

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2231-1987

Date of Decision: October 03, 2017

Gram Panchayat Kotla Nihang and others

.....Petitioners

Versus

Additional Director Consolidation of Holdings Punjab, Chandigarh and
others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL

- | | | |
|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

.....

Present: Mr.P.S.Baath, Advocate
for the petitioners.

Ms.Anu Pal, AAG, Punjab.
Mr.Nitish Garg, Advocate for respondent No.4.

.....

SURYA KANT, J.

The instant writ petition has been filed by Gram Panchayat Kotla Nihang, Tehsil and District Ropar as well as some residents of the village challenging the order dated 11.09.1984 passed by the Consolidation Officer, Ropar, whereby exchange of land between respondent No.4 on one hand and *jumla Mushtarka Malakan* on the other hand, was allowed. Petitioners are equally aggrieved by the order dated 11.02.1987 passed by the Additional Director, Punjab, dismissing their appeal against the order dated 11.09.1984, being barred by limitation.

[2] We have heard learned counsel for the parties and gone through

the record. Respondent Nos.3 and 4 filed a petition under Section 21 of the the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (In short,'1948 Act') seeking exchange of their land with that of *Jumla Mushtarka Malakan*, which was under the 'management' and 'control' of the Gram Panchayat in accordance with provisions of the 1948 Act. The plea taken was that a storm water passes through the land allocated to respondent Nos.3 and 4 and due to construction of the temporary *Bandh* during rainy season the entire land used to be flooded. The Consolidation Officer vide impugned order dated 11.09.1984 allowed that application and ordered the exchange of land of respondent Nos.3 and 4 with the land *Jumla Mushtarka Malkan*. The record further reveals that the Gram Panchayat and some of the residents felt aggrieved by the order of the Consolidation Officer and filed an appeal in the year 1986. The Additional Director Consolidation of Holdings Punjab, Chandigarh dismissed the appeal summarily being time barred by limitation. The aggrieved Gram Panchayat approached this Court and vide order dated 21.04.1987 its dispossession was stayed. The said order is still operative.

[3] Having pondered over the rival submissions and keeping in view the fact that the Consolidation Officer's order dated 11.09.1984 (P5) has not been given effect till date in view of the *ad interim* stay granted by this Court, it appears expedient to direct that instead of dismissing the appeal on a hyper technical ground of limitation, let the Additional Director Consolidation decides that appeal on merits. It may be true that the appeal was barred by limitation but keeping in view the fact that the appellant-

procedure like passing of resolution and getting approval of the competent Authority, it is quite possible that delay was caused bonafidely despite best efforts. Still further, it cannot be overlooked that the consolidation took place in the year 1968-69 and respondent Nos.3 and 4 also took more than 14 years in approaching the consolidation authorities for the exchange of land. If their application could be entertained at such a belated stage, we find no rhyme and reason for not entertaining the appeal of the Gram Panchayat even if it was barred by limitation.

[4] For the reasons aforesaid, the writ petition is allowed in part; impugned order dated 11.02.1987 (P9) is set aside and the matter is remitted to the Additional Director Consolidation, Punjab to decide the appeal afresh in accordance with law.

[5] The parties are directed to appear before the appellate Authority on 02.11.2017.

(SURYA KANT)
JUDGE

October 03, 2017
meenuss

(SUDHIR MITTAL)
JUDGE

1. Whether speaking/reasoned ?	Yes/No
2. Whether reportable ?	Yes/No