

## **Swaran Singh And Others vs State Of Punjab And Others on 12 April, 1994**

**Equivalent citations: AIR1994SC2301, JT1994(3)SC203, (1994)108PLR206, 1994(2)SCALE557, (1994)3SCC544, 1994(1)UJ678(SC), AIR 1994 SUPREME COURT 2301, 1994 (3) SCC 544, 1994 AIR SCW 2231, 1994 (1) UJ (SC) 678, 1994 (2) REVL R 70, (1994) 3 JT 203 (SC), 1994 REVL R 2 70, 1994 PUNJ LJ 223, 1994 UJ(SC) 1 678, (1994) 2 LANDLR 61, (1994) 2 RRR 232, (1994) 3 PUN LR 206, (1994) 1 RENTLR 568, (1994) 1 CURLJ(CCR) 806**

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**Bench: Kuldip Singh**

### **ORDER**

1. In all these appeals the question that arises for consideration is whether the tenants also are entitled to be heard by the concerned authority while deciding a dispute of title between the persons claiming to be the owners and the Gram Panchayat in respect of Shamlat Deh under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ('Act', for short)? According to the averments, the appellants claim to have been cultivating the land as lessees which, land has been described in the revenue records as Shamlat Deh owned by the Gram Panchayat. Thus they claim to be tenants of the Gram Panchayat in respect of the land in dispute. Before the High Court they challenged the order of Director of Consolidation of Holdings ('Director' for short) passed under Section 42 of the Act. The said order was passed by the Director in a petition filed by persons claiming to have shares in the Shamlat Deh which shares were entered in the cultivation column as maqbuza malkan. Their contention before the Director was that the Consolidation authorities were not competent to change the title of the "right holders" and that whatever was entered in the Wajab-ul-Arz had to be made a part of the scheme of the village and had to be adhered to by the consolidation authorities during re-partition proceedings. Secondly they also challenged the mutation. The Director accepted the contention and held that the Panchayat can not lay any claim to the area since the same was mentioned in the Jamabandi to Be in possession of the Khewatdars namely the right holders and therefore the Panchayat had no right to the land. The Director remanded the matter to the Consolidation authority with a direction that 20 acres of the area should be allowed to the Gram Panchayat and the rest should be partitioned among the right holders namely the Khewatdars. It may be mentioned here that the Panchayat pursued the matter further unsuccessfully. Ultimately the Special Leave Petition filed by it was also dismissed by this Court.

2. The appellants, however, filed writ petitions before the High Court and contended that since they were in possession of the suit land as lessees under the Gram Panchayat, they were entitled to be heard before any order could be passed adversely affecting them and since no such opportunity was

given to them nor they were made parties to the petition under Section 42 of the Act, the order of the Director was liable to be quashed. They also contended that they had the locus standi to file the writ petitions. The High Court, however, dismissed the writ petitions filed by the appellants holding that in view of two earlier decisions of the same High Court namely *Joginder Singh and Ors. v. Director of Consolidation of Holdings and Nek Singh and Ors. v. State of Punjab* through Additional Director, Consolidation of Holding and others, C. W.P. No. 2820/86 dated 12.8.86 the petitioners can not claim to have any locus standi to file the writ petitions and accordingly dismissed them. L.P.As. filed in some of these matters against the order in writ petitions were also dismissed. Hence the present appeals.

3. At this juncture, it may be mentioned that Civil Appeal No. 3429/90 is filed against the judgment in *Joginder Singh's case* (supra) in the following circumstances. In *Joginder Singh's case* the Division Bench after considering the legal provisions held that the land in question did not vest in the Panchayat. Then with reference to the contention of the petitioners that they being the tenants of the Panchayat in respect of this land in question are interested parties and the Director should have also made them parties to the petition under Section 42 of the Act, the Division Bench at one stage made an observation that they could have approached the Director for passing a fresh order after affording them an opportunity of being heard. But the later observations would show that the Director could not review the order. The petitioners *Joginder Singh and others*, however, moved the Director for giving them an opportunity of being heard and for passing a fresh order, as observed by the High Court. The Director asked the petitioners to get a clarification from the High Court regarding the observation made. The petitioners applied to the High Court for clarification and the High Court dismissed the petition saying that no clarification is necessary. As against the said order, Civil Appeal No. 3429/90 is filed and consequently the ratio laid down by the Division Bench in *Joginder Singh's case* also being questioned. The other Civil Appeal Nos. 3427-3428/90 and 4357/90 are filed by the petitioners-appellants claiming to be the tenants against the order of the High Court dismissing the writ petitions filed by them following the decision in *Joginder Singh's case* and the L.P.As. filed by them were also dismissed by the High Court. Since a common question arises, all these appeals are being disposed of together.

4. The Act provides for the compulsory consolidation of agricultural holdings and preventing the fragmentation of agricultural holdings in the State of Punjab and for the assignment or reservation of land for common purposes of the Village. Under Section 14 of the Act, the Government may of its own accord agree or on application declare its intention to make a scheme for consolidation of holdings. Section 16 lays down that the scheme prepared by the Consolidation Officer may provide for the distribution of land held under the occupancy tenure between the tenant holding right of occupancy and his landlord in such proportion as may be agreed upon between the parties. Section 16(2) confers ownership right in the manner stated therein on such tenants. Section 22 provides for preparation of record of rights by the Consolidation Officer in accordance with the provisions of the Land Revenue Act giving effect to the re-partition etc. Some of the later provisions provide for consolidation and adjustment of the re-partitioned lands and remedies to appeal by any aggrieved person by order of the Consolidation Officer. Section 42 empowers the State Government to call for the proceedings at any time for the purpose of satisfying itself as to the legality or propriety of any order passed or scheme prepared or re-partition made by any officer and examine the records and

pass appropriate orders. In all the cases before us the respondents claiming to be the right-holders preferred petitions under Section 42 of the Act before the Director and contended that the land in dispute was Banjar Qadim and according to the entry in the Wazab-ul-Arz of the Village, it had to be apportioned among the proprietors and Khewatdars pro rata of their holdings in the revenue estate and that the Director had no jurisdiction to hold that the land in dispute vests in Gram Panchayat. They also contended that the disputed land was described in the record of rights prior to the consolidation as Banjar Qadim in the individual cultivating possession of the Khawatdas and therefore the same could not vest in the Gram Panchayat. The Director accepted their plea and passed orders ordering distribution of the land among share-holders as per the provisions contained in the Jamabandi of 1951-52, which according to him, is the only authenticated document inherited by the Consolidation Department. In all these cases similar orders were passed by the Director. Questioning the same the petitioners-appellants claiming to be the tenants in the disputed land filed above writ petitions before the High Court and the main submission was that they should have been given an opportunity of being heard by the Director.

5. The Division Bench which heard the first matter in Joginder Singh's case referred to Section 2(g) of the Village Common Lands Act which defines shamlat deh and held that the land in dispute does not come within the ambit of shamlat deh. The Division Bench also observed that the petitioners have not placed any material on record to draw in inference that the land was recorded as shamlat deh in the record of rights. The Division Bench also observed that even otherwise in the scheme of consolidation there are existing adequate shamlat deh lands for common purposes including the purposes of the Gram Panchayat and that the excess land secured from the proprietors pro rata deserves to be re-distribute among the proprietors in accordance with their rights. The Division Bench in detail considered several other aspects concerned with the interpretation of the provisions of the Act. The Division Bench also noticed that the petitioners got priority for cultivation in auction for a year and they had a right to remain in possession for the auction period namely one year. The Division Bench, however, concluded that since the dispute was between the proprietors and the Panchayat, the tenants had no right to be impleaded as respondents before the Director.

6. Learned counsel for the appellants before us contended that since they are tenants in the disputed land as per the leases granted by way of auction by the Gram Panchayat, they are interested parties and they should have been heard by the Director while passing an order under Section 42 of the Act in favour of the respondents. From the facts stated above, it can be seen that it was a question of dispute of title to the land between the Gram Panchayat and the right holders.

7. A perusal of some of the above mentioned Provisions of the Act in the background of the object underlying would show that the legislation is meant to improve the standard of living and working in the villages and the provisions indicate that the persons who were in possession of certain lands either as tenants or otherwise are entitled to allotment of the said lands after consolidation. The provisions also provide for preparation of schemes, re-partition, rights to possession of new holdings and reservation of land for common purposes etc. Under Section 42 of the Act all such proceedings of the concerned authorities can be examined by the Government to satisfy itself about the legality or propriety of the orders passed in such proceedings. Section 42 of the Act reads thus:

42. Power of (State) Government to call for proceedings - The (State) Government may at any time for the purpose of satisfying itself as to the legality or propriety of (any order passed, scheme prepared or confirmed or repartition made by any officer under this Act), call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit;

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard (except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration).

8. It can be seen that the proviso to Section 42 of the Act lays down that notice to "interested parties" to appear and opportunity to be heard to them being given are conditions precedent to the passing of an order under Section 42.

9. The test for determining whether or not a particular person is a "party interested" within the contemplation of the proviso is, whether he is likely to be affected by the decision or the result of the proceedings.

10. In North India Caterers Private Ltd. and Anr. v. States of Punjab and Haryana the Constitution Bench of this Court indicated that an unauthorized occupant should have an opportunity of being heard. In Mohan Lal v. The State of Punjab 1971 P.L.J. 338, Justice Hegde speaking for the Bench of this Court referred to the ratio laid down in North India Caterers Private Ltd. 's cases and having considered the scope of provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act observed thus:

Under our jurisprudence even an authorised occupant can be evicted only in the manner authorised by law. This is the essence of the rule of law.

11. The appellants in each of these appeals before us claim to be the tenants of the Panchayat. In Joginder Singh's case, the Division Bench also noted the fact that the writ petitioners got the property for cultivation in the auction held by the Panchayat. The Division Bench further observed that lease was only for one year and they had a right to remain in possession only for the auctioned period and after the expiry of that period they had to surrender the suit land to the Gram Panchayat. But the plea of the appellants in each of the case is that they are continuing to be in possession and they are still holding the land on annual patta basis and the patta-name in their favour has been executed by the Gram Panchayat and therefore, they are tenants and lessees of this land. In the counter-affidavit filed by the respondents also it is stated that the appellants were merely lessees from year to year basis under the Gram Panchayat and that when once it is found that Gram Panchayat is not the owner of the suit land and that they-were merely lessees from year to year basis under the said Panchayat, they will have no right to stay on that land as they had no right independent to that of the Gram Panchayat and their possession becomes illegal and unauthorised and they can be ejected in due course by law by the rightful owners, namely, the respondents-proprietors who have been held to be the owners of the suit land. It can thus be seen

that the appellants have an interest in the dispute land in each of these cases. Though the dispute as such was regarding the title between the proprietors and the Panchayat, the appellants atleast come in the category of tenants having interest in the suit land in which case they do come within the meaning of "interested parties" and the proviso to Section 42 comes into operation and consequently an order passed without notice to them to appear becomes invalid.

12. In *Paras Ram v. State of Punjab* 1969 P.L.J. 97 Justice Sarkaria, as he then was, considered the scope of the proviso to Section 42 and held thus:

The proviso to Section 42 of the Act embodies a fundamental canon of natural justice. It is founded on the maxim that no one should be condemned unheard. The word "interested" in the proviso, therefore, is to be interpreted in a very generous spirit and its wide amplitude should not be allowed to be whittled down by legal quibbles. In its dictionary sense, the word "interested" means "concern, 'affected', having an interest, right or title to, a claim upon or a share in something'. The word "interested" therefore, embraces within its scope not only landowners, rightholders, tenants and settlers, but also all persons who have a claim upon the land or the property which is the subject-matter of the case before the Government under Section 42 of the Act. The test for determining whether or not a particular person in a 'party interested' within the contemplation of the proviso, is whether he is likely to be affected by the decision or the result of the proceedings. In the present case, the petitioners satisfy that test. It cannot be denied that the impugned order might adversely affect the petitioners by causing shrinkage or disappearance of the surplus area on which they have settled. Surely, they are not trespassers. They have been inducted by the Collector in accordance with a statutory scheme for utilisation of surplus area drawn up under the Tenancy Act. It is true that as a result of the order, dated 20th June, 1967, of the Commissioner, the matter has been re-opened, but that does not mean that the petitioners have ceased to be 'parties interested' within the meaning of the proviso to Section 42 of the Act. Admittedly, they are still in cultivating possession of the land. They have, not been evicted from the area on which they were settled.

13. Likewise in *Gram Panchayat of Village Serohi Behali and Ors. v. Har Lal and Ors.* 1971 P.L.R. 1009, a Division Bench of the High Court considered the meaning of the words "parties interested" in the proviso to Section 42 and observed thus:

The learned Counsel for the appellants has, however, submitted that the words "parties interested" in the proviso to Section 42 of the Act only relate to the rightholders and not the tenants or other persons in possession of the land otherwise than as rightholders. We regret our inability to agree to that submission. The words "parties interested" in the proviso means persons whose rights of the ownership or possession or any other rights in the land will be affected by the adjudication under Section 42 of the Act. The reason is that no order adverse to the interest of any person whatever can be made without issuing notice to him and affording him an opportunity of being heard and that is the purpose and the intention of the proviso. It

cannot be confined only to the rightholders. The tenants have also a right to be heard in order to safeguard their tenancy rights and to secure that, in case of any other land being allotted to the landowner under whom they are tenants, their rights in that land are protected and that the land allotted in lieu of the land going to be taken away from them is such a land which is cultivable and their interest as tenants will not in any way suffer.

(emphasis supplied)

14. In *Mukhtiar Singh and Ors. v. The State of Punjab and Ors.* AIR 1971 Punjab 1, a Division Bench of the High Court examined the scope of provisions of Section 42 of the Act and held as under:

As already held above, the Act specifically prohibits the State Government from exercising its jurisdiction under Section 42 with a view to vary or reverse the order of a lower authority under the Act without complying with the statutory requirements of the proviso to that section.

15. In *Chet Singh v. State of Punjab*, the facts are that one Gurdev Singh petitioner under Section 42 who had some complaint against a consolidation scheme was not present and his petition was ordered to be closed by the Additional Director (Consolidation) on 4th May, 1965. Gurdev Singh on 15th May 1965 filed an application for restoration supported by an affidavit, attributing his absence on 4th May, 1965 on ground of illness. An order dated 8th June, 1965 of the Additional Director shows that the appellant Gurdev Singh's assertion that he could not attend due to illness was accepted by the Additional Director, who proceeded to exercise his powers under Section 42 of the Act and to set right the grievance of Gurdev Singh, he perused all the relevant records. This order of the Additional Director was questioned by the appellant unsuccessfully before the High Court as well as before this Court. The contention was that the Additional Director had no power to review. A Bench of this Court in the said case having examined Section 42 held thus:

The proviso to Section 42 lays down that notice to interested parties to appear and opportunity to be heard are conditions precedent to passing of an order under Section 42. The fact that the Additional Director was satisfied that the respondent, Gurdev Singh, did not have an opportunity of being heard due to his illness, seems to us to amount to a finding that the proviso could not be complied with so that the previous order could not be held to be an order duly passed under Section 42 of the Act. It could be ignored as "non est".

16. The learned Counsel for the respondents, however, submitted that assuming that the appellants are the tenants in the disputed land they can at the most claim such protection as would be available to them as tenants and if they acquire any rights for being in possession they can assert the same whenever any proceedings are taken before a competent authority to dispossess them. We do not agree that they cannot participate in the dispute between the proprietors and the Panchayat in respect of the title of the land in view of the mandate under the proviso to Section 42. The general issues in law regarding locus standi of a tenant to participate in a dispute regarding title between

two rival claimants would not arise in a case covered by Section 42 of the Act having regard to the nature of the rights created under the Act in favour of the tenants also, as discussed above. As observed in Paras Ram's case and in the case of Gram Panchayat of Village Serohi Behali and others (supra) the tenants definitely came within the meaning of "parties interested" and, therefore, they have a right to be heard. As a matter of fact in Joginder Singh's case they again approached the Director of Consolidation and he directed them to get a clarification from the High Court which was refused and they have come upto this Court. We do not think that the appellants in each of these appeals who are the interested parties should be driven to have a recourse to some other proceedings. Hearing of an interested party is a condition precedent for passing of an order under Section 42 of the Act. When once it is not in dispute that the appellants who are the tenants in the disputed land by virtue of a lease granted by the Panchayat by way of auction, then they have acquired some rights which also should be protected.

17. In the result the impugned orders passed by the Director and also the impugned judgments of the High Court are set aside and the matters are remanded to the Director for being disposed of afresh after hearing the appellants as well as the other necessary parties. Before passing appropriate orders the Director shall consider whether any or all of the appellants are still in possession of the land as tenants and if so how their rights can be protected even if the title to the land is to be decided in favour of the respondents-shareholders. Accordingly all the above said appeals are allowed as indicated above. There will be no order as to costs.