

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 23184 of 2017 (O&M)

Reserved on : 07.12.2023

Date of Decision: 16.12.2023

Gurjant Singh and others

.....Petitioners

Versus

The Director, Land Records, Punjab,
Jalandhar and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. A.K.Walia, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. A.S.Dhindsa, Advocate
for respondents No. 2 to 6.

Mr. Rajinder Kumar Dahiya, Advocate
for respondent No. 7.

Ms. Tamanna, Advocate for
Ms. Kavita Arora, Advocate
for respondent No. 8.

SURESHWAR THAKUR, J.

1. The present petitioners become aggrieved by the order dated 02.8.2017 (Annexure P-3), whereby the authority concerned, after ordering for the realignment of the rasta concerned, which was declared in the finalized consolidation scheme, to become borne in khasra No. 492//22/2, thus ordered that a straight passage be carved out, rather on the northern side of khasra No. 551//2.

Submissions of the learned counsel for the petitioners

2. The learned counsel for the petitioners has contended, that the impugned order, as became passed through invocation of jurisdiction under

Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948'), is liable to be faulted on the ground, that it became made after almost 50 years elapsing, since the finalization of the consolidation scheme rather happening in the year 1960-61. He further submits, that despite no valid reason being made out, in the apposite application, thus for the said delay becoming condoned, and, nor when any speakings occur in the impugned order, thus suggestive, that the said inordinate delay is sufficiently explained, thereby on the ground of limitation, the impugned order is required to be quashed, and, set aside. The learned counsel for the petitioners also contends, that if the consolidation rasta, was carved in the finalized consolidation scheme, which became drawn in the year 1960-61, thereupon unless there was any evident obstruction or hindrance, thus caused against user thereof, rather by the other estate holders concerned, thereupon, neither a fresh or a new consolidation rasta, nor any rasta in substitution to the said carved consolidation rasta, thus could be carved, nor it was to be substituted, as became untenably done through the impugned order.

Submissions of the learned counsels for the respondents

3. The learned counsels for the respondents submit, that the impugned order does not suffer from any gross illegality or impropriety, nor the bar of limitation was required to be attracted to the relevant lis, as only a clerical mistake has been rectified through the impugned order. Resultantly, thereby it is contended, that since in the makings of rectification(s) of consolidation mistakes, as occur in the finalized consolidation scheme, thus an able jurisdiction, did vest, in the authority, contemplated under Section 42 of the Act of 1948. Therefore, it is contended, that the instant writ petition

has no merit, and, is required to be dismissed.

Analysis of the submissions of the learned counsel for the petitioners, and, of the learned counsels for the respondents, and, reasons for rejecting the submissions of the learned counsels for the respondents, and, accepting the submissions of the learned counsel for the petitioners.

4. Initially, the lis, as became constituted before the learned authority concerned, was so constituted after an evident inordinate delay of 50 years, elapsing since the finalization of the consolidation scheme in the year 1960-61, and, upto the lis becoming instituted before the authority concerned.

5. Though, no period of limitation is prescribed in Section 42 of the Act of 1948, yet irrespective of no prescribed period of limitation becoming borne in Section 42 of the Act of 1948. Nonetheless, the relevant motion is to be cast within a reasonable period of time.

6. The only exception to the above would be, in case a gross or dire clerical mistake, thus thereby prejudicing the right, title and interest of the estate holders concerned, rather may not attract theretos the bar of limitation. However, in the instant case, no purported clerical error existed in the finalized consolidation scheme, nor the same was rectifiable, thus after a gross delay of 50 years, thus happening since the finalization of the consolidation scheme, taking place in the year 1960-61 thus upto the relevant *lis* becoming instituted. Therefore, unless the said gross delay became well explained, and/or reasons for condoning the said delay became assigned, by the learned authority concerned, thereupon, at the outset the lis was not maintainable, and, rather it was required to be declared to be completely barred by limitation. However, the above has not happened. Contrarily, even despite evidently a consolidation rasta being carved by the consolidation officer concerned, in the consolidation scheme, thus finalized

in the year 1960-61, and, to the said consolidation rasta khasra No. 492//22/2 becoming assigned, yet through the impugned order, another consolidation rasta, but in substitution thereof, being ordered to be carved over khasra No. 551//2, thus on the pretext that the earlier consolidation rasta is curved, and, the substituted thereto rasta, through the impugned order, rather is straight. Therefore, it appears, that only to ably facilitate the respondents herein, the said untenable substitution has taken place.

7. In other words, the jurisdiction vested in the authority contemplated under the Act of 1948, is limited, only to create a consolidation rasta, if not earlier created, besides is exerciseable but only if the consolidation rasta is obstructed. However, in the instant case, the above grievances became not ventilated, rather despite the consolidation rasta becoming carved in the finalized consolidation scheme, yet in substitution thereto, another rasta became untenably carved. The said substitution, as, done through the impugned order, to the earlier carved rasta, fillips a conclusion that the impugned order is rendered in departure from the lawful jurisdiction vested in the authority concerned. In consequence, the impugned order suffers from a gross illegality, and, is required to be quashed, and, set aside.

8. However, if the respondent concerned, was aggrieved from the consolidation rasta, thereupon if he intended to, on the basis of prescription and necessity espouse, thus for a rasta alternate to the consolidation rasta, becoming declared as such, thereby, than his filing a petition under Section 42 of the Act of 1948, he was to file a declaratory suit, premised on prescription and necessity, thus before the Civil Court concerned. However, the above recourse became not adopted rather the above untenable recourse became adopted. Therefore too, the impugned order is liable to be faulted.

Final order

9. Consequently, this Court finds merit in the instant petition, and, is constrained to allow it.

10. Accordingly, the instant petition is allowed. The impugned order is quashed and set aside. However, liberty is reserved to the respondent concerned, to file a declaratory suit, premised on easements of prescription and necessity, thus before the Civil Court concerned.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 16, 2023

Gurpreet

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