

A

GRAM PANCHAYAT KAKRAN

v

ADDL. DIRECTOR OF CONSOLIDATION AND ANR.

OCTOBER 3, 1997

B

[SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948: Sections 19,20,21 and 42.

C

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949:

Rule 16(ii) and 18-Second Proviso—Scheme and repartition effected under the Act—Challenge to—Limitation period for—Net entitlement of father of second respondent determined in consolidation proceedings in 1956—No objection filed by father of second respondent during his lifetime—Application for re-opening the partition made by second respondent in 1996—Application allowed by Additional Director Consolidation—Writ preferred by appellant Gram Panchayat dismissed—Hence this appeal—Held, even if Rule 18 was not directly attracted application should have been filed within reasonable time—In this case inordinate delay of 40 years has not been explained satisfactorily—Therefore application of second respondent was not maintainable.

D

E

Jagtar Singh v. Additional Director, Consolidation of Holdings, Jalandar, AIR (1984) Pb. Haryana 216, referred to.

F

Gram Panchayat, Village Kanonda v. Director, Consolidation of Holdings, (1989) Suppl. 2 SCC 465, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7221 of 1997.

G

From the Judgment and Order dated 3.12.96 of the Punjab & Haryana High Court in C.W.P. No. 10741 of 1996.

R.K. Kapoor, (S.K. Srivastava) for Anis Ahmad Khan for the Appellant.

H

A.V. Palli for Ms. Rekha Palli for the Respondents.

The following Order of the Court was delivered :

Special leave granted.

The appellant is Gram Panchayat of village Kakran. In consolidation proceedings which took place in the year 1956 under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948, the net entitlement of Sangha Singh, father of the 2nd respondent was held to be of the value of 152-14-9 pai and after making deduction of the value 3-4-3 pai for common purposes, he was allotted 149-10-6 pai of land. The Resolution No. 120 which is dated 16.6.56 is under Section 20 of the Act confirming the Consolidation Scheme. Prior to such confirmation, under Section 19 the draft scheme is required to be published and objections have to be invited which have to be considered within the time prescribed in section 19. Thereafter under section 20, after considering the objections, the final scheme has to be confirmed. Under Section 21 the Consolidation Officer is required to carry out repartition in accordance with the scheme of consolidation in the manner set out therein. Under sub-section (2) of Section 21 any person aggrieved by repartition is entitled to file a written objection within 15 days of the publication before the consolidation officer. There are further provisions for appeal under section 21. Under Section 42, a power is given to the State Government to call for, *inter alia*, any scheme prepared or confirmed or repartition made by any officer under the Act for the purpose of examining legality or propriety thereof. The Section provides that this can be done by the State Government at any time. In the present case no objections under Section 21 appear to have been filed by the father of the 2nd respondent who was then alive. However, after 40 years, in the year 1996 the 2nd respondent made an application under Section 42 for re-opening the repartition, on the ground that there should not have been any deduction from his land there should not have been any deduction from his land for common purposes. This application has been entertained and an order has been passed by Additional Director, Consolidation dated 23.5.96 directing that a portion of the Bachat land be given to the 2nd respondent. The writ Petition filed by the present appellant-Gram Panchayat has been dismissed. Hence the present appeal has been filed before us.

Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 prescribes that an application under Section 42 shall be made within six months of the date of the order against which it is filed. Under the 2nd proviso to that Rule, there is a power to admit the

A application after the period of limitation, which requires the applicant to satisfy the authorities that he has sufficient cause for not making the application within such period. The 2nd respondent has relied upon a decision of the Full Bench of the Punjab & Haryana High Court in the case of *Jagtar Singh v. Additional director, Consolidation of Holdings, Jalandar*, AIR (1984) Pb. & Haryana 216. In this decision the High Court had held that the period prescribed under Rule 18 will apply only in respect of orders which are passed under the Act and will have no application to a scheme which is framed or repartition which has been effected under the Act.

This, however, cannot be understood as enabling the party which is aggrieved by the scheme or by repartition to make an application under Section 42 after an unreasonably long lapse of time. Even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. In fact this Court in the case of *Gram Panchayat, Village Kanonda v. Director, Consolidation of Holdings*, [1989] Suppl. 2 SCC 465 dealing with Rule 18 itself, said that when no limitation is prescribed for an application under Section 42 dealing with confirmation of the scheme, the application should be made within a reasonable time and this question will have to be decided on the facts of each case. In that case the delay of about 3 years and 8 months in filing an application under Section 42 by the Panchayat was held to be not unreasonable. In the present case, however, the delay is of 40 years. We have tried to ascertain from the 2nd respondent whether there is any explanation for this unreasonable and inordinate delay. But no satisfactory explanation appears to be there for this inordinate delay in making the application under Section 42. The only contention which has been urged before us by respondent No. 2 relates to the application of Rule 18 and the period of limitation prescribed therein not being applicable where the challenge is to the consolidation scheme and repartition. But even if Rule 18 is not directly attracted, an application which is made after such inordinate delay ought not to have been entertained. It is also contended by the 2nd respondent that the appellants have no locus standi to challenge the order of the Additional Director of Consolidation in a Writ Petition because the land in question continued to remain in the name of the proprietary body. He drew our attention to Rule 16(ii) of the said Rules. Rule 16(ii), however, quite clearly provides that the management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the Village Proprietary Party and the Panchayat shall have to utilise the income and the benefits of the estate or estates concerned. Even before

Additional Director, the appellants were made a party-respondent. This A
contention, therefore, has no merit.

The appeal is, therefore, allowed. The impugned order of the High Court
is set aside and the Writ Petition is allowed accordingly, No costs.

T.N.A.

Appeal allowed. B