

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.8360 of 2017.

Date of Decision: September 14, 2017

Amar Singh and others

.....Petitioners

versus

Commissioner, Hisar Division and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: Mr.Jatinder Nagpal, Advocate, for the petitioners.

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Surya Kant, J. (Oral)

The instant writ petition is directed against the order dated 12.01.2017 passed by the Commissioner, Hisar Division, Hisar in purported exercise of his powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, 'the 1948 Act'). Vide the impugned order, an application moved by the petitioners under Section 42 of the 1948 Act has been dismissed on the ground of delay and laches. The petitioners sought re-alignment of the path which is being used for access to their agricultural lands. Since the original path, of which the re-alignment is sought, was sanctioned at the time of consolidation in the year 1962-63, the Commissioner, Hisar Division has observed that the application moved for re-alignment after 54 years was hopelessly time barred.

We find from the record that the only respondent impleaded by the petitioners before the Authority as well as before this Court is Gram Panchayat of their village. The impugned order was passed without issuing notice to the Gram Panchayat, namely, in *limine*. The plea taken before us is that no one in the neighbourhood including the Gram Panchayat has any objection against re-alignment of the passage. It is also averred that the

public passage No.68 is being used at the spot from the very inception and passage No.69 which was sanctioned during consolidation is lying defunct/unused.

In the light of such a stand taken by the petitioners, we deem it not necessary to call upon the Gram Panchayat as it would burden it with unnecessary litigation expenses. Suffice to observe that if in due course of time all the share-holders as well as the Gram Panchayat have reconciled with the private-path No.68 which is being used as a public path, it is not necessary to turn down the prayer for re-alignment of the passage only on the ground of delay and laches. Consequently, we allow this writ petition; set-aside the impugned order dated 12.01.2017 and direct the Commissioner, Hisar Division, Hisar-cum-Director, Consolidation to issue notice in the application filed by the petitioners not only to the Gram Panchayat but also the other share-holders who might be effected by the re-alignment. Such share-holders or the Gram Panchayat will be at liberty to oppose the prayer and in case they raise objection of limitation/delay, the Commissioner-cum-Director, Consolidation, Hisar shall decide such objection in accordance with law. However, if the parties agree for re-alignment, the Authority shall be at liberty to pass appropriate order. The petitioners are directed to appear before the Commissioner, Hisar Division, Hisar, on 03.10.2017.

The writ petition stands disposed of accordingly.

[SURYA KANT]
JUDGE

September 14, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

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

CM No.13082 of 2017 in
CWP No.8360 of 2017

- - -

Amar Singh and others vs. Commissioner, Hisar Division and another

Present : Mr.Jatinder Nagpal, Advocate,
for the applicant-petitioner.

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For the reasons mentioned in the application, the same is
allowed and the document (P-1/A) is taken on record.

CM stands disposed of.

(SURYA KANT)
JUDGE

September 14, 2017
mohinder

(SUDHIR MITTAL)
JUDGE