

LPA No. 180 of 2006

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 180 of 2006

Date of Decision: 28.02.2017

Ghuman Singh and others

.....Appellants

vs.

Tara Singh and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN**

**Present:- Mr. Harsh Bunker, Advocate
for the appellants**

**Mr. K.S. Sidhu, Sr. Advocate with
Mr. M.S. Brar, Advocate
for respondent No. 2**

MAHESH GROVER, J. (ORAL)

This appeal is directed against the judgment of the learned Single Judge dated 01.03.2006 accepting the plea of the respondents by setting aside the impugned order dated 30.08.1982 re-opening an order passed by the Consolidation Officer on 24.03.1960 under the provisions of Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act'). By virtue of the impugned order dated 30.08.1982, the Additional Director, Consolidation of Holdings, Punjab had remanded the matter back to the Consolidation Officer with a direction that he should scrutinize the record properly and make up the deficiency of the claimants, if any, from any other area.

Learned Single Judge noticed that while doing so, the Additional Director, Consolidation of Holdings, Punjab, ignored the fact that proceedings under Section 42 of the Act had culminated on 24.03.1960 conclusively determining the rights of the claimants. This order was challenged by way of another petition under Section 42 of the Act which was dismissed and rightly so as there was remedy of appeal under Section 21(3) of the Act which was availed of by the appellants but withdrawn for undisclosed reasons. Subsequently, a suit was also filed which met the same fate as also the appeal filed against the judgment and decree of the learned trial Court when it was withdrawn.

It was thereafter that an appeal under Section 42 of the Act was filed resulting in the order dated 30.08.1982, which was adversely commented upon by the writ Court to hold that the Director exceeded his jurisdiction, in view of the afore-stated extracted facts.

Before us, learned counsel for the appellants contended that the order dated 24.03.1960 was passed without affording opportunity of hearing to their predecessor-in-interest Mela Singh, which fact is actually not true as his presence is noticed in the said order. Apart from this, it is contended that the order dated 30.08.1982 would have ensured substantial justice and should be permitted to stand.

As against this, learned counsel for the respondents has pointed out that appellants had concealed these facts while making application under Section 42 of the Act, as presence of Mela Singh as noticed in the said order of 1982 would clearly demolish any claim that the appellants have under the law, particularly when they had remedy of appeal, which they had availed of

only to withdraw the same.

After hearing learned counsel for the parties, we are of the opinion that the impugned judgment does not warrant any interference as the learned Single Judge has rightly noticed that the appellants had remedy of filing an appeal which was availed of but withdrawn for no explained reasons. Besides, the appellants squandered their claim by pursuing frivolous remedies of civil suit and appeal and in any eventuality the application under Section 42 of the Act was clearly barred in law and ostensibly the authority concerned was persuaded to pass an order when the appellants failed to disclose earlier proceedings initiated by them under Section 42 of the Act concluded in 1960 and an appeal under Section 21(3) of the Act. We would, thus, find no reason to interfere.

Hence, the instant appeal is hereby dismissed.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

28.02.2017
reena/rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No