

CASE NO.:
Appeal (civil) 646 of 2000

PETITIONER:
Bagirath Singh and another

RESPONDENT:
State of Haryana and others

DATE OF JUDGMENT: 06/09/2005

BENCH:
B.P. SINGH & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

B.P. SINGH, J.

This appeal by special leave is directed against the judgment and order of the High Court of Punjab and Haryana at Chandigarh in CWP No. 18310 of 1998. The appellants/petitioners claiming to be the proprietors and co-sharers in the Shamlat Deh lands which comprised in three villages, namely \026 Kairwali, Amritpur Khurd and Amritpur Kalan impugned the Consolidation Scheme in respect of Shamlat Deh lands of the aforesaid three villages published on February 8, 1995. They also challenged the order of the Director of Consolidation, Haryana, in Case No. 148 of 1996 dated June 6, 1997 whereby he held that the aforesaid Scheme had been prepared in accordance with the direction of the High Court contained in its judgment dated August 10, 1987 and upheld by an order of the High Court dated November 16, 1995. The High Court by its impugned judgment and order dismissed the writ petition and held the Consolidation Scheme so published to be valid and in accordance with law.

Before we advert to the facts of the case, we may notice that in accordance with the provisions of the Punjab Village Common Lands (Regulations) Act, 1961 the Shamlat lands except those which were affected by river action and some other specified categories vested in the Panchayat. The Shamlat Deh was, therefore, by and large confined to the lands which were affected by river action after the year 1961. In view of the change of course of river Yamuna the lands were subjected to alluvion and delluvion and a provision was made in Douie Land Records Manual to the effect that the lands which were recovered shall be maintained as Shamlat Deh of all the three villages i.e. the land which is recovered after the loss of any Khewat or recovered as excess area. The land owners and the occupancy tenants who had lost their land were held entitled to reclaim the recovered area for the purpose of cultivation and the land had to be distributed to them in proportion to the area which they had lost by reason of submersion of their lands with the change of course of the river. Necessary provision was made in the Wajab-ul-Arz during the first settlement held sometime in 1906-1907 which provided as follows :-

"The method of assessment in all the three paties is in equal shares and inside the paties it is in accordance with Hasab Rasad Zare Khewat on the basis of the land revenue as assessed according to settlement of Mr. Douie. It has also been shown that whatever land is recovered from the village is mentioned as Shamlat of all the three villages. Whether it is recovered after the loss

of any Khewat or is recovered as excess area. The landowners and the occupancy tenants who have lost their land are entitled to retain the recovered area and cultivate the same. At the time of partition the area in the Shamlat which has been recovered will be given to only those land owners and occupancy tenants in the first instance in proportion to the area which they have lost since the settlement of Mr. Douie. Thereafter the excess area of the Shamlat will be distributed according to the rate of assessment of Mr. Douie."

In the instant appeal we are concerned only with such Shamlat Deh lands which were subject matter of Consolidation Scheme framed in the year 1966. In this appeal we are not concerned with the Consolidation Scheme in respect of other lands of the villages in question which has attained finality and is not subject matter of challenge.

In this background we may notice the relevant facts of this case. Consequent upon initiation of consolidation operations, a scheme was finalized by the Settlement Officer on November 29, 1966. The said Scheme came to be challenged by some of the right holders on various grounds before the High Court in C.W.P. No. 756 of 1967. There were various objections raised such as that all the objections filed under Section 21(2) had not been disposed of and, therefore, change of possession was not justified. It was also objected to on the ground that the Scheme framed in relation to Shamlat Deh Lands was not in consonance with Wazab-ul-Arz. The writ petition was not entertained by the High Court which held that the parties must avail of the remedies provided under the Act. It was also observed that if provisions made in the Wazab-ul-Arz were applicable, the Consolidation Authorities must take that into account. The writ petition was so disposed of on November 29, 1968.

On July 4, 1969 the Settlement Officer passed an order for change of possession in accordance with the Scheme since it appeared from the Report of the Consolidation Officer dated June 6, 1969 that almost 90% of the right holders were keen that the Scheme should be implemented and change of possession of land effected.

The Consolidation Scheme came to be challenged by one Sultan Singh before the Deputy Commissioner, Karnal exercising powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Consolidation Act'). Invoking his revisional jurisdiction it was contended that re-partition Scheme framed by the Consolidation Authorities in respect of the three villages in question was not in accordance with law. In particular the petitioner challenged the propriety and legality of Paragraph 11 of Part VI of the Consolidation Scheme relating to the partition of Shamlat land of these three villages. The Deputy Commissioner exercising the power of revisional authority under Section 42 of the Consolidation Act came to the conclusion that the Scheme to the extent it provided for partition of Shamlat Deh was illegal and patently unjust and could not be allowed to stand. He, therefore, allowed the petition and quashed the provision of the re-partition Scheme in so far as it related to partitioning of Shamlat Deh of these three villages. He directed that the Shamlat Deh will remain intact on a separate khewat and the change of possession which may have occurred in pursuance of the above provision of re-partitioning Scheme shall stand quashed. He further directed that the possession existing prior to the implementation of the Consolidation Scheme shall be restored on the basis of the then existing entries in the revenue record. Consequential changes required to be made in the Consolidation Scheme shall be

made by the Consolidation Officer. This order was made by the Deputy Commissioner exercising revisional jurisdiction under Section 42 of the Consolidation Act on August 18, 1970.

Learned counsel for the respondents submitted that this order passed by the Deputy Commissioner, Karnal was based on a misconception that there was any partitioning of the Shamlat Deh lands. In fact all the Shamlat Deh lands were recorded in a separate khewat of the three villages and this was done strictly in accordance with the provisions of Wazab-ul-Arz. It is however not necessary for us to go into the correctness of that order.

It appears that another proceedings under Section 42 of the Consolidation Act was initiated by one Badlu. The Director Consolidation by his order dated January 30, 1979 affirmed the order dated August 18, 1970 noticing that the Scheme in relation to the Shamlat land had been revoked and that the concerned right holders had to be given back possession of the land in accordance with that order.

It appears that the Consolidation Officer by his order dated February 5, 1986 purported to give effect to the order of the Deputy Commissioner, Karnal dated August 18, 1970 with regard to change of possession of lands. The Consolidation Officer, therefore, gave certain directions as to the manner in which the order had to be implemented. However, the Order of the Consolidation Officer dated February 5, 1986 was challenged before the High Court in C.W.P. No. 3143 of 1986. Before the High Court the State conceded that the aforesaid order dated February 5, 1986 could not be sustained and ought to be quashed. Accordingly the aforesaid order dated February 5, 1986 was quashed. The High Court further gave a direction that the Consolidation Authorities shall proceed to frame a scheme with respect to the land subject to alluvion and delluvion (Shamlat Deh lands) only in accordance with law keeping in view Shart Wazab-ul-Arz and the rights of the right holders. It would thus appear from the order of the High Court dated August 10, 1987 that a direction was made by the High Court to frame a Consolidation Scheme only with respect of Shamlat Deh lands. This order does not touch the other provisions of the Consolidation Scheme which was framed in the year 1966, and was confined to the framing of the Scheme in relation to Shamlat Deh lands only.

Pursuant to the order of the High Court a fresh Scheme was published in regard to Shamlat Deh lands on February 8, 1995. The said Scheme which has been annexed to this Appeal as Annexure P/5 records the fact that the type and the value of the lands had already been assessed in the year 1965 which had been found to be correct on the spot and which had been duly attested in the open session. Accordingly the list of the khasra numbers as per value had been incorporated in the Scheme. This clearly discloses that the Scheme framed related to the Shamlat Deh lands only which formed subject matter of the comprehensive Consolidation Scheme framed in the year 1966. Since that part of the Consolidation Scheme which dealt with the Shamlat Deh lands had been quashed, the Scheme was framed with a view to provide a Scheme for the Shamlat Deh lands of the three villages.

The said Scheme was approved in due course but the same was again challenged before the High Court by some of the right holders. The said writ petition was disposed of by the High Court by its judgment and order dated November 16, 1995. The High Court noticed that only 3 or 4 of the right holders out of the entire village had challenged only a part of the Scheme by the aforesaid writ petition. The writ petition was, however, dismissed by the High Court by its order dated November 16, 1995 and the second challenge to the

Scheme did not be succeed. A special leave petition was preferred against the judgment and order of the High Court dated November 16, 1995 but the same was also rejected by this Court on May 2, 1996.

After the dismissal of the writ petition filed by some of the right holders, another application was filed by Surinder Singh and some other right holders of the three villages in question under Section 42 of the Consolidation Act. The Scheme was again challenged on the ground that the same was illegal being contrary to the provisions of the Consolidation Act. It was also sought to be urged that since questions of title were involved the matter could not be decided by the Consolidation Authorities and should have been decided under Section 117 of the Land Revenue Act.

The Director Consolidation, Haryana, dismissed the said case being Case No.148 of 1996 by his order dated June 6, 1997. He held that the Consolidation Authorities had prepared the Consolidation Scheme in accordance with the direction of the High Court dated August 10, 1987. The Scheme published on February 8, 1995 and approved on May 5, 1995 had been challenged by some of the land owners before the High Court by filing a writ petition which was also dismissed on November 16, 1995 and the Scheme was upheld. In these circumstances resort to Section 42 of the Consolidation Act was not justified. The Director, therefore, dismissed the petition and upheld the Scheme.

The fresh Scheme published on February 8, 1995 and the order of the Director Consolidation dated June 6, 1997 whereby he rejected a fresh application under Section 42 of the Act were challenged before the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 18310 of 1998. The High Court by its impugned judgment and order dismissed the writ petition.

It appears from the perusal of the judgment and order of the High Court that the appellants did not challenge at all the Scheme published on February 8, 1995. However, it was contended that the said Scheme and the order of the Director Consolidation dated June 6, 1997 were in the teeth of the order dated August 18, 1970 passed under Section 42 of the Act, which had not been challenged at any stage. Therefore, the impugned order providing for partition of Shamlat lands in three villages was illegal. This contention was repelled by the High Court holding that the aforesaid order was challenged at every stage and ultimately the High Court gave direction to decide the matter in the light of the entries contained in Wajab-ul-Arz. Pursuant to the direction of the High Court the Scheme came to be framed and therefore it could not be said that the order dated August 18, 1970 attained finality having not been challenged. The High Court found that the Shamlat lands had been divided in accordance with the entries in Wajab-ul-Arz and there was, therefore, no question of title involved. The judgment of the High Court has been challenged in this appeal.

Learned counsel for the appellants submitted that the High Court was in error in thinking that the order of the Deputy Commissioner, Karnal, passed on August 18, 1970 and affirmed on January 30, 1979 was ever the subject matter of challenge. In fact that order had attained finality. On the other hand counsel for the respondents contended that the said order was non est having been passed in clear violation of the proviso to Section 42 of the Consolidation Act because no notice was given to the other parties concerned. He further submitted that even assuming that a part of the Consolidation Scheme which related to Shamlat Deh lands had been quashed by the revisional authority exercising powers under Section 42 of the Consolidation Act, that part of the Scheme ceased to exist and, therefore, in its place another Scheme had to be framed. This is what was done by framing a Scheme confined to the Shamlat Deh

lands on February 8, 1995. In the peculiar facts and circumstances of this case we do not consider it necessary to refer to the arguments advanced at the Bar regarding the correctness or otherwise of the orders passed by the Consolidation Authorities dated August 18, 1970 and January 30, 1979. It is enough to notice that when the order dated August 18, 1970 was sought to be implemented and an order was passed by the Consolidation Officer on February 5, 1986, the same was challenged before the High Court and while setting aside the order of the Consolidation Officer dated February 5, 1986 the High Court gave a direction in C.W.P. No. 3143 of 1986 on August 10, 1987 to the Consolidation Authorities to frame a Scheme with regard to Shamlat Deh lands only in accordance with the provision of Wajab-ul-Arz and rights of the right holders. This order of the High Court was not challenged and attained finality. In obedience to the orders of the High Court the Scheme was framed on February 8, 1995. The Scheme was again challenged, though on different grounds, in C.W.P. No. 4938 of 1995 and the High Court by its order dated November 16, 1995 dismissed the said writ petition. The special leave petition preferred against the aforesaid order of the High Court was also dismissed by this Court. Thereafter again when the Scheme was sought to be challenged by some of the land holders by filing another application under Section 42 of the Consolidation Act, the same was rejected by the Director Consolidation holding that the Scheme framed in accordance with the direction of the High Court and which was upheld by the High Court by its judgment and order dated November 16, 1995 could not be challenged under Section 42 of the Consolidation Act. He accordingly dismissed the application filed before him under Section 42 of the Consolidation Act.

We do not find any fault with the order of the Director Consolidation dated June 6, 1997 nor do we find any error in the impugned judgment and order of the High Court.

Before parting with the judgment we may notice that on March 30, 2005 this Court passed the following order :-

" After some argument Counsel for the parties are agreed that the direction of the High Court in its order dated 10th August, 1987 was to frame a scheme in respect of Shamlat Deh lands which were subject to river action in the year 1965-1966. The real dispute between the parties before us is the extent of land which is subject to such river action. Learned counsel for the Appellants contends that the extent of the land subject to such river action is what is given by him in his affidavit filed in this Court at page 208 of the paper book, while Counsel for the private Respondents disputes this fact.

In the circumstances, we direct the State of Haryana to file an affidavit before this Court giving the break up of the lands which are the subject matter of the Scheme under challenge indicating clearly to what extent the Shamlat Deh consists of lands subject to river action, and other lands not affected by river action included in the Shamlat Deh. These particulars must be given by reference to the schemes framed in the year 1965 and in the year 1995. A copy, in advance, shall be given to the parties by the Counsel for the State and they may submit their comments, if any, within a week thereafter.

Put up after three weeks."

Pursuant to the order aforesaid, an affidavit was filed on behalf of the State of Haryana affirmed by the Director, Consolidation of

Holdings, stating that the area of Shamlat lands which was subject to river action of all the three villages was 16806 Bight 13 Biswa. After making minor adjustments, the lands available were 16660 Bigha 1 Biswa. Apart from the aforesaid lands there was no other Shamlat Deh lands in the year 1965-1966. It was further stated that in the Scheme framed in 1966 there was no provision for the re-partition of the above mentioned Shamlat lands and same were kept intact as Shamlat of all the three villages and was entered as Khewat No.1 of the Khatauni and final Jamabandi. After the year 1965-66 there had been no change in the area of Shamlat lands due to river action upto the year 1995. It was further stated that the Scheme of 1995 had been framed only in respect of Shamlat lands pursuant to the direction of the High Court dated August 10, 1987. The affidavit further gave the break-up of the lands that remained for re-partition in accordance with the provisions of the Wajab-ul-Arz. The area available was 14205 Bigha 10 Biswa only, after excluding lands given to the State of Uttar Pradesh under the Dixit Award and the lands allotted to displaced persons as per the orders of the State Government. Out of the area that was available, 4598 Bigha 5 Biswa was given to the right holders whose lands were taken away and submerged in the river Yamuna due to river action, and the remaining land i.e. 9607 Bigha 5 Biswa was re-partitioned among all the right holders of the three villages according to the provisions of Wajib-ul-Arz.

It was vehemently contended on behalf of the respondents that in view of the order of this Court dated March 30, 2005 there was no scope for further argument and the appeal should be dismissed on that ground alone. We have also noticed that even in the order of August 18, 1970 passed by the Deputy Commissioner, Karnal, the area of Shamlat land has been stated to be 16660 Bigha 1 Biswa. There is, therefore, really no controversy as to the extent of the land which constituted the Shamlat Deh of the three villages. However, it is not necessary to dilate on this aspect of the matter any further in view of our finding that the Scheme as published and approved in the year 1995 is a valid Scheme in relation to Shamlat Deh lands and was framed on the basis of valuation of lands as they existed when the Scheme of 1966 was framed.

We, therefore, find no merit in this appeal and the same is accordingly dismissed but without any order as to costs.

CIVIL APPEAL NO. 647 OF 2000

Bagirath Singh and another

\005 Appellants

Versus

State of Haryana and others

\005 Respondents

J U D G M E N T

B.P. SINGH, J.

This Civil Appeal has been preferred by the appellants against the order of the High Court dismissing the review petition filed by them for review of the judgment and order of the High Court in Civil Writ Petition No. 18310 of 1998.

We have today dismissed Civil Appeal No.646 of 2000 arising out of CWP No.18310 of 1998. We, therefore, find no merit in this appeal and the same is accordingly dismissed.

\005\005.\005\005\005\005\005\005\005.J
(B.P. SINGH)

\005\005\005\005\005\005\005\005\005J
(S.H. KAPADIA)

New Delhi
September 6, 2005

WRIT PETITION NO. 413 OF 2003

Dharam Veer Singh & others

\005 Petitioners

Versus

State of Haryana and others

\005 Respondents

J U D G M E N T

B.P. SINGH, J.

This Writ Petition has been filed by some of the land holders who are affected by the Consolidation Scheme framed in regard to Shamlat Deh lands of the concerned villages. The said scheme was challenged by some other proprietors and co-sharers in Civil Writ Petition No.18310 of 1998 before the High Court of Punjab and Haryana at Chandigarh. The said writ petition having been dismissed, Civil Appeal No.646 of 2000 was preferred before this Court by Special Leave. Despite the order of status-quo granted by this Court pending the appeal, the petitioners alleged that they were being displaced since they were not parties in the writ petition filed before the High Court.

They, therefore, filed the instant writ petition which has been heard along with Civil Appeal No.646 of 2000.

We have delivered our judgment today dismissing the Civil Appeal No. 646 of 2000. We find no merit in this writ petition filed by the petitioners and the same is accordingly dismissed.