

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

CWP No.26132 of 2017

Date of Decision:-14.02.2019

Municipal Committee Ellenabad through its Secretary.

.....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.D. Bawa, Advocate with
Mr. Randhir Bawa, Advocate for the Petitioner.

Mr. Arun Beniwal, Deputy Advocate General, Haryana
for official respondent nos.1 & 2.

Mr. Ashok Verma, Advocate for private respondent no.3.

JASWANT SINGH, J.(ORAL)

Municipal Committee, Ellenabad/petitioner has filed the present writ petition seeking quashing of order dated 11.08.2016 **(Annexure P-4)** passed by the Commissioner, Hisar Division, Hisar, whereby on the application of Mange Ram-respondent No.3 under Section 42 of the Consolidation Act, 1948, the claim for deficiency in allotment of Mange Ram has been accepted and the matter has been remanded back to Tehsildar-cum-Consolidation Officer, Ellenabad to decide the issue of allotment afresh as per rules after inspecting the spot and hearing all the affected parties.

As per the record, Mange Ram-respondent No.3 purchased 03 *bighas* and 02 *biswas* in *khewat* No.22 in Village Ellenabad vide sale deed dated 29.04.1960. The mutations were duly effected. The consolidation proceedings of Village Ellenabad were undertaken in the year 1961. It is claimed that in the register *khatoni istimaal*, the demand of the petitioner for 03 *bighas* and 02 *biswas* was duly entered. It is claimed that as per register *karwai*, Mange Ram was entitled to allotment of 14 *kanals* and 18 *marlas* after proper deductions. It is claimed that factually only 12 *kanals* and 13 *marlas* were allotted with a deficiency of 02 *kanals* and 05 *marlas*. No doubt Mange Ram had approached the authorities under Section 42 after delay of 53 years of consolidation. However, keeping in view the *prima facie* entitlement, the Commissioner has remanded the matter for afresh adjudication after condoning the delay.

Counsel for the petitioner states that the area of the Village Ellenabad stood merged in the Municipal Committee, Ellenabad by virtue of the notification of the area to be Municipal Area in the year 1988. It is contended that in the absence of the petitioner committee and that too after 53 years, no such orders could be passed.

On the other hand, Mr. Ashok Verma, counsel for private respondent No.3-Mange Ram submits that the presence of the Municipal Committee was not required since there has been no final adjudication by the learned Commissioner. He submits that in view of the claim of Mange Ram based on the record, learned Commissioner has only directed the re-determination of the claim based on a proper evaluation of the record by the Tehsildar-cum-Consolidation Officer under Section 21(1) of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act

1948 (hereinafter referred to as “The Consolidation Act, 1948”) by giving due opportunity to all the affected parties. Hence the petitioner would have opportunity to raise its plea and rebut the claim of Mange Ram of entitlement qua deficiency in allotment.

After hearing both the counsel, we are satisfied that in the absence of any allotment vide impugned order Annexure P-4 regarding even entitlement of allotment of any deficient area much less claim to any specific area, no prejudice has been caused to the petitioner Municipal Committee. The Commissioner has on examination of record *prima facie* found claim put up by Mange Ram to be worthy of afresh adjudication by the competent officer i.e. Tehsildar-cum-Consolidation Officer by hearing all the affected parties.

At this stage, counsel for the petitioner has raised a very pertinent concern by stating that Mange Ram-respondent no.3, is insisting upon being granted a specific portion of land as per his entitlement at the time of consolidation. To this, learned Counsel for the respondent no.3 has stated that his client would not claim any specific portion of land and would be satisfied in case he is allotted land from anywhere within the then revenue estate/municipal area which does not adversely affect the rights of petitioner, in case he is ultimately found entitled for allotment of land by the competent authority at the time of adjudication under Section 21(1) of The Consolidation Act, 1948.

Keeping in view of the fair stand of the parties and especially when it has been pointed out that the proceedings for fresh adjudication has commenced since last two years wherein Municipal Committee, Ellenabad-petitioner is duly appearing and represented, we dispose off the petition

with the afore-stated consent recorded above of both the parties and further direct the competent officer to allot the land to Mange Ram-respondent no.3, in case he is found entitled to, from an area which is un-utilized and which would not affect any party (including third party) adversely. Consequently the issue of limitation for invoking Section 42 of The Consolidation Act, 1948 would pale into insignificance.

Disposed of accordingly.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

February 14, 2019
Vinay-I/Vinay

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