

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9124 of 1993

Date of Decision:-06.01.2016.

Bhushan Lal alias Bhushan Saran (deceased) through LRs.

.....Petitioners

Versus

State of Haryana and others

.....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. Ashish Gupta, Advocate for
Mr. R.K. Gupta, Advocate for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

Mr. Rajesh Goyal, Advocate for
Mr. Pritam Saini, Advocate for
respondent No.4.

SURYA KANT, J. (ORAL)

1.) The petitioner (since deceased and represented by legal heirs) has laid challenge to the order dated 9.2.1993 whereby the Director, Consolidation of Land Holdings dismissed his application purportedly filed under Section 42 of the The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948(for short 'the 1948 Act') for the correction of the area of ownership comprising

new *khasra* No.1015/840 situated within the revenue estate of Village Garhi Mando, Tehsil Jagadhri which according to the petitioner was measuring 14 *biswas*. The consequential relief sought in the application was to reduce the land holding of the private respondents comprising new *khasra* No.1016/840, which was claimed to be measuring 11 *biswas*. The Director Consolidation dismissed the application observing that the matter stood decided in favour of private respondents in a civil suit instituted by the petitioner and secondly no power lies under Section 42 of the 1948 Act with the Consolidation Authorities to correct the mistake in respect of measurements of *killas*, if any, committed during the consolidation process. The third reason assigned was that on inspection, it was found that the site which was by that time a part of Jagadhari Town, had already been constructed as there were *pucca* shops.

2.) The facts may be noticed briefly. The predecessors-in-interest of the petitioner (Om Parkash) and of the private respondent (Kishori Saran) were co-owners. A family partition is said to have taken place between them in the year 1939-40 whereby the joint holding was divided into two *khatas*, bearing *khasra* Nos.17/185 measuring 14 *biswas* which fell to the share of Om Parkash and No.17/186 measuring 11 *biswas* came to Kishori Saran. The *khasra* numbers were changed in the year 1945-46. While *khasra* No.17/185 was converted into *khasra* No.1015/840, the new number given to *khasra* No.17/186 was 1016/840. The total area of both the *khasra*

numbers remained the same.

3.) The consolidation in the village took place in the year 1962-63. The petitioner alleges that at the time of consolidation, the total area of each *khasra* number was not reflected/entered into the record and taking undue advantage thereof, the private respondents started encroaching upon a part of *khasra* No.1015/840 (14 *biswas*). The petitioner then filed a civil suit for prohibition and mandatory injunction against the private respondents, to restrain them from interfering in any manner in the land of the petitioner and to remove the unauthorized construction said to have been raised on the land which actually fell to the share of petitioner as it was part of *khasra* No.1015/840.

4.) The civil suit was dismissed by the First Appellate Court. The regular second appeal preferred by the petitioner was also dismissed by this Court. The judgment has attained finality.

5.) Thereafter, the petitioner moved a petition under Section 42 of the 1948 Act before the Director, Consolidation who has vide the impugned order declined to interfere in the matter.

6.) We have heard learned counsel for the parties and gone through the record. In our considered view, no exception can be made to the view formed by the Director, Consolidation and no interference in the said order is called for. It may be seen from the judgment passed by the Civil Court that the parties went on trial on issues:- (i) as to whether the disputed land is part of *khasra*

No.1015/840 and, (ii) whether defendant No.1 had any right as a co-sharer in that *khasra* number? Once, the Civil Court answered those issues against the petitioner and those findings have attained finality, the Director, Consolidation being a quasi judicial authority rightly declined to sit over the findings of the Civil Court. Secondly, the petition under Section 42 of the 1948 Act was liable to be rejected outrightly on account of inordinate delay and laches. The alleged mistake had crept in the year 1962-63. The civil suit was filed after more than 15 years in the year 1978. Since the plea taken before this Court is that the Civil Court's judgment has no bearing on the proceedings initiated under the 1948 Act, the petitioner then owes an explanation for not approaching the Consolidation Authorities for almost 30 years. It may be true that no limitation period is prescribed to initiate proceedings under Section 42 of the 1948 Act but it is well settled that such proceedings ought to be initiated within a reasonable period.

8.) Dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

January 6, 2016.

sandeep sethi