

RUPENDER ALIAS RAJ KUMAR v. STATE OF HARYANA, (2022-3)207 PLR 004 , 2022 PLRonline 1570

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Augustine George Masih and Mr. Justice Sandeep Moudgil.

RUPENDER ALIAS RAJ KUMAR and others – Petitioners,

Versus

STATE OF HARYANA and others – Respondents.

CWP-3949-2022

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (50 of 1948) Section 43-A - Confer a power upon the Consolidation Officer to either correct an accidental slip or omission at any time on its own motion or on an application of any of the parties - This would mean that the party, who is likely to be adversely affected by exercise of such power, has not been made aware of the same or has been given an opportunity to assist and contest the said changes sought to be made by the said authority - In this case, it would be an order which would adversely affect a party or parties being passed in violation of the provisions of the principles of natural justice, which cannot sustain - Audi alteram partem is a well recognized principle of law.

Mr. Vikram Singh, for the petitioners. Ms. Rajni Gupta, Addl. A.G. Haryana, for State.

Augustine George Masih, J. (Oral) -(14th March, 2022) – Learned counsel for the petitioners submits that the order dated 06.11.2019 (Annexure P-4) passed by the Consolidation Officer, Karnal exercising powers under Section 43-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as '1948 Act'), is not sustainable in the light of the fact that the said order has been passed without issuing any notice to the parties concerned who have been adversely affected in pursuance to the said order. Counsel has further gone to the extent of saying that there is no power of review conferred under the 1948 Act and, therefore, the order, which has been passed under Section 42 of the 1948 Act in favour of the petitioners, cannot be set aside in this manner by the Consolidation Officer, Karnal without there being any notice to the petitioners and others.

2. On the last date of hearing i.e. 02.03.2022, learned counsel for the State was called upon to seek instructions with reference to the assertion of the counsel for the petitioners that the impugned order dated 06.11.2019 (Annexure P-4) has been passed without issuing notice to the petitioners, which fact is acknowledged by the counsel for the State. However,

an explanation has been sought to be projected by her with reference to Section 43-A of the 1948 Act, to contend that there is no mandate in the said provision for issuing notice or hearing the parties before passing the order.

3. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the record.

4. The issue involved in the present case is as to whether an order under Section 43-A of the 1948 Act can be passed by the Consolidation Officer without issuing notice to the parties who are likely to be adversely affected by such change/correction of a clerical error.

5. Section 43-A of the 1948 Act reads as follows:-

“43A. Correction of clerical errors:- Clerical or arithmetical mistakes in a scheme made, or an order passed by any officer, under this Act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties.”

6. A perusal of the above would only confer a power upon the Consolidation Officer to either correct an accidental slip or omission at any time on its own motion or on an application of any of the parties. This would mean that the party, who is likely to be adversely affected by exercise of such power, has not been made aware of the same or has been given an opportunity to assist and contest the said changes sought to be made by the said authority. In this case, it would be an order which would adversely affect a party or parties being passed in violation of the provisions of the principles of natural justice, which cannot sustain.

7. Audi alteram partem is a well recognized principle of law, which cannot be, in the garb of a statutory provision, as is being sought to be projected by the counsel for the petitioners, used to scuttle and deny a person his right, which has been earlier granted to him, may be erroneous.

8. In the light of the above, we set aside the order dated 06.11.2019 (Annexure P-4) passed by the Consolidation Officer, Karnal and direct the said authority to pass a fresh speaking order after issuing notice to all concerned parties and giving them an opportunity of hearing.

The writ petition stands allowed in the above terms.

Sd/- Sandeep Moudgil, J.

R.M.S.

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Petition allowed.