

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-943-1993

Decided on : 02.07.2015

Karpal Singh

.... Petitioner

VERSUS

**Director Consolidation of Holdings,
Punjab, Chandigarh and others**

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
 HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: **Mr.Jai Bhagwan, Advocate, for the petitioner.**

Mr.A.P.Kaushal, Advocate, for respondent No.3.

RAJIVE BHALLA, J. (ORAL)

The petitioner prays for issuance of a writ of certiorari, quashing order dated 01.12.1992 (Annexure P-8), passed by the Director, Consolidation of Holdings, Punjab, Chandigarh (exercising power under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act')).

Counsel for the petitioner submits that Jagsir Singh may have purchased land from Bachan Singh but as the land was purchased after consolidation and was part of a larger parcel of land which was already allotted a path during consolidation, the petition for allotment of a path was not maintainable. Counsel for the petitioner further submits that after conclusion of proceeding consolidation authorities are *functus officio* and cannot take

cognizance of post consolidation events namely purchase of a part of a larger parcel of land which was already allotted a passage and allot a path to such land. The impugned order allotting a path to Jagsir Singh respondent No.2 is illegal and void and may be set aside.

Counsel for respondent No.3 states that the path has been rightly allotted and cannot be allotted from land belonging to respondent No.3 who has already raised construction.

A notice informing him of the date fixed for arguments was ordered to be served on contesting respondent No.2. The notice was received back served but as respondent No.2 did not to enter appearance, a second notice was ordered to be served. The second notice has been received back with the report that respondent No.2 is out of the country. As respondent No.2 has chosen not to enter appearance, despite knowledge that the case is fixed for arguments, we have appraised his reply and proceed to decide the writ petition.

A perusal of the reply, filed by respondent No.2, reveals that respondent No.2 has averred that he claimed a passage through the land of respondent No.3 on the premise that no path was allotted during consolidation but as respondent No.3 had already constructed a room, the path has been validly allotted from the petitioner's land after holding that a path was not allotted during consolidation.

We have heard counsel for the parties, perused the reply filed by respondent No.2 as well as the impugned order.

Jagsir Singh, son of Dharu Singh (respondent No.2), filed

a petition under Section 42 of the Act, praying that a path may be provided to land purchased by his father, on 11.06.1970. The Director Consolidation proposed a path through the land belonging to Ruldu Singh (respondent No.3) but eventually as Ruldu Singh had raised construction, a path was ordered to be provided through Khasra No.310 min, by withdrawing 0-5 marlas from the petitioner and allotting 0-5 marlas from Khasra Nos.305/1 min and 307 min to Hardial Singh, Sukhdial Singh and the petitioner who were co-sharers at the relevant time.

A perusal of the facts reveals that Jagsir Singh's father purchased Killa No.281 from Bachan Singh, vide sale deed dated 11.06.1970, after conclusion of consolidation proceedings. The land, so purchased, forms part of a larger parcel of land, which was allotted a path during consolidation. The question, therefore, that calls for an answer is whether a post consolidation vendee, who purchases a part of a larger parcel of land already allotted a path during consolidation can approach consolidation authorities for allotment of a path to the smaller parcel of land purchased after consolidation?

The answer to the question, in our considered opinion, must obviously be in the negative. After conclusion of proceedings, consolidation authorities are *functus officio*, except to the extent of correcting errors committed during consolidation. A vendee post consolidation may seek a path from consolidation authorities only if

the land so purchased was not allotted a path but if a post consolidation vendee purchases a part of the larger parcel of land, which was allotted a path during consolidation, he cannot call upon consolidation authorities to allot a path as there is no error that consolidation authorities could have rectified in the exercise of jurisdiction under Section 42 of the Consolidation Act. A vendee faced with such a situation, would be required to either approach his vendor for an appropriate path or seek his remedy by pleading and proving an easement of necessity but cannot approach consolidation authorities for correction of an error as no such error was committed during consolidation.

Jagsir Singh had no right to approach consolidation authorities for allotment of a path as the larger parcel of land, from which he purchased a smaller parcel of land, had already been allotted a path, a fact the Director Consolidation failed to discern while allotting a path through the petitioner's land.

Consequently, the writ petition is allowed, the impugned order is set aside leaving it to Jagsir Singh son of Dharu Singh, to seek such other remedy, as may be available, in accordance with law.

[RAJIVE BHALLA]
JUDGE

02.07.2015
shamsher

[AMOL RATTAN SINGH]
JUDGE