article 227 of the Constitution on October 23, 1964. The petition under Article 227 is almost a verbatim copy of the earlier petition under Article 226. It is somewhat strange that the petitioners did not mention anywhere in the miscellaneous application about the earlier filing and return of the writ petition. Learned counsel states that it was due to sheer inadvertence, and adds that the petition under Article 227 was filed because the brief of the writ petition had been mis-placed and the counsel did not want the petitioners to be compelled to pay the court-fee requisite on writ petition over again. C.M. No. 3650 of 1964, came up before the Motion Bench (S. K. Kapur, J.) on 26th October, 1964 and was admitted on that day. Dispossession of the petitioner was ordered to be stayed by the learned Judge. Even after refileing the writ petition on 21st December, 1964, several adjournments were secured by the petitioners from this Court till the petition came up before the Motion Bench (Dulat and Grover, JJ.), on 12th March, 1965, when it was admitted and directed to be heard with C.M. 3650 of 1964.

Mehnga Singh, respondent No. 5 has chosen to remain absent in spite of service. Both these cases have been heard against him *ex parte*. Karam Chand, respondent No. 6 has filed written statement, dated 13th July, 1965, and has contested this petition. Respondents Nos. 1 to 4 have filed separate written statement, dated July 21, 1965, and have vehemently contested these petitions.

Learned counsel for the petitioners concedes that the maintainability of the petition under Article 227 of the Constitution may in the circumstances of this case be doubtful. In view of the fact that the brief of the original writ petition was traced and the same was re-filed, he does not press the petition under Article 227 of the Constitution particularly when the scope of the two proceedings is the same. C.M. 3650 of 1964, is, therefore, dismissed as infructuous without any order as to costs.

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In the writ petition, the learned counsel has pressed only two main grounds. It is firstly contended by him that the scope of the jurisdiction of a Settlement Officer under section 21(3) of the Act, is circumscribed by the provisions of that sub-section and a Settlement Officer cannot, therefore, make any alteration in the order under appeal before him which is opposed to the interest of the appellants. In other words, it is argued that the right of appeal under section 21(3) of the Act having been conferred on a person aggrieved by an order under sub-section 2 of that section, it is only such a person who goes up in appeal to the Settlement Officer that can be granted some relief; and no relief can be granted to a person, who was not aggrieved by the order under section 21(2) of the Act. It is conceded by the learned counsel that if in granting whole or part of the relief which an appellant under section 21(3) of the Act claims, some consequential changes in favour of some other respondent, are also necessitated, no objection can be taken to the same. He, however, contends that an appellant under section 21(3) cannot be deprived of what he has already got. Nor can he be meted out treatment which is adverse to his interests without his asking for it, merely in order to benefit some of the respondents, who were not aggrieved by the order of the Consolidation Officer and who never preferred any appeal. The learned counsel emphasises that the use of the expression "person aggrieved by the order of the Consolidation Officer" in the opening part of sub-section 3 of section 21 of the Act makes it clear that it is only such person who is entitled to claim relief under that sub-section. Mr. Cuccria has argued that the appellate jurisdiction of the Settlement Officer conferred on him to pass "such order as he considers proper" has to be construed in such manner as to keep him within the bounds of that sub-section. According to the learned counsel, the appellate authority can pass any order as he considers proper while hearing an appeal under sub-section 3 of section 21 provided the orders passed by him are for the benefit of the person aggrieved by the order of the Consolidation Officer, i.e., for the benefit of the appellant before the Settlement Officer though, as a consequence of the relief granted to the appellant, somebody else may also benefit. Considering the scheme of the Act and particularly of sub-sections (1) to (4) of section 21 of the Act and complete absence in the Act of a provision like Order 41 Rule 33 of the Code, I find great force in the arguments of the learned counsel for the petitioners. No *suo motu* power has been conferred by sub-sections (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 contra-distinction to those wide powers, the authority of the Settlement Officer under sub-section 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 section 21 of the Act, which does not appear to have been vested in them by the Legislature. Mr. Chopra, the learned counsel for Karam Chand, respondent, admits that his client did not prefer any objection under sub-section (2) of section 21 and was not aggrieved by the order under that provision of the Act and, therefore, did not prefer any appeal under sub-section (3). That being so, Karam Chand, could not possibly claim as of right any relief from the appellate authority. Since no part of the claim of the appellants was being granted by the Settlement Officer, he could not have granted relief to Karam Chand, at the cost of the appellants. In these circumstances, I hold that the order of the Settlement Officer and the order of the Consolidation Officer to the detriment and prejudice of the petitioners were wholly without jurisdiction, and outside the scope of his authority under section 21(3) of the Act.

It is lastly contended by Mr. Agnihotri, the learned counsel for respondents Nos. 1 to 4, that in any case the order of the Settlement Officer should not be set aside because it has been upheld by the State Government under section 42 of the Act in exercise of its plenary powers. I do not find any force in this contention of the learned counsel, because the Additional Director thought that the impugned changes had been made by the Settlement Officer at the instance of the petitioners themselves. This impression of the Additional Director was obviously based on some serious misapprehension. In these circumstances, the orders of the Assistant Director and the Additional Director fall with the order of the Settlement Officer.

In the view I have taken of the first point raised by the learned counsel for the petitioners, it does not appear to be necessary to deal

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with the only other contention of counsel to the effect that if the Settlement Officer could be justified in making any changes in the consolidation scheme for the first time, he was bound to award compensation for trees and *Khurlis*, etc., of the petitioners which were on the land of which they were being deprived.

This writ petition is accordingly allowed and the orders of the Settlement Officer (Annexure 'A') and all subsequent proceedings in this case, are set aside and quashed. The learned counsel for the petitioners does not want his appeal to the Settlement Officer being reheard and presses that the same may be deemed to have been dismissed. No further proceedings by the authorities would, therefore, be necessary and the petitioners' appeal against the order of the Consolidation Officer under section 21(2) of the Act, would be deemed to have been withdrawn and dismissed. In the circumstances of the case, the parties are left to bear their own costs.

R.S.

CIVIL MISCELLANEOUS

Before J. N. Kaushal, J.

JAGMOHAN LAL,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 383 of 1963

August 18, 1966

Punjab Civil Services Rules, Volume I, Part I—Rule 7.5—Interpretation of—Government servant given benefit of doubt and acquitted—Whether entitled to full pay and allowances for the period of his suspension.

Held, that a Government servant who has been acquitted of the criminal charge by the Court on giving him the benefit of doubt is entitled to full pay and allowances for the period of his suspension. In criminal law the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding