

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 8895 of 1991

Khagesh Kumar and others

.....Petitioners

versus

Director, Consolidation of Holdings, Punjab, Chandigarh and others

.....Respondents

Regular Second Appeal No. 2430 of 1995

Khagesh Kumar and others

.....Appellants

versus

Durga Dass

.....Respondent

Regular Second Appeal No. 2431 of 1995

Khagesh Kumar and others

.....Appellants

versus

Durga Dass

.....Respondent

Civil Revision No. 6215 of 2001

Gurnam Singh

.....Petitioner

versus

Rajinder Pal and others

.....Respondents

Date of Decision: September 21, 2017

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

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate (in C.W.P. No. 8895 of 1991)
for the petitioners

Mr. Avnish Mittal, Advocate
for the appellants (in RSA Nos. 2430 and 2431 of 1995)

Mr. Amit Jain, Advocate
for the petitioner (in C.R. No. 6215 of 2001)

Mr. S.D. Sharma, Sr. Advocate with
Mr. Ved Priya Malik, Advocate
for the respondents

-:-

Sudhir Mittal, J.

This order shall dispose of CWP No. 8895 of 1991, RSA Nos. 2430 and 2431 of 1995 and Civil Revision No. 6215 of 2001 as common controversy *inter se* same parties is involved therein.

2. The petitioners are successors-in-interest of one Smt. Akki @ Shankar Devi whereas respondents No. 2 and 6 are the successors-in-interest of one Smt. Punni. The said Smt. Akki and Smt. Punni were joint owners and their land was partitioned during consolidation of holdings which took place in the year 1955-56. It is the grievance of the petitioners that no path has been provided to their land although it was mandatory for the Consolidation Authorities to have provided such a path.

3. Many proceedings have arisen out of the dispute between the parties referred to hereinabove. The details of the same are as given in the succeeding paragraphs:

CWP No. 8895 of 1991 (Khagesh Kumar and others vs. Director, Consolidation of Holdings, Punjab, Chandigarh and others)

4. In this writ petition challenge has been laid to the order dated 25.04.1991 (Annexure P-9) whereby the Director, Consolidation of Holdings, Punjab dismissed the application of the petitioners under Section 42 of the Consolidation of Holdings Act, 1948 (hereinafter referred to as "1948 Act"). On

perusal of the pleadings of the parties, it emerges that at the time of consolidation a Resolution dated 22.7.1955 (Annexure R-6/7) was passed by the Consolidation Authorities that Smt. Akki would be provided a 'Pagdandi' to her land which has been identified with the help of flags on the ground. This Resolution is signed by the Consolidation Committee as well as the predecessors-in-interest of the petitioners and respondents No. 2 and 6 and is numbered as 48. Vide another Resolution No. 246, Smt. Akki was compensated by giving her excess of Rs. 2/-. Thus, in lieu of Smt. Akki giving up her right to a path to her land, she was compensated by giving her excess land. Thereafter, on 08.06.1958, Smt. Akki approached the Additional Director Consolidation of Holdings, Punjab, Patiala under Section 42 of the 1948 Act requesting for provision of a path to her land. This petition was dismissed vide order dated 24.06.1965 (Annexure P-2) on the ground that a 'Pagdandi' has been provided to her land and in lieu of a path, excess land has been provided to her. Under the circumstances the request for a path was misconceived. Thereafter, Smt. Akki and her successors-in-interest remained satisfied with the 'Pagdandi' for the next 23 years. On 14.01.1988, Civil Suit No. 38 was instituted by the petitioners for an injunction restraining the demolition of an alleged passage which passed through the land of respondents No. 2 and 6. This suit was ultimately dismissed. Simultaneously, respondent No. 2 filed Civil Suit No. 121 of 09.02.1988 for injunction restraining the petitioners from taking their carts, tractor-trolley etc. through his land. Since the suit of the petitioners had been dismissed, as a natural corollary the suit of respondent No. 2 was decreed. Meanwhile, the petitioners again approached the Additional Director, Consolidation of Holdings, Chandigarh at Mohali under Section 42 of 1948 Act and obtained an ex-parte order providing a path to their land. Respondent No. 2 moved an application for recalling the said order and also filed CWP No. 6475 of 1990 challenging the same. This writ petition was dismissed with liberty to respondent No. 2 to approach the concerned authority. Vide order dated 16.05.1990, the

Additional Director Consolidation of Holdings, Punjab, Chandigarh at Mohali recalled the order dated 14.10.1988 and this order was then challenged by the petitioners vide CWP No. 10105 of 1990. The said writ petition was disposed of vide judgment dated 21.11.1990 and after setting aside the order dated 16.05.1998 the case was remanded for a fresh decision. Vide order dated 24.01.1991 (Annexure P-8) the Director Consolidation of Holdings, Punjab Chandigarh recalled order dated 14.10.1988 after examining the evidence on record. Thereafter, vide order dated 25.04.1991 (Annexure P-9) the petition under Section 42 of the 1948 Act filed by the petitioners was dismissed on the ground that a similar application had already been rejected vide order dated 24.06.1965 (Annexure P-2) and no review was permissible in law. It was also found that the petitioners had concealed the factum of dismissal of their earlier petition vide order dated 24.06.1965. Thus, the present writ petition was filed in which notice of motion was issued and operation of the impugned order was stayed vide order dated 12.06.1991 of this Court. Subsequently, efforts were made to resolve the controversy through Mediation and Conciliation Centre of this Court but the same did not yield any results.

RSA No. 2430 of 1995 and RSA No. 2431 of 1995 (Khagesh Kumar and others vs. Durga Dass)

5. Regular Second Appeal No. 2430 of 1995 has arisen out of Civil Suit No. 38 of 14.01.1988 for permanent injunction filed by the present petitioners seeking to restrain respondent No. 2 from demolishing an alleged passage leading to the land of the plaintiffs therein. The second Regular Second Appeal No. 2431 of 1995 has arisen out of Civil Suit No. 121 of 09.02.1988 filed by respondent No. 2 for injunction restraining the defendants therein from taking their carts, tractor-trolley etc. through the land of the plaintiff therein. Civil Suit No. 38 of 14.01.1998 was dismissed whereas Civil Suit No. 121 of 09.02.1988 was decreed. The appeals filed by the present appellants were also dismissed, hence, the afore-mentioned Regular Second Appeals.

C.R. No. 6215 of 2001 (Gurnam Singh vs. Durga Dass)

6. Respondent No. 2 filed another civil suit viz. Civil Suit No. 566 of 18.12.2000 for an injunction restraining the defendants therein from blocking his passage through a 'Rasta' leading upto his land. This 'Rasta' is different from the path referred to in the Civil Writ Petition and Regular Second Appeals mentioned hereinabove. Defendant No. 1 in this suit filed an application under Section 10 of the Code of Civil Procedure seeking stay on the proceedings in view of the pendency of the Civil Writ Petition mentioned hereinabove as well as another Civil Writ Petition which was subsequently dismissed as withdrawn. The learned trial Court rejected the said application giving rise to C.R. No. 3215 of 2001. This revision petition was admitted vide order dated 24.05.2003 and passing of final order by the trial Court was stayed.

7. Learned counsel for the parties are in agreement that decision of CWP No. 8895 of 1991 will govern the decision of the Regular Second Appeals as well as the Civil Revision petition.

8. Learned counsel for the writ petitioners submits that the land holder is statutorily entitled to a proper path to his land and the denial thereof by respondent No. 1 vide the impugned order, is illegal. On the contrary, counsel for respondents No. 2 and 6 states that writ petitioners are not entitled to any relief because they have accepted 'Pagdandi' at the time of the consolidation.

9. Having heard learned counsel for the parties, we are of the view that the writ petition must fail. From the facts mentioned hereinabove, it is clear that Smt. Akki (predecessor-in-interest of the petitioners) had accepted 'Pagdandi' in lieu of a path to her land and she had been compensated by excess land at the time of consolidation. Soon after consolidation, Smt. Akki had a rethink but her petition under Section 42 of the 1948 Act for a path was rejected vide order dated 24.06.1965 (Annexure P-2). Thereafter she or her successors did not raise any dispute for 23 years. This fact conveys the satisfaction of the petitioners with the

arrangement made at the time of consolidation. The second application under Section 42 of the 1948 Act would amount to seeking review of the order dated 24.06.1965 (Annexure P-2), which is not permissible under the law. It is settled law that a quasi judicial authority can exercise power of review only if the statute under which the said authority is acting provides for the same. Learned counsel for respondents No. 2 and 6 has also cited a Full Bench decision of this Court in ***Deep Chand vs. Additional Director Consolidation of Holdings, 1964 Current Law Journal 128***, in which it has been held as under :-

“13. Section 151, Civil Procedure Code, undoubtedly reserves to the court the inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court but this power, though undefined and rightly so, in my opinion, cannot be utilised for permitting a judicial or a quasi-judicial tribunal to vary and alter any order passed by it on the ground that it is later considered to be erroneous on the merits as indeed the existence of such wide power is rightly not canvassed by the learned Advocate General.

15. To concede such a wide power of review would, in my opinion, introduce into judicial and quasi-judicial decisions, disconcerting element of permanent uncertainty and unpredictability tending to give an impression of quasi judicial lawlessness, which cannot persuade myself to uphold. If Courts do not possess such a wide and sweeping power, it is difficult to accede such a wide power in statutory judicial or quasi-judicial tribunals.”

10. This judgment has been delivered with reference to 1948 Act and is squarely applicable to the present case. Thus, the impugned order is legal and valid and is upheld. The writ petition is, therefore, dismissed, however, with no order as

to costs.

11. Despite dismissing the writ petition, we would hasten to add that an effort was made at the time of the arguments to get the matter settled between the parties by suggesting exchange of land. Respondent No. 6, who was present in Court in person, however, refused to accept any such suggestion. If better sense prevails upon the parties in future, they would be at liberty to approach the concerned Consolidation Officer for exchange of land to enable the petitioners to get a proper path to their land holdings.

12. In view of the fact that the writ petition has been dismissed, the aforementioned Regular Second Appeals do not survive and are consequently dismissed. Decree sheets be prepared accordingly. Similarly, the civil revision petition is also dismissed with liberty to the plaintiff of Civil Suit No. 566 of 18.12.2000 to pursue his suit, in case the cause of action still survives.

[SUDHIR MITTAL]
JUDGE

[SURYA KANT]
JUDGE

September 21, 2017
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No