

M/s Khushi
Ram-Behari Lal
and Co.
v.
The Assessing
Authority,
Sangrur
and another

Harbans Singh,
J.

2. in view of the facts that no intimation was given about the dissolution of the firm as required under the Act and the rules the firm continued to be liable to be assessed and that in any case proceedings having been initiated long before the actual alleged dissolution, order of assessment could properly be made notwithstanding the subsequent dissolution of the firm.

For the foregoing reasons, therefore, I find no force in this petition, dismiss the same and discharge the rule. In the circumstances of the case, there would be no order as to costs.

D. FALSHAW, C.J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

JIT SINGH AND ANOTHER,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1275 of 1963.

1964

Jan., 2nd.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) as amended by East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act (XXV of 1962)—Ss. 21 and 42—Revision under S. 42 pending against an order passed under S. 21(4) when the Amending Act came into force—Whether can be decided thereafter.

Held, that sub-section (4) of section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, as amended by section 6 of the Amending Act, 1962, provides that an appeal against an order of the

Settlement Officer would lie to the Assistant Director. The amended sub-section (5) mentions that appeals, which were pending immediately before 13th December, 1962 under section 21(4) of the Act would be decided by the Assistant Director of Consolidation and not the State Government. These provisions, therefore, relate to the appeals which were either pending before the commencement of the Amending Act or which had to be filed after 13th December, 1962. No provision has, however, been made with regard to the appeals which already stood decided by the delegate of the State Government under section 21(4) of the Act before the enforcement of the Amending Act. Consequently a revision under section 42 of the Act which was pending at the time of the commencement of the Amending Act cannot be decided thereafter by the State Government as section 11 of the Amending Act only validates those orders of the State Government under section 42, which were passed before 13th December, 1962, and makes no provision for the revisions that were pending before the State Government under section 42 of the Act on that date.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, or any other appropriate writ, order or direction be issued quashing the order dated the 15th February, 1963, passed by respondent No. 2.

J. N. KAUSHAL AND M. R. AGNIHOTRI, ADVOCATES, for the Petitioners.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL WITH T. S. DOABIA, AND A. S. BAINS, ADVOCATES, for the Respondents.

ORDER

PANDIT, J.—This is a petition under Articles 226/227 of the Constitution challenging the legality of the order dated 15th February, 1963, passed by the Additional Director, Consolidation, respondent No. 2, under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act).

Pandit, J.

According to the allegations of the petitioners, they were the *khewatdars* of village Ismail Pur in tehsil and district Kapurthala. During the course of consolidation proceedings in this village, on 25th May,

Jit Singh
and another
v.
The State of
Punjab
and others

Pandit, J.

1960 they were allotted by the Consolidation Officer wrong *karrahs* in lieu of the land previously owned by them. Against this order, they filed an appeal before the Settlement Officer, who *vide* his order dated 23rd August, 1960, accepted the same and allotted the correct *khasra* numbers to them. Feeling aggrieved by this order, Mulkiat Singh and others, respondents 3 to 7, filed an appeal to the State Government under section 21(4) of the Act. It was decided by the Assistant Director, Consolidation, to whom the powers of the State Government had been delegated under section 41 of the Act. The same was rejected by him on 9th May, 1961. Thereupon, respondents 3 to 7 filed a revision application to the State Government under section 42 of the Act. The Additional Director, by the impugned order, modified the order of the Assistant Director and thereby withdrew certain *khasra* numbers from the share of the petitioners and allotted the same to the respondents. This has led to the filing of the present petition.

Learned counsel for the petitioners has submitted that once the assistant Director, Consolidation, had exercised the powers of the State Government as its delegate under section 21(4) of the Act, his order became final and was not open to any revision, modification or interference by the State Government under section 42 of the Act. The Additional Director, Consolidation, had thus no jurisdiction to modify the order passed by the Assistant Director.

There is merit in this contention. Their Lordships of the Supreme Court in *Roop Chand v. The State of Punjab and another* (1), have held that when Government delegates its powers under the provisions of the East Punjab Holdings (Consolidations and Prevention of Fragmentation) Act to an officer and that

(1) A.I.R. 1963 S.C. 576

officer pursuant to such delegation hears an appeal and makes an order, the order of the officer is the order of the Government and the Government cannot interfere with it under section 42 of the Act. After this decision of the Supreme Court, the Punjab Legislature enacted the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act 1962 (No. 25 of 1962), which came into force on 13th December, 1962. The relevant portion of section 11 of this Act is as under:—

**Jit Singh
and another
v.
The State of
Punjab
and others**
—
Pandit, J.

“S. 11. Notwithstanding anything contained in the principal Act, or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, where, at any time before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962:—

- (a) the State Government or an officer, to whom powers of the State Government under section 42 have been delegated, has passed an order against an order of the Assistant Director of Consolidation passed by him under sub-section (4) of section 21 of the principal Act, as a delegate of the State Government, the order under section 42 shall be, and shall be deemed always to have been, valid and shall not be questioned on the ground that it could not be made under that section against the order of the delegate of the State Government;

* * *
* * * ”

Jit Singh
and another
v.
The State of
Punjab
and others

Pandit, J.

According to this, all orders passed by the delegates of the State Government under section 42 of the Act before 13th December, 1962, have been validated. The impugned order, however, as already mentioned above, was made on 15th February, 1963 and, therefore, the same is not saved by this provision.

Learned counsel for respondents 3 to 7 submitted that according to section 6 of the Amending Act, the appeal filed by them against the order of the Settlement Officer before the State Government under section 21(4) of the Act should be deemed to have been filed before the Assistant Director (Consolidation) and, therefore, the order passed by the State Government under section 42 of the Act as quite valid.

The relevant portion of section 6 of the Amending Act is as follows:—

“S. 6. In section 21 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

- (4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3), whether made before or after the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, may, within sixty days of that order, appeal to the Assistant Director of Consolidation;
- (5) Any appeal against an order of the Settlement Officer (Consolidation), pending under sub-section (4) immediately before the commencement

of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, either before the State Government or any officer to whom the powers of the State Government in this behalf have been delegated, shall be decided by the Assistant Director of Consolidation.

* * * "

Jit Singh
and another
v.
The State of
Punjab
and others

Pandit, J.

A perusal of the above would show that the amended sub-section (4) of section 21 provides that an appeal against an order of the Settlement Officer would lie to the Assistant Director. The amended sub-section (5) mentions that appeals, which were pending immediately before 13th December, 1962 under section 21(4) of the Act would be decided by the Assistant Director of Consolidation and not the State Government. These provisions, therefore, relate to the appeals which were either pending before the commencement of the Amending Act or which had to be filed after 13th December, 1962. No provision has, however, been made with regard to the appeals which already stood decided by the delegate of the State Government under section 21(4) of the Act before the enforcement of the Amending Act. In the present case, the appeal under section 21(4) of the Act was decided on 9th May, 1961, that is, before the commencement of the Amending Act, and consequently, the provisions of section 6, mentioned above, are of no assistance to the respondents.

No doubt, the revision under section 42 of the Act was pending at the time of the commencement of the Amending Act, but section 11 thereof, as already mentioned above, only validates those orders of the State Government under section 42,

Jit Singh
and another
v.
The State of
Punjab
and others

Pandit, J.

which were passed before 13th December, 1962, It appears that by oversight no provisions had been made in the amending Act for the revisions that were pending before the State Government under section 42 of the Act and the learned Additional Advocate-General frankly conceded that there was a lacuna in the Amending Act in this respect.

The result is that this petition succeeds and the order, dated 15th February, 1963 passed by the Additional Director under section 42 of the Act is hereby quashed. In the circumstances of this case, however, I will make no order as to costs in these proceedings.

B.R.T.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

BAHAL SINGH,—Petitioner.

versus

THE STATE AND ANOTHER,—Respondents.

Criminal Revision No. 958 of 1963.

1964

Jan., 2nd.

Code of Criminal Procedure (V of 1898)—Ss. 207-A, 215 and 439—Powers of the Committing Magistrate—Magistrate discharging the accused, but Sessions Judge directing him to commit the accused to the Court of Sessions—Magistrate committing the accused—Order of the Sessions Judge—Whether revisable by the High Court—S. 215—Petition under—High Court—Whether can go into the merits of the case.

Held, that in an inquiry under section 207-A of the Code of Criminal Procedure, if a *prima facie* case triable by the Court of Sessions is made out, the magistrate must commit the accused to that Court to stand his trial and it is not for the Magistrate to deal with the evidence placed before him as if he were entrusted with the trial of the accused. After