

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1689 of 2016

Date of Decision:-28.01.2016.

Rajesh Kumar

.....Petitioner

Versus

Commissioner, Gurgaon Division Gurgaon 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. P.R. Yadav, Advocate for the petitioner.

SURYA KANT, J. (ORAL)

1.) The petitioner has laid challenge to the order dated 26.8.2014 passed by Commissioner, Gurgaon Division whereby his application dated 2.8.2008 purportedly filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the 1948 Act'), has been dismissed.

2.) Though it is apparent from the averments made in the writ petition as well as the arguments raised before the Commissioner-cum-Director, Consolidation, Haryana that the petitioner sought a passage for his land comprising *khasra* No.217/1 but if one minutely goes through the application dated 2.8.2008, it may be seen that the entire effort is for the inclusion of land measuring zero *kanal* 8 *marla*

comprising *khasra* No.217/2 which is recorded as *gair mumkin raasta* into the petitioner's land holding, on the premise that at the time of consolidation which took place in the year 1963-64, the standard area allotted to his father is recorded as 88 *kanal* 9 *marla* whereas at the spot, the total area given to them has been reduced to 88 *kanal* 1 *marla*. To say it differently, the petitioner tried to project that *khasra* No.217/2 measuring zero *kanal* 8 *marla* has been erroneously recorded as *gair mumkin rasta* (public passage) and it should be the part of his land holding.

3.) Nevertheless, what has been argued before the Authority and this Court is that there is a passage only up to *khasra* No.218 no access is provided to the petitioner's *khasra* No.217/1. It is also argued that *khasra* No.217/2 though recorded as a 'public passage' but it leads nowhere.

4.) We have given our thoughtful consideration to the submissions made by learned counsel for the petitioner and are of the considered view that no interference in the impugned order is called for. We say so for the reason that firstly, the petitioner's claim is liable to be turned down solely on account of inordinate and unexplained delay in approaching the Authorities under the 1948 Act. The petitioner claims that a private passage (*raasta*) was left for old *khasra* No.1007/451 on 5.12.1959 at the time when one of his father's co-sharers sold his land (mutation Annexure P-2). The petitioner alleges that the said passage was not kept intact at the time of consolidation which was admittedly held in the year 1963-64.

The aforesaid grievance, however, was first time ventilated by the petitioner on 2.8.2008 i.e. after a period of more than 44 years. It is true that no limitation period is provided for invoking jurisdiction under Section 42 of the 1948 Act but the Hon'ble Supreme Court in **Gram Panchayat, Kakran Vs. Additional Director of Consolidation and another 1997 (8) SCC 484** has held that even where no period of limitation is prescribed, the aggrieved party is required to move to the appropriate authority for the relief within a "reasonable time". The time taken by the petitioner cannot be termed as a reasonable period for invoking such jurisdiction.

5.) The petitioner relies upon a Division Bench Judgment of this Court in **Haqiqat Versus The Additional Director Consolidation of Holdings, Punjab and others 1981 PLR 472** wherein it has been viewed that where there was a mistake committed by the Consolidation Authority, the limitation prescribed by Rule 18 of the Consolidation Rules, 1949 would not be attracted for correction of such mistake. The aforesaid principle cannot be borrowed to the facts of the instant case as the Director, Consolidation vide the impugned order has categorically held that a passage has indeed been provided up to *khasra* No.218. Hence, no separate passage is required for plot No.217/1. Similarly, the Director, Consolidation has found that there is no mistake in the allocation of standard area to the petitioner's father as the deficiency is less than 3 *marla* which is permissible under the Scheme.

6.) Similarly, the Full Bench decision of this Court in **Jagtar**

Singh Versus Additional Director, Consolidation of Holdings,

Punjab 1984 PLR 364 also deals with Rule 18 of the Rules *ibid* and

it holds that the bar of limitation of six months provided under that Rule is only for petitions filed against the orders passed. The word

'order' in Rule 18 was held not to include within its purview

“Consolidation Scheme prepared or confirmed or re-partition made”.

These decisions do not deal with the question of inordinate delay in approaching the Authority under Section 42 of the 1948 Act.

7.) For the reasons aforesaid, we do not find any ground to interfere in the impugned order.

8.) Dismissed.

9.) This order, however, shall have no bearing on the fate of the civil suit statedly pending between the parties.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

January 28, 2016.

sandeep sethi