

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

**CWP No.10988 of 2019(O&M)**

**Date of Decision:-06.05.2019**

**Devender.**

.....Petitioner.

Versus

**Commissioner, Hisar Division, Hisar & Ors.**

.....Respondents.

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

Present:- Mr. R.S. Kundu, Advocate for the Petitioner.

\*\*\*

**JASWANT SINGH, J.**

1. Petitioner-Devender has filed the instant writ petition, seeking quashing of order dated 13.11.2018 (P-7) passed by Commissioner, Hisar Division, Hisar as well as order dated 12.03.2019 (P-10) passed by Consolidation Officer, Safidon, District Jind, whereby application filed by respondent no.4-Ramesh Bhardwaj under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act 1948) was allowed vide order dated 13.11.2018 (P-7) and in compliance thereof, Consolidation Officer has provided Rasta in consonance with the Scheme framed during Consolidation vide order dated 12.03.2019 (P-10).

2. Learned Counsel for the petitioner has raised the following arguments:-

(i) Respondent no.4 had, with a malafide intention moved an application after more than 52 years of Consolidation, for providing a *rasta* through the Khasra No.292 and 293, by seeking allotment of a number to the vacant land lying in between the said Khasra Nos, which is evidently barred by time as per Rule 18 of the 1949 Rules framed under the Act, 1948. In support of his contention, Counsel has relied upon **Mehar Chand Vs. State of Haryana & Ors. 1971 PLJ 562, Shrimati Nasib Kaur Vs. The Additional Director, Consolidation of Holdings, Punjab and Ors. 1998(1) PLJ 114, Gram Panchayat Kakra Vs. Addl. Director of Consolidation and Anr. 1998(1) All India Land Laws Reporter 435 (SC) and Kesho Ram & Ors. Vs. Additional Director, Consolidation of Holdings, Haryana and Ors. 1979 PLJ 382.**

(ii) Respondent no.4 has concealed the factum of there being three rastas/paths to his land and, therefore, no equity could have played in his favour, especially when the impugned orders were passed at the back of petitioner, as he was never made a party to the proceedings initiated by respondent no.4. Reliance has been placed upon a single bench judgment of this Court in **Dholposh Sharma Shastri Vs. Richhpal Singh & Ors. 1991 PLJ 337**;

(iii) Land lying in between Khasra Nos.292 and 293 belongs to the petitioner, as land in question abuts Khasra No.292 which admittedly belongs to petitioner and, therefore, grave prejudice has been caused to him.

3. We have heard learned Counsel for the petitioner at length and have perused the paper book. However, we are of the view that instant writ petition is without any merit and, therefore, deserves to be dismissed.

4. Before advertng to the arguments raised by learned Counsel, it

would be apposite to appreciate certain admitted facts of the instant case along with the relevant statutory provisions governing the dispute involved.

It is not denied that in the scheme of Consolidation, a passage was indeed provided to respondent no.4/his predecessor in interest and the said passage was to be given in between Khasra No.292 and 293, after assigning it a separate number. Except for a bald averment made in the petition and during course of arguments, there is nothing on record to show that the land in question, lying in between Khasra no.292 and 293, was ever allotted to petitioner or his predecessor in interest.

The relevant statutory provisions i.e. **Section 42** of the 1948 Act and Rule 18 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules 1949 (for short 1949 Rules) which are necessary for adjudication are reproduced as under:-

***Section 42:*** *Power of State Government to call for proceedings: The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act], call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks filed:*

*Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.*

***Rule 18 :*** *Limitation for application under section 42 - An application under section 42 shall be made within six months of the date of the order against which it is filed:*

*Provided that in computing the period of limitation the time spent in obtaining certified copies of the orders and the grounds of*

*appeal, if any, filed under sub-section (3) or Sub-section (4) of section 21, required to accompany the application shall be excluded:*

*Provided further, that an application may be admitted after the period of limitation prescribed therefor if the applicant satisfies the authority competent to take action under section 42 that he had sufficient cause for not making the application within such period ”*

**Emphasis supplied**

In view of the aforestated admitted facts/position and the relevant statutory provisions, let us examine the arguments raised by learned Counsel for the petitioner.

**FIRST ARGUMENT:-**

5. As far as the first argument is concerned, we are afraid same is completely mis-conceived. The argument of applicability of Rule 18 in the instant case seems to be attractive, but on minute consideration of facts, same is devoid of any merit. What we can gather from the conjoint reading of Section 42 and Rules 18 is that Rule 18 applies only when an order passed by an officer under Section 21 of the Act, 1948 is put to challenge and not upon scheme prepared or confirmed or repartition. This very issue of whether limitation of six months provided in Rule 18 can be made applicable to instant proceedings, whereby a party is seeking implementation of scheme of consolidation has already been considered in detail by a Full Bench of this Court in **Jagtar Singh Vs. Additional Director, Consolidation of Holdings, Jalandhar AIR 1984 Punjab & Haryana 216**, which has been subsequently approved by Hon'ble Supreme Court in **Gram Panchayat Village Kanonda Vs. Director, Consolidation of Holdings Haryana, Chandigarh & Ors. 1990 AIR SC 763**, whereby it has been held that Rule 18 only applies to the cases where an order has been

passed by any Authority exercising powers under the Act,1948, however, the said bar of limitation would not apply to other un-foreseen circumstances, where a party is aggrieved against any part of scheme etc

Now let us consider the Judgments that have been referred by the Counsel for petitioner in detail.

In ***Mehar Chand's case (supra)***, the dispute was regarding an order passed by Director Consolidation whereby he had ordered removal of encroachment after consolidation already stood completed. In this situation it was held that Director Consolidation had no power to order removal of encroachment as the consolidation stood concluded and, therefore, it was for civil court to decide the issue.

In ***Shrimati Nasib Kaur's case (supra)***, a person who had purchased the property after consolidation, was seeking a new path. The court in such facts held that a person who was not the original participant in the consolidation proceedings has no right to seek a path under the Consolidation Act as he has no locus standi.

In ***Gram Panchayat Kakra's case (supra)***, the issue was whether a person, who had not agitated his rights under the Consolidation Act can be permitted to seek relief after nearly 40 years of Consolidation. In the said case, although, an argument under Rule 18 of the rules was raised, however, the said argument was negated by the Hon'ble Supreme Court in paragraph no.3. Simultaneously, it was also held that a person cannot be permitted to agitate his rights after an unreasonable period of time.

In ***Kesho Ram's case (supra)***, the issue involved was whether the Director Consolidation was right in accepting a time barred petition,

without affording any reason. Since, there was no one to contradict the averments made in the petition, as the respondents therein were proceeded ex-parte, therefore, the Court held that the averments made in the writ petition were required to be taken as it is and the reasons given for condonation of delay cannot be accepted. Consequently, the petition was allowed.

6. Thus, it is seen from a perusal of the aforesaid judgments that except for ***Gram Panchayat Kakra's case(supra)***, none of the judgment relied upon by the petitioner are remotely applicable to the facts of the case. Further, in the said judgments, either there was an order which was put to challenge before the concerned authority under section 42 of the Act, 1948 or the Full Bench of this Court in ***Jagtar Singh's case*** was not considered. Hence all the judgments are distinguishable on facts.

Now coming back to the argument that Rule 18 framed under the Act, 1948 would apply to the instant case, we are even more convinced that the argument is devoid of any merit as the Hon'ble Supreme Court in ***Gram Panchayat Kakra's case*** has also categorically rejected the argument. For ready reference, paragraph 3(three) of the said judgment is reproduced as under:-

**“Para 3** Rule 18 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Rules, 1949 prescribes that an application under Section 42 shall be made within six months of the date of the order against which it is filed. Under the 2nd proviso to that Rule, there is a power to admit the application after the period of limitation, which requires the applicant to satisfy the authorities that he has sufficient cause for not making the application within such period. The 2nd respondent has relied upon a decision of the Full Bench of the Punjab & Haryana High

Court in the case of [Jagtar Singh vs. Additional Director, Consolidation of Holdings, Jalandar](#) (AIR 1984 Pb. & Haryana 216). In this decision the High Court has held that the period prescribed under Rule 18 will apply only in respect of orders which are passed under the Act and will have no application to a scheme which is framed for re-partition which has been effected under the Act. ”

7. At the same time, a perusal of opening lines of para no.4 of the said judgment would show that although argument of Rule 18 has been negated but the Hon'ble Supreme Court had categorically held that no application challenging the scheme can be made after an unreasonably long period. But on a careful perusal of the paragraph no.4 of the judgment we are of the view that although the Hon'ble Supreme Court has held that such an application cannot be entertained after an unreasonably long period, however, there is no absolute bar in exercising of the said powers.

The words “restraint” and “unreasonable delay” are relative terms, which are required to be assessed on the basis of facts of each case. There cannot be an absolute bar on exercise of power where no limitation has been provided. In fact, the Hon'ble Supreme Court in **Gram Panchayat Kakra's case** had itself held in para no.4 of the judgment that question of “reasonable time” has to be seen on the basis of facts of each and every case. Thereafter, the Hon'ble Supreme Court had gone further to assess the merits of the case and finally found that there was an unexplained inordinate delay which cannot be condoned. **Paragraph no.4** of the judgment is reproduced as under for ready reference:-

“**Para No.4** This, however, cannot be understood as enabling the party which is aggrieved by the scheme or by repartition to make an application under Section 42 after an unreasonably long lapse of time. Even where no

period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. In fact this Court in the case of [Gram Panchayat, Village Kanonda vs. Director, Consolidation of Holding](#) (1989 Suppl. (2) SCC 465) dealing with Rule 18 itself, said that when no limitation is prescribed for an application under Section 42 dealing with confirmation of the scheme, the application should be made within a reasonable time and this question will have to be decided on the facts of each case. In that case the delay of about 3 years and 8 months in filing an application under Section 42 by the Panchayat was held to be not unreasonable. In the present case, however, the delay is of 40 years. We have tried to ascertain from the 2nd respondent whether there is any explanation for this unreasonable and inordinate delay. But no satisfactory explanation appears to be there for this inordinate delay in making the application under Section 42. The only contention which has been urged before us by respondent No.2 relates to the application of Rule 18 and the period of limitation prescribed therein not being applicable where the challenge is to the consolidation scheme and repartition. But even if Rule 18 is not directly attracted, an application which made after such inordinate delay ought not to have been entertained. It is also contended by the 2nd respondent that the appellants have no locus standi to challenge the order of the Additional Director of Consolidation in a writ Petition because the land in question continued to remain in the name of the proprietary body. He drew our attention to Rule 16(ii) of the said Rules. Rule 16(ii), however, quite clearly provides that the management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary party and the Panchayat shall have to utilise the income and the benefits of the estate or estates concerned. Even before Additional Director, the appellants were made a party-respondent. This contention, therefore, has no merit. ”

8.

Thus, in our opinion there is no absolute restraint or limitation

provided in exercising powers under Section 42 of the Act, 1948 with the authority concerned when a scheme is put to challenge, but said power must be exercised to do substantial justice to a party who is actually in need and not exercise the same without any “restraint” in each and every case and not considering reasons for delay at all. We think the famous saying **“with great power comes great responsibility”** is aptly applicable to all the authorities who are exercising powers similar to what has been provided under Section 42 of the Consolidation Act, 1948 as they are required to not only apply their judicious mind but also the principles of natural justice.

However, the Courts, while exercising powers under Article 226/227 of the Constitution have been granted unfettered powers, which are required to be exercised in a righteous/judicious manner to do substantial justice. In fact, all the judgments that have been passed after coming into force of the Constitution would show that the Courts have time and again shown self restraint while curtailing their own powers so as to maintain a balance. The Hon'ble Supreme Court in the latest case of ***Asian Resurfacing of Road Agency Pvt. Ltd. & Ors. Versus Central Bureau of Investigation 2018(2) RCR (Criminal) 415***, while dealing with question of jurisdiction of High Court to entertain petition against order framing charge under Prevention of Corruption Act, 1988, in view/inspite of the bar created by Section 19(3)(c) of the PC Act, has held that inherent power of a Court setup by a Constitution, is not abrogated, being a power that inheres in such Court because it is superior Court of record and not because it is conferred by the Code of Criminal Procedure. The Hon'ble Court over ruled its earlier judgment in the case of **Satya Narayan Sharma Vs. State of Rajasthan (2001) 8 SCC 607** wherein it was held that there is blanket ban of stay of

trials, therefore, Section 482 cannot be used for the aforesaid purpose. The relevant para 49 reads as under:-

“ 49. It is thus clear that the inherent power of a Court set up by the Constitution is a power that inheres in such court because it is a superior court of record, and not because it is conferred by the Code of Criminal Procedure. This is a power vested by the Constitution itself, inter alia, under Article 215 as aforestated. Also, as such High Courts have the the power, nay the duty to protect the fundamental rights of citizens under Article 226 of the Constitution, the inherent power to do justice in cases involving the liberty of a citizen would also sound in Article 21 of the Constitution. This being the constitutional position, it is clear that Section 19(3)(c) cannot be read as a ban on the maintainability of a petition filed before the High Court under Section 482 of the Code of Criminal Procedure, the non-obstante clause in Section 19(3) applying only to the Code of Criminal Procedure. The judgment of this Court in Satya Narayan Sharma Vs. State of Rajasthan, Manu/SC/0580/2001: (2001)8 SCC 607 at paragraphs 14 & 15 does not, therefore, lay down the correct position in law. Equally, in paragraph 17 of the said judgment, despite the clarification that proceeding can be “adapted” in appropriate cases, the Court went on to hold that there is a blanket ban of stay of trials and that, therefore, Section 482 even as adapted, cannot be used for the aforesaid purpose. This again is contrary to the position in law as laid down hereinabove. This case, therefore, stands overruled. ”

Since the powers exercised under Article 226/227 of the Constitution by us are equally wide, if not more, we have no hesitation in holding that in an appropriate case, the High Court has the power to interfere, so as to do complete justice amongst the warring parties and in case dispute is amongst an individual and State, where the State can either be compensated or no loss has been caused to it then even the delay can be ignored, for doing substantial justice to the aggrieved party.

9. Coming to the merits of the present case, both the authorities concerned, especially Tehsildar on spot inspection and enquiry has found that although the disputed passage was provided during consolidation

scheme but it was never reflected/implemented/recorded in the final revenue record. However, it was found that passage was being put to use by respondent no.4/his predecessor in interest-Jai Bhagwan, without any resistance since consolidation. It was further found that this passage was subsequently blocked by petitioner by taking advantage of absence of entry in revenue record about the passage in question. This forced respondent no.4 to file a petition (P-1) under Section 42 of the Act, 1948. Thus, applying the aforesaid judgment passed by Hon'ble Supreme Court as well as considering the facts of the case, we are convinced that it is a fit case where respondent no.1-Commissioner had rightly exercised its powers under Section 42, by directing the Consolidation Officer to provide the passage as per Scheme.

**SECOND ARGUMENT:-**

10. As far as the second argument is concerned, we are again afraid that same is without any merit. It is for the consolidation authorities to verify and consider as to how many passages are required to be provided to a particular piece of land. It is evident from the averments made in the writ petition itself that Jai Bhagwan-predecessor of respondent no.4, was co-sharer in more than 111 Kanals of land. Once that is so, it is quite possible that numerous passages are required to approach the land as per the situation existing on the spot. Consequently, existence of other passage is no ground to set aside the impugned orders. Furthermore, neither the scheme of Consolidation is under challenge before us nor we have been given the privilege to consider the scheme, as the same is not on record.

11. The judgment cited by learned Counsel for petitioner to support his argument is not at all applicable. It is seen that in ***Dholposh Sharma's***

*case (supra)*, a passage was carved out from the land of petitioner therein, whereas in the instant case, no such situation has arisen as the land was reserved for passage, which was being used as such for number of years together, however, taking benefit of the revenue record, petitioner blocked the same by putting cow dung. Consequently, it is held that petitioner was rightly not made a party to the proceedings initiated before the Authorities below.

**THIRD ARGUMENT:-**

12. The said argument is completely fallacious as there is no proof of ownership shown to us, whereby it can be held that land in question was ever allotted to petitioner/his predecessor in interest. In fact, from the facts of the case, we are convinced that petitioner has no *locus standi* to maintain the instant writ petition, as he is not all aggrieved by the orders passed by the Authorities below.

In view of the above, finding no merit in the instant writ petition, the same is hereby ordered to be **dismissed**.

( JASWANT SINGH )  
JUDGE

( ARUN KUMAR TYAGI )  
JUDGE

May 06 2019  
Vinay

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |