

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9524 of 1999 (O&M)

Date of Decision: 13.12.2017

Luxmi Narain (through LRs)

... Petitioner

VS.

Director Consolidation, Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Parveen Kaushik, Advocate for the petitioner

Mr. D.Khanna, Addl. AG Haryana

Mr. Sandeep Sharma, Advocate for respondent No.2 to 6

SURYA KANT, J. (Oral)

(1) The petitioner has laid challenge to the order dated 12.02.1999 (P2) passed by Director, Consolidation, Haryana, in purported exercise of powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The order has been passed pursuant to an application filed by respondent No.2 wherein it was claimed that no passage was provided to his land comprising Killa No.49/7, 8, 9/1, 12/1, 13, 14 & 15 within the revenue estate of village Janaula, Tehsil and District Gurgaon. It may be mentioned here that the consolidation proceedings in the village started in the year 1952-53 and the passage, if any, was required to be provided during those proceedings only. The second respondent did not raise any objection at the time of consolidation with regard to the non-availability of passage to his agricultural land. However, after more than 4 decades, the second respondent chose to file application on 04.02.1998 before the Director, Consolidation which has been accepted and the impugned order has been passed primarily on the ground that there was a mistake committed by the authorities at the time of

respondent. Consequently, a direction has been issued that the second respondent be provided 2 karam wide passage along western line of khasra No.49/12/2, 19, 22/1 and the deficiency caused in the land due to passage be made good. It may be mentioned that khasra No.49/12/2, 19, 22/1 belong to the petitioner (since dead and represented through LRs).

(2) The grievance of the petitioner appears to be two-fold: firstly it is averred that there is already a passage shown in site plan (A2) through which respondent No.2 has an access to his land. Secondly, no application under Section 42 of the Act was maintainable at a highly belated stage even if the Statute does not prescribe any limitation period for moving such application. Reliance is placed on a decision of the Hon'ble Supreme Court in **Gram Panchayat, Kakran vs. Addl. Director of Consolidation and another, (1997) 8 SCC 484.**

(3) On the other hand, counsel for the second respondent submits that pursuant to the impugned order dated 12.02.1999, the matter was remanded to the Assistant Director, Consolidation where a consent order was allegedly passed which is not under challenge in the present proceedings.

(4) It cannot be overlooked that the aggrieved petitioner had approached this Court through instant writ petition in the year 1999 and operation of the impugned order was stayed vide order dated 16.07.1999. The said interim stay is still operating.

(5) Having heard learned counsel for the parties, it appears to us that the matter requires re-consideration by the Director, Consolidation. We say so for the reason that even in the absence of any time limit for filing of petition under Section 42 of the Act, the aggrieved party is expected to act diligently and move the appropriate Authority within a "reasonable period". Onus was on

the second respondent to explain as to why he could not approach the Consolidation authorities for more than 40 years for the relief sought by him through an application dated 04.02.1998. It may be equally true that in a given case, the party may render a plausible explanation which can then be accepted by the authorities by condoning the delay. Such a recourse is conspicuously absent in the instant petition. We thus allow this writ petition; set aside the order dated 12.02.1999 and remit the case to the Commissioner, Gurgaon Division exercising the powers of Director, Consolidation under Section 42 of the Act to decide the matter afresh and in accordance with law. The consequential order passed by the Assistant Director also stands set aside as the matter is required to be decided afresh.

(6) Parties are directed to appear before the Director, Consolidation, Haryana on 09.01.2018.

(7) Ordered accordingly.

(Surya Kant)
Judge

13.12.2017
vishal shonkar

(Sudhir Mittal)
Judge

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