

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

CWP No.17129 of 2014

Date of Decision:-31.05.2019

Balwant Singh.

.....Petitioner.

Versus

State of Haryana & Ors.

.....Respondents.

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

Present:- Mr. Babbar Bhan, Advocate for the Petitioner.

Mr. Arun Beniwal, Deputy Advocate General, Haryana.

Mr. Gourave Bhayyia Gilhotra, Advocate for respondent no.7.

JASWANT SINGH, J.

The dispute regarding carving out a *rasta* (passage) for private respondent no.7, allegedly from the land of petitioner has reached this Court, whereby the Authorities have put the parties in an infinite loop of litigation and consequently, we are called upon to finally determine these factual disputes by putting an end to an unnecessary litigation, which ordinarily should have been sorted out by the Authorities below, lest their rigidity to stick by their orders de-hors logic, had not come in their way.

The petitioner-Balwant Singh, has filed the present writ petition seeking quashing of the remand order dated 19.12.2006 (**P-2**) passed by Director Consolidation and another remand order dated 11.01.2014 (**P-13**)

passed by Commissioner, Hisar, who while setting aside the orders passed by The Settlement Officer, Bhiwani dated 25.06.2007 (P-8) as well as 22.10.2013 (P-11) passed by Assistant Director (Consolidation) and directed them to pass a fresh order in consonance with original letter dated 19.12.2006 (P-2).

It is undisputed that private respondent no.7-Karam Singh had filed a petition under Section 42 of the Consolidation Act before the Director Consolidation at Chandigarh, seeking to implement the scheme of consolidation passed more than 4 decades ago, whereby he was granted a passage from southern side of Killa No.15//24 and 25 to reach water course no.144. It is further not disputed that the Director Consolidation, condoned the delay and remanded the matter back to Consolidation Officer vide its order dated 19.12.2006 (P-2), with a direction that a 2 *Karam* wide passage be provided from sought of Killa No.15//24 and 25.

On remand, the Consolidation Officer directed the Halqa Kanungo to inspect the spot and submit a report pursuant to which the spot was inspected and a report dated 19.03.2007 (P-3) was prepared. The said report dated 19.03.2007 is reproduced as under:-

“ The spot was inspected in the presence of the aforesaid persons in attendance. Upon spot inspection it has been found that three karam wide khaal is an existence on the South of Killa No.15//24-25. The respondent has constructed his pukhta house in the shark zanun of Killa No.15//24 after leaving about 7 feet. Upon completing the rakba of the khaal only about 7 feet area remains on the spot. Therefore, two karam wide (11 feet) passage cannot be provided from the South of Killa No.15//24-25. Passage to the applicant can be provided from Killa No.22//3-4-5 alongside khaal. There is no hindrance in providing passage from there such as temple,

house, tubewell etc. The requisite report is submitted/forwarded to your goodself for further necessary action in the matter. ”

The said report was accepted by the then Consolidation Officer, Hisar vide its order dated 06.04.2007 (P-4) and held that 2 *Karam Rasta* be provided from Killa No.22//3-4-5 instead of southern side of Killa No.15//24 and 25.

However, petitioner was aggrieved by the said order Annexure P-4 as well and, therefore, he challenged the same before the Settlement Officer, Bhiwani, whereby he raised a plea that in case the passage is carved out from the proposed alternate route, then his land would be divided into two parts and instead proposed to provide a passage to respondent no.7 from boundary of Killa No.15//4-5.

The said appeal was accepted by Settlement Officer, Hisar, vide its detailed order dated 25.06.2007 (P-8) and the appeal against the said order filed by private respondent no.7 before Assistant Director (Consolidation) was also dismissed vide order dated 22.10.2013 (P-11). However, the Commissioner, Hisar Division, it seems got swayed by the fact that the Authorities below could not have invoked the principles of natural justice and violate the original order dated 19.12.2006 (P-2) passed by Director Consolidation and, therefore, vide its order dated 11.01.2014 (P-13), set aside all the orders and directed the Consolidation Officer, Hisar to implement the order of Director Consolidation, Chandigarh in its true letter and spirit. Aggrieved against the said order dated 19.12.2006 (P-2) and 11.01.2014 (P-13), the petitioner has preferred the instant writ petition.

We have heard the parties at length and tried out level best to

get the matter resolved amicably. However, it seems that none of the parties

are ready to let go of the litigation and consequently, we are proceeding to decide the factual aspect as per material available before us.

A perusal of the site plan (Annexure P-6) which is admitted by all the parties to be factually correct as per spot, would show that the area from which originally passage was proposed to be carved out goes right from the middle of the land holding owned by the petitioner. However, the passage which petitioner has proposed to give to private respondent is right at the edge of his land and would cause less or no damage as compared to the *rasta* as directed by the Director Consolidation to be carved out in its order dated 19.12.2006 (P-2). The stand of the private respondent to insist upon the same passage on the ground that it is in existence for the past many years, cannot be accepted. It may be true that factually there is a *rasta* in existence or the spot, but it is equally true that in the revenue record no such *rasta* exists. The private respondent, for the first time after about four decades had asserted his right for carving out a passage from land of petitioner as per consolidation scheme, by moving an application before Director Consolidation. Meaning thereby, he knew of the legal flaw, which he had allowed to perpetuate for years together. Still, the Director Consolidation, without application of mind and without considering the impact of allowance of said application, condoned the delay without giving any reason and sent the parties into a serious web of litigation for years to come. Nonetheless, once the said order dated 19.12.2006 (P-2) was passed and the parties submitted to the jurisdiction of the Authorities concerned, this Court would not like to interfere in the order dated 19.12.2006 (P-2), as far as non-description of any reason for condonation of delay is concerned.

However, the Commissioner, Hisar has mis-directed itself by

not considering the site plan P-6, which was a part of the record, while passing the impugned order dated 11.01.2014 (P-13). It is seen that Commissioner, Hisar has mindlessly passed the impugned order on mere technicalities and not considering the factual aspect.

Although counsel for private respondent has placed on record a report, site plan, photographs and resolution of Panchayat, while insisting before this Court to uphold the order dated 11.01.2014 (P-13), as *rasta* is factually in existence and further there is no bend in case existing passage is permitted to continue, as compared to proposed passage, which would have many bends. However, we are not at all impressed by his arguments. Even if we take it to be true that factually a *rasta* is in existence (although resolution dated 03.11.2009 (Annexure R-4) passed by Gram Panchayat says no such *rasta* is in existence and thus goes contrary to the argument raised by private respondent, who has placed it on record), but same is a bone of contention for petitioner because admittedly, it goes right through the land holding of petitioner. This may have been feasible at the time of consolidation, had it been implemented in the revenue record, but cannot be termed to be justifiable today, when private respondent no.7 is himself guilty of inordinate delay in approaching the competent officer. Equally frivolous is the argument of private respondent regarding bends being created for him to approach the water course. It is seen that only private respondent is affected by the closing of this *rasta* and in lieu of this *rasta*, a passage has already been suggested, which would give him approach upto the water course.

Thus, to meet the ends of justice and keeping in view the undisputed site plan placed on record as Annexure P-6, we direct that the

petitioner would provide a passage from Northern boundary of Killa No.15//4-5 and thus, we set aside the order dated 11.01.2014 (P-13) as well as order dated 19.12.2006 (P-2) to the extent of providing passage from south of Killa No.15//24 and 25 only and thereby uphold the orders dated 25.06.2007 (P-8) and 22.10.2013 (P-11) passed by Settlement Officer, Bhiwani and Assistant Director (Consolidation) respectively.

Allowed in the above terms.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

May 31st, 2019
Vinay

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