

CHET SINGH

v.

STATE OF PUNJAB & ORS.

March 24, 1977

[M. H. BEG, C.J., A. C. GUPTA AND P. S. KAILASAM, JJ.]

Constitution of India, Article 136—Powers to be exercised when—whether non-est orders can be ignored—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948—Section 42.

Gurdev Singh had certain complaints about the Consolidation Scheme. He was not present when his application was being considered. Therefore, the application was dismissed by the Additional Director, Consolidation. Thereafter, Gurdev Singh respondent No. 3 filed an application for restoration supported by an affidavit attributing his absence to his illness. The Additional Director accepted the ground of respondent No. 3 about illness and granted necessary relief to him. The appellant filed a writ petition in the High Court under Articles 226 and 227 of the Constitution. The High Court held that the assertion of rights by the appellant merely because of some report contained in the "Fard Badar" could not take away the effect of the entries in the revenue records. The High Court also held that no injustice was caused to the appellant and, therefore, there was no ground for interference under Article 226.

In an appeal by Special Leave, the appellant contended that the Additional Director had no power to review his previous order. The power to review conferred by section 42 of the Act has to be exercised only after hearing the interested parties. Since respondent No. 3 was not given an opportunity of being heard on account of his illness, it shows that the order passed was *non-est* and can be ignored at any stage. The court dismissed the appeal on the ground that this was not a fit case for interference under Article 136. The Court, however, observed that if the appellant has any right on account of long possession or otherwise he can assert them by adopting proper proceedings and that his rights would not be affected by whatever is stated in the judgment of this Court as well as the High Court.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2150 of 1968.

(Appeal by Special Leave from the Judgment and Order dated 5.9.1968 of the Punjab & Haryana High Court in L.P.A. No. 458/68).

V. C. Mahajan, Hardev Singh and R. S. Sodhi, for the appellant.

O. P. Sharma, for the respondents 1 and 2.

K. R. Nagaraja and P. N. Puri, for respondent No. 3.

The Judgment of the Court was delivered by

BEG, C.J. This appeal under Article 136 of the Constitution is directed against a very detailed Judgment of the Punjab & Haryana High Court on a Writ Petition No. 1875 of 1965 filed under Articles 226 and 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

A some complaint against the Consolidation Scheme, was not present so that his petition was ordered to be filed by the Additional Director, Consolidation on 4 May, 1965. Gurdev Singh, soon thereafter 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, came to the conclusion that an assertion of rights by the petitioner/appellant, a member of the Sanjam Group, merely because of some report contained in the "Fard Badar," could not take away the effect of entries in the revenue records. The learned Judge held that no injustice was caused to the petitioner/appellant also, there was no ground for interference under Article 226 of the Constitution.

D The learned counsel for the appellant has relied upon the case of *Harbhajan Singh v. Karam Singh & Ors.* reported in 1966 (1) S.C.R. 817, 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.

E Section 42 of the Act runs as follows :

F "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 :

G 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."

H 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." 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 'non est' can be ignored at any stage.

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 reason of long possession, can assert them whenever any proceedings are taken before a 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, if any, as the Appellant may have acquired by reason 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.

P.H.P.

Appeal dismissed.