

CWP No. 17821 of 2015
DECIDED ON: AUGUST 27, 2015

.....PETITIONER

VERSUS

.....RESPONDENTS

Present: Mr. Jatinder Singla, Advocate
for the petitioner.

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- 1. Whether Reporters of Local papers may be allowed to see the judgment?***
- 2. To be referred to the Reporters or not?***
- 3. Whether the judgment should be reported in the Digest?***

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JASPAL SINGH, J

Challenge in this writ petition is to the order dated January 14, 2015 (P-19) passed by respondent No.1 whereby, petition preferred by the petitioner under Section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'Act') for correction of mistake/error committed during consolidation proceedings, has been dismissed.

2. Shortly put, the case of petitioner is that prior to the consolidation, land measuring 41 bighas 10 biswas was under possession of Hasan son of Gulab Nabi, Sarfu, Jusaf etc. $\frac{1}{4}$ share, Navia son of Genda $\frac{1}{4}$ share, Karimdeen etc. $\frac{1}{4}$ share, Ralla etc. $\frac{1}{4}$ share out of $\frac{3}{10}$ share as per jamabandi for the year 1944-45 (P-1). On July 28, 1960 mutation No. 4466 of Tabdeel Malkiat was sanctioned

and Sarfu and others i.e. ancestors of petitioner were shown as “Marusians”. On the same day, vide mutation No. 4467 the above-said Sarfu and others were recorded as owners on the basis of operation of Act No. 29 dated July 05, 1958 [Punjab Occupancy Tenants (Vesting of Proprietary Rights) Amendment Ordinance 1958] by making correction in column No. 4 of the said mutation. Ancestors of petitioner i.e. Abdul Gafoor etc were recorded as co-owners/co-sharers in the land in dispute. The said mutation was never challenged by any of the right holders including the respondents at any point of time. Karimdeen and some of his other co-sharers claiming themselves to be owners sold 9/10 share of the land in dispute vide registered sale deed No. 1493 dated August 21, 1958. In fact, they were not entitled to sell 9/10 share of the land, as some other co-sharers namely Mohd. Ramzan and Navia had not sold their share of land. However, mutation No. 4468 on the basis of afore-said sale deed was sanctioned on August 31, 1960. Prior to the consolidation of village, as per jamabandi for the year 1959-60, khata/khewat No. 703/1217, as 1/10 share was corrected vide order dated February 16, 1962 passed by Deputy Commissioner, which was subsequently mutated in the name of petitioner's ancestors by deleting the entry showing the ownership of the custodian. Mutation No. 4871 was sanctioned in this regard on April 11, 1962, measuring 18 bighas 3 biswas. Though, Ali Hasan was neither owner of land measuring 18 bighas 3 biswas nor was he co-sharer with Sarfu, Yusuf and others, as per mutation No. 4467, yet he sold the said land to Jagir Kaur. Jagir Kaur was also not entitled to any land during consolidation proceedings. Since, Ali Hasan etc. was/were not competent to sell the property, Jagir Kaur cannot have a better title than him. Thus, she was not entitled to any

land during consolidation. However, she was allotted the land measuring 30 kanals 1 marla in lieu of land measuring 18 bighas 3 biswas. In fact, ancestors of the petitioner were entitled to the allotment of the land in lieu of land measuring 18 bighas 3 biswas. Due to the non-allotment of the above-said area, petitioner suffered deficiency which necessitated filing of the instant petition under Section 42 of the Act.

3. While reiterating the facts, the impugned order has been assailed on the ground that the entire approach of respondent No.1 while dismissing the petition holding that the same is barred by limitation is wrong and illegal. An error and omission had occurred during preparation and confirmation of the scheme and re-partition. After the correction of mistake, error or omission having occurred during preparation and confirmation of scheme and re-partition under Section 21(1) of the Act, the Authority under Section 42 of the Act has full and exclusive jurisdiction to entertain and adjudicate the matter and to correct any mistake, error or omission so committed during consolidation. In such a situation, law of limitation does not apply. Moreover, petitioner does not know the technicalities of law. As and when he came to know about the error, he approached the concerned authorities. It is also well settled that when technical considerations and cause of substantial justice are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of the non deliberate delay. Moreover, during the pendency of petition under Section 42 of the Act before the Director Consolidation, an application alongwith amended petition dated May 10, 2011 (P-17) seeking condonation of delay was filed but respondent No.1 did not

consider the said prayer and declined to condone the delay without assigning any reason. As a result whereof, petitioner has been greatly prejudiced as it has resulted in legalizing the injustice on technical grounds. Thus, impugned orders are not sustainable in the eyes of law and are liable to be set aside.

4. After bestowing due consideration to the aforesaid submissions and scrutinizing the impugned order(s), we do not find any legal substance therein.

5. The primary grouse ventilated by the petitioner through instant petition is that petition under Section 42 of the Act has been wrongly dismissed on the ground of limitation despite the fact that no such limitation has been provided under the Act. It is true that no period of limitation has been stipulated for entertaining petition under Section 42 of the Act but by now, it is pretty settled that such a petition must be preferred within a “reasonable period”.

6. The determination of “reasonable period” is a question of fact which would depend upon the facts of each case. If, there is some plausible explanation with regard to delay which could satisfy the authority, the concerned authority may condone the delay but after recording the reasons in writing for arriving at such a conclusion. Moreover, the issue regarding limitation is no longer *res-integra* and has been authoritatively answered by Hon'ble Supreme Court in the case of **Gram Panchayat, Kakran vs. Addl. Director of Consolidation and another; 1997 (8) SCC 484** wherein, it has been held that no application under Section 42 of the Act could be entertained after an inordinate delay without any satisfactory explanation. It has further been held that even where no period of limitation is prescribed, the aggrieved party is required to move to the appropriate Authority for the relief within a “reasonable time”.

7. Similarly, in the case of **Gram Panchayat Village Ladhpur vs. State of Punjab and others; 2015 (1) RCR (Civil) 652;** the Consolidation was held in the year 1950-51 but a petition under Section 42 of the Act was admittedly moved by some of the proprietors in the year 1994, which was held to be unreasonable. In the case of **Gram Panchayat of village Hari Nagar Kherki vs. Director, Consolidation of Holdings, Punjab and others; 2004 (4) RCR (Civil) 687;** it was observed that once the consolidation proceedings had been completed in the year 1959-60 and the scheme had already been prepared and implemented then there was no reason as to why the respondents waited for more than 25 years for filing a petition under Section 42 of the Act. By reversing the order passed by Director, Consolidation, an application under Section 42 read with Section 43-A of the Act was dismissed.

8. Similarly in the case of **Gram Panchayat, village Shekhupur vs. Union of India and others; 2005 (3) RCR (Civil) 302;** there was an unexplained delay of 40 years and it was observed that an un-explained delay invites summary rejection of the petition under Section 42 of the Act.

9. Adverting to the facts of the case in hand, Consolidation is stated to have taken place in the year 1965-66. Earlier the petitioner filed a petition before the Additional Director, Consolidation under Section 42 of the Act but the same was dismissed as withdrawn it being incomplete vide order dated June 15, 1995 (P-12). The said petition can be said to have been filed after more than 28 years. Even thereafter, petitioner remained inactive for a period of more than 12 years as the fresh petition was filed in the year 2007. There is no explanation, what to talk of any plausible explanation, for such a long and inordinate delay. We are, thus,

of the considered view that Director, Consolidation was fully justified in dismissing the petition on the ground of unreasonable delay, which is absolutely unexplained.

10. As a sequel to the afore-said discussion, we do not find any merit in the instant petition. As such, the same is dismissed.

[JASPAL SINGH]
JUDGE

[SURYA KANT]
JUDGE

AUGUST 27, 2015
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