

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6055 of 1994

Date of Decision:-11.01.2016.

Jamit Kaur

.....Petitioner

Versus

Additional Director, Consolidation, Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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?

Present: Mr. Mohit Setia, Advocate for
Mr. Gaurav Chopra, Advocate for
the petitioner.

Mr. K.K. Gupta, Additional A.G. Punjab.

Mr. Arun Bansal, Advocate for respondent No.2.

SURYA KANT, J. (ORAL)

1.) The petitioner and respondent No.2 are at loggerheads on the issue of the passage claimed by respondent No.2 to approach his agricultural fields. As the passage could be provided only through the petitioner's land holding, the order dated 22.12.1993 passed in favour of respondent No.2 by the Additional Director, Consolidation in purported exercise of his powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation)

Act, 1948 is under challenge in the instant writ petition. This Court stayed the operation of that order on 12.5.1994. The interim stay is operative till date. Meanwhile, an effort was made to provide an alternative passage to respondent No.2 without effecting the room constructed by petitioner and for that purpose, a detailed order dated 25.4.1995 was passed, disposing of the writ petition itself. The aforementioned order did not yield any positive result and was recalled on 6.9.1996 thereby restoring the writ petition for re-hearing. This is how the matter has now been listed for final hearing.

2.) We have heard learned counsel for the parties with reference to the *Aks-Shijra* (P-1) and other relevant record.

3.) The consolidation proceedings appears to have taken place in the village in late 1960s and as per the Consolidation Scheme, a common passage of 3 *karam* width was provided to the parties.

4.) The second respondent moved an application in the year 1993 alleging that the passage going towards his fields has been recently dismantled and that he may be provided a path to approach his agricultural fields. The first respondent allowed that application vide the impugned order dated 22.12.1993 (P-3), operation whereof was stayed by this Court.

5.) While there can be no quarrel that the second respondent is entitled to have access to his land by way of a passage, it is equally undisputable that such a passage needs to be carved out in

a manner that it does not affect the existing construction raised by the petitioner in her fields. Equally relevant would be to determine whether the original passage provided in the Consolidation Scheme has been disrupted/dismantled by the petitioner, or that respondent No.2 is seeking an additional passage for approaching his land.

6.) These are all essentially question of facts which may be determined by the Consolidation Officer after making spot inspection. While doing so, he can re-align the passage in such a manner that minimum inconvenience, hardship, loss or disadvantage is caused to the parties.

7.) For the reasons aforesated, the writ petition is allowed in part; the impugned order dated 22.12.1993 (P-3) is set aside with a direction to the Consolidation Officer to visit the spot and submit his report to the Additional Director, Consolidation as to how the passage, if need be, can be provided to respondent No.2. The report shall be submitted within a period of three months and on receipt of such report, the Additional Director, Consolidation shall pass appropriate orders within two months.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

January 11, 2016.

sandeep sethi