

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

CWP No.2063 of 1987 (O&M)

Date of decision: May 03, 2016.

Darshan Singh

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri Balbir Singh Saini, Advocate, for the petitioner.

Shri Rajesh Bhardwaj, Additional Advocate General, Punjab.

None for the private respondents.

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

Surya Kant, J. (Oral):

The petitioner has laid challenge to the order dated 23.10.1986 (Annexure P-2) passed by the Additional Director (Consolidation of Holdings), Punjab in purported exercise of powers under Section 42 of the Consolidation of Holdings and Prevention of Fragmentation Act, 1948 (in short the Act). Vide the impugned order, the 2nd respondent's petition has been allowed to the extent that the passage provided to the petitioner's land by the Consolidation Officer under Section 21 of the Act has been re-located on the premise that the land of the petitioner is already well connected with two existing paths and thus he does not require the third path sanctioned in his favour by the Consolidation Officer.

Perusal of the record reveals that respondent No.2 in his

petition under Section 42 of the Act averred that he and the respondents (in his petition), namely, the petitioner and proforma respondents have been using a service path passing through the boundary of killa No. 50//1, 2, 3, 4, 5, and 50//6, 7, 8, 9 since the consolidation proceedings which were held nearly 20 years back. He further averred that on an application moved by the petitioner, a third path was carved out even though there were already two paths well connecting the land of the petitioner and which was straight and short from the village abadi.

The above stated contention of the 2nd respondent has been held to be genuine and correct by the Additional Director while passing the impugned order.

The record further reveals that vide order dated 15th April, 1987, this Court stayed the operation of the order dated 23.10.1986 of the Additional Director, Consolidation. Resultantly, the said order has never been given effect to.

By now, almost 30 years have passed. The land holdings have shrunk. There must have been further partition amongst the co-sharers/family members and thus, the necessity for access to the sub-divided land holdings must have also altered in the changed circumstances. Taking into consideration these factors, we are of the considered view that the issue regarding access to different parcels of land requires reconsideration at the hands of the competent authority.

Equally important would be the petitioner's contention, namely, as to whether the Additional Director, Consolidation is competent to determine the dispute regarding passage or not. All these issues can be re-

visited by the competent authority.

For the reasons afore-stated, we allow this writ petition and set aside the impugned order, relegating the case to the Consolidation Officer at Jalandhar for re-determination of the controversy in accordance with law and taking into consideration the changed circumstances. Till the matter is decided afresh, interim stay already granted by this Court shall continue to operate. The parties are directed to appear before the Consolidation Officer at Jalandhar on 27.6.2016, who shall issue fresh notice to the parties before proceeding in the matter.

[Surya Kant]
Judge

[A.B. Chaudhari]
Judge

May 03, 2016.
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