

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

**CWP No.12958 of 2016(O&M)**

**Date of Decision:-23.05.2019**

**Mahender Kumar & Ors.**

.....Petitioners.

Versus

**State of Haryana & Ors.**

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH  
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present:- Mr. Manoj Kaushik, Advocate for the Petitioners.

Mr. Rajeev Doon, Assistant Advocate General, Haryana  
for respondent nos.1 & 2-State.

Mr. Krishan Singh, Advocate for respondent nos.3 & 4.

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**JASWANT SINGH, J.**

Three Petitioners(3) have filed the instant writ petition, challenging the order dated 31.05.2016 (P-1) passed by the Director Consolidation-cum-Divisional Commissioner, Gurgaon Zone, Gurgaon while exercising the powers under Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Act, 1948), whereby an application filed by respondent nos.3 & 4 i.e. Roshni Devi and Mantra Devi for grant of passage has been allowed, by making good the

deficiency caused to petitioners.

Learned Counsel for the petitioners has argued that the Director Consolidation has exceeded his jurisdiction while carving out a passage for the contesting respondent nos.3 & 4 from the land of petitioners after more than 40 years have elapsed since consolidation had taken place, especially when no such passage was ever reserved under the scheme. It is argued that the Director Consolidation has wrongly condoned the delay despite the fact he himself records in the impugned order that there is a considerable delay in approaching him. Thus, prayer has been made for setting aside the impugned order dated 31.05.2016 (**P-1**).

On the other hand, learned Counsel for the contesting respondents nos.3 & 4 has supported the impugned order passed by the Director Consolidation by arguing that while passing the impugned order, Director Consolidation has made good the deficiency caused in the land of petitioners by allotting equivalent amount of land from the adjacent land owned by respondent nos.3 & 4. It is argued that no doubt there was a considerable delay in approaching the authority concerned, however, the delay caused was on account of fact that at time of purchase of land by Balbir Singh (father of respondent nos.3 & 4) from Durga Singh (father of petitioners) the passage in question was already in existence, however, after the respondents had constructed their houses and started tilling their land, petitioners wrongly blocked the passage by taking advantage of the revenue entries. This in turn led to a

situation whereby respondents had no passage left for egress and ingress to their houses as well as lands and, therefore, were forced to approach the Director Consolidation, being unaware about the factual position. Thus, it is prayed that keeping in view the factual aspect of the case, the instant writ petition be dismissed.

We have heard learned Counsel for the parties at length and have tried to ascertain the factual as well as legal aspect of the instant case with the assistance of both the counsels. However, we are of the view that the instant petition deserves to be dismissed.

Admittedly, Consolidation of the village had taken place in the year 1956-57 and while preparing the scheme no passage was carved out, as the land in question along with other land was owned by Durga Singh-father of petitioner. Durga Singh had sold a part of the land which is land locked by his land from all the sides vide registered sale deed in favour of Balbir Singh (father of respondent nos.3 & 4). At the time when the land was sold, a passage of about 5 Karams was already in existence and considering this passage to be permanent, Balbir Singh had bought the land and constructed houses therein. However, it seems that after nearly 14-15 years of purchase, children of Durga Prasad-petitioner and private respondent nos.5 to 19, got greedy and taking benefit of the revenue record, especially the consolidation record, tried to block the passage. It was this action on part of petitioners, that forced the respondent nos.3 to 4 (daughters of Balbir Singh) to file an application before the Director Consolidation, praying for providing an adequate passage.

In order to ascertain the controversy more minutely, on previous hearings, the Co-ordinate Bench had directed the parties to place on record a site plan, which has been eventually placed on record by counsel for respondent nos.3 & 4. This site plan has not been disputed by either of the parties. A perusal of the same would show that Director Consolidation has considered the factual position very correctly and imparted equitable justice amongst the parties. Once the site plan and impugned order Annexure P-1 are juxtaposed and read together, it becomes evident that petitioners were at fault by blocking the said passage. Still to balance the equities (although no equity lies in favour of petitioners), the Director Consolidation had made good the deficiency caused to petitioners for providing a two karam rasta (not even five karam as originally provided to Balbir Singh), by giving petitioners some of the land owned by respondent nos.3 & 4. Once that is so, especially considering the provisions of Section 42 of the Consolidation Act, which cloaks Director Consolidation with ample powers to rectify any mistake or vary any scheme, being court of record, was justified in passing the impugned order and, therefore, it cannot be said that there was any jurisdictional error on part of Director Consolidation while passing the impugned order.

The technical argument raised by Counsel for petitioner that after a considerable delay of more than 40 years, no passage can be provided, is also devoid of any merit. From the facts of the case in hand, it is clear that the Director Consolidation has rightly

exercised his powers under Section 42 of the Act to vary the consolidation scheme, after issuing due notice, in order to do complete justice amongst the parties. Such discretion, which is based upon good conscious cannot be considered to be arbitrary by any stretch of imagination and, therefore, deserves to be upheld.

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

( JASWANT SINGH )  
JUDGE

( AVNEESH JHINGAN )  
JUDGE

May 23, 2019  
Vinay/dk kamra

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