

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 25464 of 2016
Reserved on: 13.7.2023
Date of Decision: 21.7.2023**

Ram Chander and others

.....Petitioners

Versus

The Director, Land Records, Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Jatinder Singla, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Sandeep Gahlawat, Advocate for
Mr. Angrez Singh Dhindsa, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

Factual background

1. Respondent No. 2-one Mohinder Singh son of Saudagar Singh resident of village Mandvi, Tehsil Khanauri, District Sangrur, instituted against the petitioners herein, a petition under Section 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948). In the said petition, the above Mohinder Singh claimed that, in the finalized consolidation scheme, killa Nos. 125//21, 23 became allotted to the original owners. He also pleaded therein that in view of the consolidation scheme, a consolidation passage became provided to each tak, as became allotted to the right holders. The ancestors of the petitioner therein had given land on pro-rata cut for the common purposes of the village. He further pleaded therein, that the tak which had been given to

the petitioner therein, was allotted during consolidation proceedings, in killa Nos. 125//21, 22, 23, and, path to the said tak became provided in the north of killa No. 158//4, and, in the northern-eastern corner of 158//3, and, the petitioner therein, was using the said path since the consolidation proceedings concerned. It is also pleaded in the petition (supra), that on an objection being raised by the respondents therein, the petitioner inquired the relevant revenue record. On inquiry thereof, he came to know that owing to a mistake of the consolidation department concerned, that a path was not provided, during the consolidation scheme hence to the tak of the original owner of the petitioner therein, whereas, the consolidation scheme enjoins the essentiality qua providing of a consolidation passage to the tak of each estate holders. Therefore, an espoused was made for the according of the claimed passage.

2. The authority, before whom the said petition became presented, through an order, made on 28.1.2015, and, which becomes enclosed in Annexure P-7, assigned the claimed passage to the petitioner therein one Mohinder Singh. A perusal of Annexure P-7 also discloses, that in granting a new revenue rasta, other than the one which was provided in the finalized consolidation scheme, by the Consolidation Officer concerned, the authority concerned, made the hereinafter extracted, thus withdrawals, and, additions to the lands of the estate holders concerned.

Sr. No.	Name of the owner	Area excluded	Area included	Remarks
1.	Mohinder Singh son of Saudagar Singh etc. Mudarja Khewat No. 56, Jamabandi for the year 2005-06	Khasra No. 125//23 min South-east, 3-4-37-37 37x(4+3)/2 area 0-14 marlas	-	
2.	Naib Singh son of Ujjagar Singh etc. Mudraja Khewat No. 450, Jamabandi for the year 2005-06	Khasra No. 158//4 min North, 3-3-40-40 40 x 3 area 0-13	Khasra No. 158//3 min East-South 33-33-4-3 33x(3+4)/2 Area 0k-13 Marlas	

		marlas		
3.	Munshi Ram son of Ram Sukh etc. Mudraja Khewat No. 533, Jamabandi for the year 2005-06	Khasra No. 158//3 min North-east corner 3-3-3-3 3 x 3 area 0K-1 marla, Khasra No. 158//3min East-South 33-33-4-3 33x(3+4)/2 Area 0K-13M	Khasra No. 125//23 min South-Wast, 3-4-37-37 37x(4+3)/2 area 0-14 marlas	
4.	Jumla Mushtarka Malkan	-	Khasra No. 158//4 min North 3-3-40-40 40 x 3 area 0-13 marlas, Khasra No. 158//3min North-East corner 3-3-3-3 3 x 3 area 0K-1 marla	Gair Mumkin Rasta, Maqbooa Saream

3. Therefore, the petitioners being aggrieved from the above made order, are led to obviously institute thereagainst the instant petition before this Court.

Objective of the Act of 1948

4. The statutory object of the Act of 1948, is to prevent fragmentation, and, to consolidate the land holdings of the estate holders whose lands are scattered in small patches, thus in different portions of the mohal concerned. Moreover, the consolidation officer concerned, is also required to, in his drawing the finalized consolidation scheme, rather ensure the participation therein, of all the estate holders, and, also is required to constitute a “mushawra committee” for ensuring that the purpose (supra) of the Act of 1948, is given the fullest lawful consensual effect. Moreover, after the finalization of the consolidation scheme, the consolidation officer, rather in terms of Section 22 of the Act of 1948, is also required to be updating the records.

5. Be that as it may, it is also a statutory obligation upon the consolidation officer concerned, to in the finalized consolidation scheme

thus earmark therein a revenue rasta hence for enabling all the estate holders to exercise thereons their easementary rights.

Inordinate delay in casting the statutory motion bars relief

6. It is not disputed amongst the contesting litigants, that in the finalized consolidation scheme, which happened in the year 1962-63, rather a revenue rasta was earmarked therein, obviously for enabling the estate right holders to exercise thereons their easementary rights. Resultantly, the said revenue rasta, did in terms of Section 22 of the Act of 1948, became entered in the revenue records.

7. The motion for the relevant purpose, and/or for the purpose of correcting the apposite revenue entry, as became made in the year 1962-63 in respect of the untenability of carving of a consolidation revenue rasta, but was made after almost 50 years elapsing therefrom, inasmuch as it was made in the year 2012.

8. The above gross delay is of paramount importance. Though Section 42 of the Act of 1948, provisions whereof stand extracted hereinafter, does not prescribe any rigid period of limitation, rather for provisions thereof becoming ably recoured by the aggrieved, but yet for a tenable motion being made in terms thereof, before the competent authority concerned, the said motion has to be made within a reasonable time. However, any inordinately procrastinated period of delay (supra), but is not a reasonable time, for the said remedy becoming ably recoured, rather thus the same reeks of the stench of gross delay and latches. Thus, on the above vice of gross delay and latches, the relevant motion was misconstituted, and, was required to be not entertained.

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.]

9. Though the exception to the above principle, would be in case there is a material irregularity or gross illegality in the drawings of the finalized consolidation scheme, but no such gross illegality or material impropriety, has been noticed in the drawings of the consolidation scheme, by the consolidation officer concerned. Therefore, also the above vice of gross delay and laches remained alive, and, did render the belated motion, as, laid before the competent authority concerned, rather to be completely misconstituted.

10. In support of the above conclusion, this Court draw vigour from a judgment of the Hon'ble Apex Court, rendered in case titled as ***Gram Panchayat, Kakran versus Additional Director of Consolidation*** to which ***Civil Appeal No. 7221 of 1997*** became assigned.

No departure from the revenue rasta concerned, in the consolidation scheme rather any other rasta can be claimed only from the civil Court

11. As above stated, the revenue rastas were carved in the finalized consolidation scheme, and, also in terms of Section 22 of the Act of 1948, thus revenue entries were made in the revenue records. The said revenue entries was created in the year 1962-63. The said revenue entries were unalterable, except in accordance with a decree of the Civil Court or through

a title suit, being filed before the authorities, contemplated in the Punjab

Village Common Lands (Regulation) Act, 1961. Thus, the alteration of the revenue rasta, as made through the impugned order, is completely outside the domain of the able jurisdiction vested in the authorities constituted in the Act of 1948.

12. Preeminently also an able jurisdiction was exercisable by the authorities contemplated under the Act of 1948, but only if no revenue rasta was carved by the consolidation officer concerned, and/or if such a revenue rasta was carved, yet there being an evident obstruction against users thereof, at the instance of the petitioners herein, and/or, against its user by the private respondents concerned. In that regard, the evidence existing on record, as above stated, rather discloses that the consolidation officer concerned, in his drawing of the finalized consolidation scheme, had earmarked therein rather the apposite revenue rasta. If so, and, when there is no further evidence displaying that the respondent(s) herein became obstructed or halted by the adversary litigant concerned, from theirs using the same for theirs exercising thereons their easementary rights, whereas, the above proven obstruction may have empowered the authorities concerned, to yet exercise an able jurisdiction on the relevant motion. Therefore, when, as above stated, no evidence (supra), is existing on record. Thus, no able empowerment becomes vested in the authorities contemplated in the Act of 1948, to yet decide the apposite belated motion in favour of the private respondents herein. The above has resulted, as revealed by the hereinabove extracted table, to untenably annul the updation of the record, as made by the consolidation officer concerned, in terms of Section 22 of the Act of 1948. The above alteration was impermissible, as it could have been done only under a decree of the Civil Court. Moreover, such an alteration has also transgressed the spirit of the Act of 1948, which is but enacted with an

objective of ensuring consolidation of scattered lands of the estate holders, rather into a consolidated chunk. Therefore, on the above score, the impugned order is liable to be quashed, and, set aside.

Final order

13. In the wake of the above discussion, this Court finds merit in the petition, and, is constrained to allow it. Consequently, the petition is allowed. The impugned order (Annexure P-7) is quashed and set aside, leaving liberty to the private respondents to, on the basis of prescription and necessity file a civil suit before the Civil Court concerned, claiming therein a declaratory easementary relief qua the claimed path.

14. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 21, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No