

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

CWP No.17024 of 2017 (O&M)

Date of decision: - 16.10.2018.

Yadvinder Singh

...Petitioner

Versus

Director Consolidation of Holdings and another

...Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present:- Mr. Harkesh Manuja, Advocate
for the petitioner.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing impugned order dated 12.04.2017 (Annexure P-6) passed by respondent No.1-Director, Consolidation of Holdings, Punjab whereby his petition filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act') has been dismissed.

Brief facts of the case are that consolidation proceedings were conducted in village Kangarh Bhutna prior to the year 1984-85 and in the year 1991, petitioner filed a petition under Section 42 of the Act for redistribution of the land in question in favour of proprietors/share

holders.

After hearing both sides, respondent No.1 allowed the petition vide order dated 16.12.1991 (P-2) and directed for amendment of the consolidation scheme to the extent that land measuring 312 kanals 16 marlas in Khewat No.64/138 and 250 kanals 16 marlas in Khewat No.64/142, which was carved out during consolidation on the basis of pro-rata cut from the land of proprietors was required to be redistributed amongst them. It was further observed that land measuring 252 kanals 14 marlas reserved for panchayat cannot exceed beyond 4 acres in view of the size of the village and thus the Consolidation Officer was asked to take necessary action in the matter accordingly.

It transpires that aggrieved against the order dated 16.12.1991, Gram Panchayat filed an application for recalling of the same on the ground that Sarpanch of the village, namely, Bhupinder Singh, who is the close relative of the petitioner had appeared at the time of hearing on 16.12.1991 despite the fact that one Surjit Singh, Panch, was acting as a Sarpanch of the village at the relevant point of time and on account of his active connivance, the petition under Section 42 of the Act was allowed. After hearing both the sides, the application of the Gram Panchayat was dismissed by the Director, Consolidation of Holdings, Punjab, vide order dated 02.12.1992 (P-4) on the ground that order dated 16.12.1991 was passed in the presence of both the parties.

Aggrieved against both the above orders, Gram Panchayat filed CWP No.3018 of 1993 which was allowed by this Court on 04.09.2013 and the matter was remanded back to Director, Consolidation

of Holdings-respondent No.1 to decide afresh in accordance with law.

In pursuance of the direction of this Court, the matter has again been decided by respondent No.1 and the petition filed by the present petitioner has been dismissed in view of the Section 42-A of the Act while observing that land reserved for the common purposes whether specified in the scheme or not, shall not be partitioned amongst the proprietors. Hence, the present writ petition.

It is contended by learned counsel for the petitioner that as per the consolidation scheme, the land in question was never reserved for the common purposes. Further argued that Section 42-A of the Act has been incorporated on the basis of Punjab Act No.6 of 2007 dated 23.07.2007 and as such the same cannot be applied retrospectively to the case of the petitioner and thus, he is entitled for redistribution of the same being a proprietor of the village.

Heard learned counsel for the petitioner and perused the paper-book.

Before proceeding with the matter, it is necessary to extract Section 42-A of the Act and which is as under: -

“42-A. Prohibition to partition the land reserved for common purposes.-- Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgment, decree, order or decision of any court, or any authority, or any officer, the land reserved for common purposes whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized and continue to be utilized for common purposes.”

Perusal of Section 42-A of the Act clearly reveals that these provisions are in the form of the non-obstante clause and specifically prohibit the partition of the land reserved for common purposes during consolidation irrespective of the fact whether such land was specified in the consolidation scheme for common purposes or not. Further stipulated that land is to be utilized for common purposes and not to be partitioned amongst the proprietors.

Still further, there is no material available on record to prove that during consolidation, the land in question was reserved for common purposes or not. The petitioner has neither placed on record the consolidation scheme; nor other related revenue records i.e. *khatauni ishtemal*, *naqsha haqdarwar* and *khatauni paimaish*, despite availing sufficient opportunities.

The mandate of Section 42-A of the Act is very loud and clear, being a valid piece of legislation in view of the Division Bench judgment of this Court reported as 2011(2) L.A.R. 75 (P&H DB) titled “**Mahatam Singh and others Vs. State of Punjab**”.

It is necessary to mention here that at the time of hearing neither any contrary judgment has been produced by learned counsel for the petitioner; nor anything has been brought to our notice that judgment in **Mahatam Singh's case (supra)** has been reversed or set aside by Hon'ble Supreme Court till date. Consequently, this Court is in full agreement with the reasoning adopted by respondent No.1 while passing the impugned order on the basis of amended provisions of the Act and same does not suffer from any illegality or material irregularity.

In view of the above, this Court does not find any merit in the present petition and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

October 16, 2018
naresh.k

Whether Speaking/reasoned?	Yes
Whether reportable?	No