

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.5368 of 2019(O&M)

Date of Decision:-05.03.2019

Rambir & Ors.

.....Petitioners.

Versus

The Commissioner, Gurugram Division, Gurugram &Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

**Present:- Mr. Shailendra Jain, Senior Advocate assisted by
Mr. Harman Jivtesh Singh, Advocate for the Petitioners.**

JASWANT SINGH, J.(ORAL)

CM No.3402 of 2019 has been filed under Section 151
CPC for placing on record coloured copy of Aks Shajra as Annexure
P-7.

For the reasons stated in the CM, the same is allowed and
coloured copy of Aks Shajra is taken on record as Annexure **P-7.**

Registry to place the same at appropriate place and paginate
the paper book accordingly.

MAIN CASE

Twenty Four (24) petitioners are before this Court,
challenging the remand order dated 06.12.2018 (**P-6**) passed by the
Commissioner, Gurugram Division, whereby the application filed by

petitioners under Section 42 of The East Punjab Consolidation of Land Holdings Act, 1948 has been allowed and the Consolidation Officer has been directed to provide for a passage from the adjacent land of Gram Panchayat.

Learned Senior Counsel appearing on behalf of the petitioners has submitted that the Authority below has rightly observed that during consolidation, no passage was provided to the petitioners to their land and, therefore, they are not aggrieved against the said part of the order. However, he has submitted that instead of affirming the existing passage on the spot, which is being used by petitioners and other villagers for the past many years (as per him prior to consolidation), the Commissioner has ordered that an alternative *rasta* from the land of Gram Panchayat be provided, as the existing *rasta* is subject matter of Regular Second Appeals pending before this Court, where stay has been ordered. It is next argued that the Commissioner, has misinterpreted the order passed in the aforesaid Regular Second Appeals because the stay is only on alienation and not on carving out a passage/its usage. Thus, prayer has been made for quashing the impugned order to the said extent.

After hearing learned Counsel for the petitioners and scrutinizing the paper book, we are of the opinion that the instant writ petition is without any merit and, therefore, liable to be dismissed.

Admittedly no passage was provided by the consolidation authorities at the time of consolidation which had led the petitioners to

file an application under Section 42 of the 1948 Act, for carving out a passage (*rasta*), and resultantly impugned order Annexure P-6 was passed. It is also admitted by the petitioners that the revenue record (Annexure P-1 Jamabandi; Annexure P-2 Aks Shajra and Annexure P-7 coloured Aks Shajra) does not depict any passage as projected/contended by the petitioners. Thus, it is hard for us, while exercising jurisdiction under Article 226 of the Constitution to ascertain the factual position and accept the contentions regarding existence of any passage.

Looking from another angle, admittedly the alleged passage which petitioners state they are using for past many decades is subject matter of litigation with private respondent nos.3 to 6 who have been declared owners by the Civil Court and two Regular Second Appeals bearing No.2102 of 2005 and 2103 of 2005 are pending adjudication before this Court after admission. Meaning thereby, at present, the alleged passage is under the ownership of private respondent nos.3 to 6 and not a common passage, as mere pendency of Regular Second Appeals does not amount to stay on findings returned by the Civil Court until and unless there is a specific order staying their operation. Admittedly, there is stay on alienation only and no stay on the operation of the judgments passed by the Courts below. This fact is clear from the interim orders passed in aforementioned Regular Second Appeals which are Annexed as Annexure P-4 & P-5 respectively. Hence, the Commissioner was right to remand the matter

back to Consolidation Officer with a proposal of alternative route, as the Consolidation Officer is in a better position to identify a passage and stay clear from alleged passage which is subject matter of civil litigation.

Although through a coloured site plan Annexure P-7 (Aks Shajra), counsel for the petitioners has tried to project that the alternate route proposed by Commissioner is very long as compared to the alleged existing passage, however, as observed earlier, in the absence of any corroborative evidence to prove the said assertion, we cannot agree with the assertions of the petitioners and leave it to the Consolidation Officer to find the best possible passage for the usage of the petitioners.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

March 05, 2019
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>