

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

-:-

C.W.P No. 9124 of 1996

Date of decision: 30.11.2018

Kewal Singh

... Petitioner

Vs.

**Addl. Director, Consolidation of
Holdings, Punjab & Ors. & Ors.**

...Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Arun Jain, Sr. Advocate, with
Mr. Amit Jain, Advocate, for the petitioner.

Mr. I.P.S. Doabia, Addl. A.G. Punjab.

Mr. G.S.Jaswal, Advocate for respondent No.3.

MAHESH GROVER, J. (Oral)

The petitioner impugns the order passed by the Additional Director Consolidation of Holdings, Punjab dated 27.03.1996.

The brief facts of the case are that consolidation took place in the Village in year 1970-71. Consolidation Officer passed the order dated 17.08.1981 unsettling the consolidation process substantially as per the Rules against the petitioner, who aggrieved by the same filed the appeal before the Settlement Officer Consolidation, who accepted it vide his order dated 28.04.1994 and remanded the matter back to Consolidation Officer. Respondents who were aggrieved of the order dated 28.04.1994 challenged the same in appeal before the Additional Director Consolidation who

declined interference on 29.11.1994, resulting in a Civil Writ Petition No. 3137 of 1995, which was dismissed on 01.03.1995.

The Consolidation Officer then passed order dated 09.03.1995, which was adverse to the respondents. But instead of filing the statutory appeal under Section 21(3) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, 'the Act') they chose to invoke the provisions of Section 42 of the Consolidation Act. Apart from that it has been argued by learned counsel for the petitioner, in all fairness that in case the respondents file an appeal even now they would not raise objection on the issue of limitation.

After hearing learned counsel for the parties we are of the opinion that the respondents have not availed the statutory remedy of filing the appeal under Section 21(3) of the Act. They could not have invoked the provisions of Section 42 of the Consolidation Act at that belated stage. The justification offered that section 42 of the Consolidation Act, could be invoked by the respondents at any point of time, does not merit acceptance for the simple reason that the respondents could have done so even at an earlier stage without challenging the earlier orders of 1981 in an appeal etc.

We are, therefore, of the opinion that the remedy of Section 42 availed of by the respondents is misconcieved one. Under Section 42 of the Consolidation Act such an order could not have been passed particularly when the order dated 09.03.1995 was in existence and the validity of which would necessarily have to be gone into before concluding the controversies.

This could have done only by following the statutory provisions.

Order dated 27.03.1996 (Annexure P-2) is, therefore, quashed and the present petition is disposed of with liberty to the respondents to avail the alternative remedy available to them.

(MAHESH GROVER)
JUDGE

November 30, 2018
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(LALIT BATRA)
JUDGE

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