

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.1008 of 2017.

Date of Decision: August 21, 2017

Kavita and othersPetitioners

versus

Commissioner, Rohtak Division, Rohtak and othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: Mr.C.B.Goel, Advocate, for the petitioners.

Mr.Harkesh Manuja, Advocate, for the caveator-respondent No.3.

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Surya Kant, J. (Oral)

The petitioners have laid challenge to the orders dated 01.09.2016 and 30.11.2016 (P-3 & P-5, respectively). The order dated 01.09.2016 has been passed by the Commissioner, Rohtak Division in purported exercise of his powers as Director Consolidation under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Vide this order, he entertained the application filed by respondent No.3 after 60 years of consolidation of the village, to provide passage to his land shown in 'Parrot Green' colour in the site plan (P-6). His grievance in the application was that for all these years, he was using the passage shown in 'Yellow' colour in the said site plan but that passage was abruptly closed by the owners of the land. The Director Consolidation in the impugned order observed that the passage in 'Yellow' colour cannot be restored as there was an order of *status-quo* passed by this Court in respect of Rectangle No.28, Killa No.13. He thus sent the case back to the Consolidation Officer to provide an alternative passage to respondent No.3. Pursuant to that order, the Consolidation Officer has

passed the impugned order dated 30.11.2016 providing such passage from the land of the petitioners which is shown in 'Green' colour in the site plan (P-6). The aggrieved petitioners are before this Court.

We have heard learned counsel for the parties at a considerable length and gone through the record.

Learned counsel for the petitioners points out at the outset that the authorities below have proceeded on wrong premise as if there was an order of *status-quo* passed by this Court in respect of Rectangle No.28, Killa No.13. He has taken us to the order dated 01.03.2011 passed in RSA No.8 of 2009 whereby this Court has directed that 'alienation of the suit property shall remain stayed till further orders'.

The above-said interim order, in our considered view, does not prevent the authorities from considering the request of respondent No.3 to provide him the passage shown in 'Yellow' colour in the site plan (P-6). The carving out of a passage does not amount to alienation of the suit property. There was thus no embargo on the authorities for not giving effect to the proposed passage rather than going to the petitioners' land for the said purpose.

That apart, both the authorities below have miserably failed to consider the legal objection, namely, whether an application filed under Section 42 of the 1948 Act can be entertained at a highly belated stage after 60 years? Respondent No.3 is under heavy onus to prove that such an application is maintainable at this juncture. As the said objection has not been decided in its right perspective, we are satisfied that the impugned orders are factually and legally wrong and are not sustainable. The same are thus set-aside and the matter is remitted to the Director Consolidation-cum-

Commissioner, Rohtak Division, Rohtak to decide the case afresh and in accordance with law.

The writ petition stands disposed of accordingly.

[SURYA KANT]
JUDGE

August 21, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No