

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Civil Writ Petition No.6470 of 2014

Date of decision: August 6, 2015

Dilbag Singh and others

...Petitioners

Versus

Director Consolidation, Haryana, Chandigarh and others

...Respondents

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

Present:- Mr.R. S.Tacoria, Advocate,
for the petitioners.

Mr.Pravinder Singh Chauhan, Additional Advocate General,
Punjab.

Mr.C.B.Goel, Advocate,
for respondent no.3.

Amol Rattan Singh, J.

The petitioners seek quashing of the orders dated 22.12.1998, 30.06.1999 and 07.09.2011, passed by the Director Consolidation, Haryana, the Consolidation Officer, Hisar and the Commissioner, Ambala Division, Ambala, respectively, the last authority, also exercising power as Director, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Act, 1948 (hereinafter to be referred to as “the Act”).

2. The first order impugned, dated 22.12.1998, was also passed by

the Director Consolidation, on an application moved by respondent no.3

under Section 42 of the Act.

By this application, respondent no.3 had sought re-alignment of path No.493 as had been carved out during consolidation proceedings, in village Fariabad, Tehsil and District Kaithal. The said path was provided through “killa” No.30/3 and as per the applicant, actually ran through an area which was low lying and got inundated and, as such, the path was actually not being used.

3. The Gram Panchayat of the village, which had been impleaded as a respondent before the Director, appeared through the Sarpanch and did not oppose the application. Consequently, vide the said order, the Director issued a direction to the Consolidation Officer, Hisar, to inspect the spot and thereafter, provide a path from the East to North side of “killa” No.30/3 and West to North side of “Killa” No.30/7. It was further ordered that in case there was a shortfall of area while providing the path, it would be compensated from the land of the applicant, i.e. present respondent no.3.

4. Consequently, the Consolidation Officer, Hisar, carried out the directions and vide order dated 30.06.1999, while holding that the whole path provided in the consolidation proceedings was actually not running at the spot, ordered the re-alignment, by modification of the consolidation scheme to that extent.

5. The petitioners, who are residents of the said village, filed CWP No.13451 of 2011 before this Court, impugning the aforesaid two orders. The petition was disposed of on 28.07.2011, with the following order:-

“The petitioners seek quashing of the orders dated 22.12.1998 and 30.06.1998 (Annexure P-2 & P-3) passed by the Consolidation Officer, Hisar and the Director Consolidation, Haryana, respectively. It is contended that the petitioners were

neither impleaded as party-respondents nor they came to know about these orders for all these years.

In my considered view, no interference by a writ court in the impugned orders at this belated stage is called for. If an Authority has taken a decision behind the back of the petitioners, there is nothing precluding the petitioners to approach that Authority and if any such application is moved by the petitioners, the same shall be considered and disposed of in accordance with law.

Ordered accordingly.”

6. Thereafter, the petitioners again filed an application under Section 42 of the 1948 Act, before the Commissioner, Ambala Division, Ambala, (in his capacity as Director, Consolidation), who vide order dated 07.09.2011, held that if the applicants or any other persons were dissatisfied with the order dated 30.06.1999, then they could have filed an appeal within time before the appropriate authority, but did not do so. The Commissioner also held that, this apart, he had no power to review the earlier orders dated 22.12.1998, passed by his predecessor, consequent upon which the order dated 30.06.1999 had been passed and that too, after more than ten years. Consequently, the application filed by the petitioners was dismissed.

7. Mr. Tacoria, learned counsel for the petitioners, submitted that, as already noticed by this Court while disposing of Civil Writ Petition No.13451 of 2011, the petitioner had no knowledge of the impugned orders and had therefore, challenged them only when the path actually started getting re-aligned/changed, as, according to the petitioners, the order dated 30.06.1999 was not actually implemented till shortly before filing of the aforesaid writ petition.

8. Mr. Tacoria drew attention to the site plan, Annexure P-1, in

which it is shown that the original path was running in a straight line, whereas the new path was re-aligned in a manner so as to inconvenience all those travelling on it, by the creation of three sharp, angular bends, to eventually rejoin the original path.

Counsel for the petitioners further submitted that this was done only in order to facilitate respondent no.3, whose land was divided into two with the path going straight, as carved out during consolidation proceedings. Respondent no.3 had never objected at that time, to any authority. Now, with the re-alignment, though the bifurcation of the land of respondent no.3 would be done away with, but it would inconvenience the public travelling on the path, which is stated to be, according to the petitioners, a common path from one village to another.

9. Mr.C.B.Goel, learned counsel appearing for respondent no.3, on the other hand, submitted that firstly, the petitioners having remained silent for more than 12 years after the impugned order dated 30.06.1999 was passed and 13 years after the order dated 22.12.1998 was passed, they could not challenge the said orders by way of a writ petition and as such, this Court had refused to entertain the earlier writ petition on that ground alone. The Commissioner, both on the ground of delay, as also for lack of jurisdiction, has also dismissed the application of the petitioners and as such, at this belated stage, they are precluded from challenging the same orders again, after a delay of more than 15 years.

Mr. Goel also submitted, that the re-aligned path is now fully operational, and is being used, whereas the old path was actually never used, as it passed through a low lying area. He next submitted that the land of the petitioners being nowhere near the area in which the path has been re-

aligned, they have no *locus-standi* to challenge the same.

10. Mr. Tacoria, on the other hand, in rebuttal, submitted that since the petitioners and all other villagers are directly affected by the re-alignment of the path, they very much have *locus-standi* to challenge the same, with the delay having already been explained, as contended earlier.

11. Having heard learned counsel for the parties, we are of the opinion that, undoubtedly, the path as shown in Annexure P-1, has been re-aligned in a manner which forms a circuitous route. However, whether or not the petitioners, firstly, have any *locus* to challenge the same and whether or not the old path was actually in a low lying area and was used or not, is a question of fact which would be best gone into by consolidation authorities. This apart, it appears that, as, after consolidation, the path bifurcated the land of Respondent no.3, the reason for change of alignment may have been to provide a consolidated chunk of land to the said respondent, though no finding with regard to this is discernible from the impugned orders.

12. Consequently, we quash the order dated 07.09.2011 and remand the matter to the Commissioner (exercising power under Section 42 of the Act), who, in appropriate manner, would go into the issue of the *locus-standi* of the petitioners, as also the factual position with regard to the need for re-alignment, on account of the old path going through a low lying area, whether or not the re-aligned path has now actually started functioning and if so, for how long and whether it causes any inconvenience to the general public, etc. These would all be issues that would be gone into by the Commissioner.

The writ petition is, consequently, partly allowed as above and the matter is remitted to the Commissioner, Ambala Division, Ambala, for re-

consideration. Parties would appear before the Commissioner, Ambala Division, Ambala, on 03.09.2015.

Till the final decision by the Commissioner, parties shall maintain status quo, as exists today.

6th August, 2015
vcgarg/dinesh

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE