

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 577 of 1995 (O&M)
Date of decision: 5.4.2017

Bakshish Singh and others

.. Petitioners

v.

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. M. L.Saini, Advocate for the petitioners.
Mr. Piyush Bansal, Deputy Advocate General, Punjab.
Mr. Rajesh Goyal, Advocate for
Mr. Pritam Saini, Advocate for respondent No. 2.

...

Rajesh Bindal J.

The petitioners have approached this court challenging the order dated 16.12.1994, passed by Additional Director, Consolidation Punjab, on an application filed by respondents No. 2 to 4 under Section 42 of the East Punjab (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, 'the Act').

It is a case in which the consolidation proceedings in the village had taken place around 1974-75. Nearly two decades thereafter, respondents No. 2 to 4 filed application under Section 42 of the Act claiming that at the time of consolidation, a passage was provided to their '*tak*'. The application was allowed granting the passage from the land owned by the petitioners without providing them any compensation for the same. The stand taken by

the petitioners is that respondents No. 2 to 4, who are co-owners of different portions of land, already have a passage from the other side. All they wanted was a passage from close to the abadi of the village. The same is not the object in consolidation proceedings. Even otherwise, the application was filed nearly two decades after the consolidation had taken place, hence, there was no question of allowing the passage to respondents No. 2 to 4 from the land of the petitioners.

The stand taken by respondents No. 2 to 4 was that they had been using passage from Khasra No. 2//6/1 owned by the petitioners. It is only when they objected to the same that the application was required to be filed. There was settlement between the parties.

After hearing learned counsel for the parties, in our opinion, the ground on which the application filed by respondents No. 2 to 4 under Section 42 of the Act, nearly two decades after the consolidation proceedings, was allowed by Additional Director, Consolidation cannot be legally sustained. The relevant part of the order is extracted below:

“I have heard the arguments of both the parties and also perused the map already on the file. The passage which approaches the fields of the petitioner from the South and shows in the map which is far away from the abadi. The petitioner for approaching his fields from the abadi side, there is to pass atleast three killas. The petitioners also produced affidavit of Rattan Singh son of Uttam Singh co-sharers of Bakshish Singh dated 14.12.1994. It is mentioned in this affidavit that he has no objection if the path be provided to the petitioners.” *(sic.)*

The site plan (Annexure P-2) produced on record has also been perused. It depicts different portions of land owned by the parties. Part of the land owned by respondents No. 2 to 4 is connected through a passage. No doubt, if the passage is provided to respondents No. 2 to 4 from the land of the petitioners, the same will shorten the distance of the land of respondents No. 2 to 4 from village abadi, however, that is not the only object during consolidation. Even if a passage from that part is permitted, still there is land owned by other persons in between through which passage will have to be provided to enable respondents No. 2 to 4 to reach their portion of land. There is no explanation available for that.

As regards the settlement arrived at between the parties, it is sufficient to notice that it was merely during the pendency of the litigation that parties resolved not to fight and abide by the court decision. The same cannot be said to be final settlement.

For the reasons mentioned above, the writ petition is allowed. The impugned order dated 16.12.1994 (Annexure P-4) passed by Additional Director, Consolidation Punjab, is set aside.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

5.4.2017
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No