

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

CWP No.23168 of 2014

Date of decision: 24.07.2015

Savitri

....Petitioner

Vs.

State of Haryana and others

....Respondents

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

Present: Mr. H.S. Rao, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. D. Khanna, Addl. Advocate General, Haryana
for respondents No.1 and 2.

Rajive Bhalla, J (Oral)

The petitioner, prays for issuance of a writ of certiorari, quashing order dated 11.07.2014, passed by the Commissioner, Rohtak Division, Rohtak, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the 1948 Act”).

Counsel for the petitioner submits that the petition under Section 42 of the 1948 Act was filed more than 50 years after completion of consolidation proceedings but this inordinate delay has been ignored by the Commissioner. The Commissioner has also ignored the fact that the land in dispute was already partitioned between respondent No.3 and his co-sharers and it was for this reason that there is no path to the land belonging to respondent No.3. Counsel for the petitioner further submits that the petitioner was never served. The private respondents procured a false report and submitted it before the Commissioner. Even otherwise, the learned

Commissioner should have waited for at least one more date or ordered substituted service but instead immediately passed the impugned order in favour of respondent No.3. Counsel for the petitioner further submits that as there was no error in consolidation proceedings, the impugned order is without jurisdiction and may be set aside.

As contesting respondent No.3 did not put in appearance despite service, he was proceeded against ex parte, on 10.03.2013.

We have heard counsel for the petitioner and perused the impugned order.

An appraisal of the facts reveals that the petition under Section 42 of the 1948 Act was filed after a delay of about four decades. The learned Commissioner was required to but has neither referred to, nor considered the delay. A further perusal of the order reveals that the petitioner was proceeded against ex parte on the basis of a report that she has refused to accept the notice. The learned Commissioner, may be justified in passing an ex parte order but should have been conscious of the fact that he would be re-opening consolidation proceedings that had concluded about four decades ago.

Taking into consideration the aforementioned facts, particularly the fact that delay of four decades has not been considered, the impugned ex parte order is set aside, the writ petition is allowed and the matter is remitted to the Commissioner, Rohtak Division, Rohtak for adjudication afresh, within three months of receipt of a certified copy of this order.

The petitioner is directed to appear before the Commissioner,
Rohtak Division, Rohtak, on 24.08.2015.

(Rajive Bhalla)
Judge

July 24, 2015
vcgarg

(Amol Rattan Singh)
Judge