

Chet Singh vs State Of Punjab And Ors. on 24 March, 1977

Equivalent citations: AIR1977SC1494, (1977)79PLR490, (1977)2SCC499, [1977]3SCR369, 1977(9)UJ345(SC), AIR 1977 SUPREME COURT 1494, 1977 2 SCC 499, 1977 2 SCWR 260, 1977 REV LR 508, 1977 U J (SC) 345, 1977 3 SCR 369

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Bench: M.H. Beg, A.C. Gupta, P.S. Kailasam

JUDGMENT

M.H. Beg, C.J.

1. This appeal under Article 136 of the Constitution is directed against a very detailed judgment of the Punjab and Haryana High Court on a Writ Petition No. 1875 of 1965 filed under Articles 226 & 227 of the Constitution, assailing an order of the Additional Director Consolidation of Holdings, passed on 8 June, 1965. A perusal of that order, together with the earlier order of 4 May, 1965 and the application for restoration dated 15 May, 1965, filed by Gurdev Singh, respondent No. 3, shows; Gurdev Singh, who had some complaint against the Consolidation Scheme, was not present so that petition was ordered to be filed by the Additional Director, Consolidation on 4 May, 1965. Gurdev Singh, soon therefore, i.e. on 15 May, 1965, filed an application for restoration supported by an affidavit, attributing his absence on 4 May, 1965 to his illness. The order dated 8 June, 1965 of the Additional Director, shows that the applicant Gurdev Singh's assertion that he could not attend due to illness, over which he had no control, was accepted by the Additional Director, who proceeded to exercise his powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act) and to set right the grievance of the applicant, Gurdev Singh, after going into all the relevant records. The learned Judge of the High Court, who heard the petition also went through the records very carefully, to the conclusion that an assertion of rights by the petitioners appellant, a member of the Sanjan Group, merely because of some report contained in the Fard Badar, could not take away the effect of entired in the revenue records. The learned Judge held that no injustice was caused to the petitioner/appellant, and for this reasons also there was no ground for interference under Article 226 of the Constitution.

2. The learned Counsel for the appellant has relied upon the case of Harbhajan Singh v. Karan Singh and Ors. , where this Court held that the Addl. Director exercising the powers of the State Government has no jurisdiction under Section 42 of the Act to review his previous order.

3. Section 42 of the Act runs as follows:

The State Government may at any time for the purpose 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 reserved without giving the parties interested notice to appear and opportunity to be heard except in case where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration:

4. 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 "honest". The view taken in Harbhajan Singh's case (*supra*) would not apply to the instant case although Section 42 of the Act, does not contain a power of review. Orders which are "honest" can be ignored at any stage.

5. On the facts and circumstances of this case, we think that this is not a fit case for interference under Article 136 of the Constitution. The appellant, if he has acquired any rights by reasons of long possession, can assert them whenever any proceedings are taken before competent authority to dispossess him. What we have held here or whatever has been held by the High Court will not affect such other rights any as the appellant may have acquired by reasons of possession. We do not know and refrain from deciding who is actually in possession and for how long and in what capacity. This appeal is dismissed. Parties will bear their own costs.