

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

121

**CWP No.29875 of 2019
Date of Decision: 17.10.2019**

Surat Singh and another

.....Petitioners

Versus

Director Land Records, Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. S.S. Salar, Advocate for the petitioners.

ARUN KUMAR TYAGI, J.

The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 28.11.2018 (**Annexure P-5**) passed by respondent No.1 whereby the prayer of the petitioners to make up the deficiency in their holding and correcting the revenue record by incorporating their names in the land reserved as Hatta Chah Gurdevwala was dismissed. The petitioners have further sought issuance of a writ in the nature of mandamus directing the respondents to make the deficiency of allotment good by giving some other land as per the site plan.

This petition has been filed with the averments that the petitioners had filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, "the 1948 Act") before respondent No.1, pleading therein that prior to consolidation, Khasra No.201 measuring 0-6-10 Pukhta Gair Mumkin Hatta Chah Gurdevwala was shown to be owned to the extent of 1/2 share by Ishar Singh, who was having land bearing Khewat No.17 and to the extent of 1/2 share by Nachattar Singh and

others, who were having land bearing Khewat No.25. During consolidation, the above said land was assigned a new Khasra No.137(1-5). In Misal Hakiat prepared in 1989-90 Nachattar Singh was recorded as the exclusive owner thereof whereas Ishar Singh, the predecessor-in-interest of the petitioners was the owner of 1/2 share in it. The petitioners further pleaded that on conversion, area of 0-6-10 Pukhta Gair Mumkin Hatta Chah Gurdevwala became 1 Kanal 12 Marlas but area of 1 Kanal 5 Marlas was allocated to Khasra No.137 instead of 1 Kanal 12 Marlas and area measuring 7 Marlas, which was a part of Khasra No.137, was wrongly shown as passage bearing Khasra No.72 which was created in lieu of Khasra No.202. Further at the time of allotment, area of Khasra No.14//17 was reckoned as measuring 8-0 but during preparation of Khatoni Pamaish Khasra No.14//17 was created measuring 3-10 causing loss of 4 Kanals 10 Marlas to Ishar Singh.

The grievance of the petitioners is that even though private respondents did not appear despite service and were proceeded against ex-parte, the petition was dismissed by passing a non-speaking and non-reasoned order without giving any opportunity to produce any other documents. The petitioners have accordingly prayed that the impugned order being illegal may be quashed.

We have heard counsel for the petitioners and gone through the record.

Learned counsel for the petitioners has argued that there were mistakes in the consolidation records as Ishar Singh was not mentioned as owner to the extent of 1/2 share in Khasra No.137, area of

which was also reduced as 1 Kanal 5 Marlas instead of 1 Kanal 12 Marlas and there was deficiency of 4 Kanals 10 Marlas in Khasra No.14//17 (3-10) allotted to him instead of 14//17 (8-0) as mentioned in the Naksha Hakdarwar. Respondent No.1 has dismissed the petition by passing a non-speaking order without application of mind and the impugned order being against the facts and law may be quashed.

On perusal of the material on record and consideration of the submissions made by learned counsel for the petitioners, we are of the considered view that this petition is devoid of any merit and is liable to be dismissed.

In the present case the claims in the petition filed under Section 42 of the 1948 Act were dealt with and rejected by respondent No.1 by giving detailed reasons in his order dated 28.11.2018, the relevant part of which is reproduced as under:-

"4. I have considered the arguments of the petitioner and have also gone through the record on the file. The petitioner has two main grievances that Khasra no.14//17 8k-0M was allotted but in the further record, the area of this khasra number was mentioned as 3K-16M. The second grievance is that the Hatta Chah bearing Khasra No.201 measured 1K-12M but it was reduced to 1K-5M and the name of his predecessor in interest was not entered in this Khasra number. Regarding grievance No.1 it is mentioned that in Khatoni Pamaish at Hatta No.217/241, in terms of right wise cut, the demand of Ishar Singh was 10K-10M standard and the Khasra No.11//18 with ordinary area was 8-8 and Khasra No.14//17 area was 3-10 and total standard value is mentioned as 10K-12M which was given. According to this, in this khata the petitioner has been allotted the land

as per his entitlement/demand. The second objection is regarding khasra No.201 showing 1K-5M instead of 1K-12M. **According to new jarib of 66 inch, while converting this area, the area of 1K-12M comes to only 1K-5M.** So far as non allotment of Hatta Chah in his name is concerned, **no proof has been by the petitioner showing that his tuk is adjoining to this Hatta.** During argument also, **no such proof has been produced which could show that as per scheme of utilization, his tuk was adjoining to this Hatta Chah and for that reason it was necessary to allot him ownership in Hatta Chah.** Keeping in view the above facts, the petitioner has not been able to prove his case."

(emphasis supplied)

The petitioners have miserably failed to substantiate their claim and show that the reasons given in support of the findings recorded by respondent No.1 are factually wrong. Therefore, the impugned order, being well reasoned, does not suffer from any illegality and is not liable to be set aside.

The case may also be judged from another angle. Under Section 19 of the 1948 Act, the draft scheme is required to be published and objections have to be invited and are to be considered within the prescribed time. After considering the objections, the final scheme has to be confirmed under Section 20 of the 1948 Act. Under Section 21 of the 1948 Act, the Consolidation Officer is required to carry out re-partition in accordance with the scheme of consolidation in the manner set out therein. Any person aggrieved by the re-partition is entitled to file written objection under Section 21(2) of the 1948 Act before the Consolidation Officer within 15 days of the publication. There are further provisions for appeal under Section 21 (3) and (4) of the 1948

Act. Under Section 42 of the 1948 Act, power is given to the State Government to call for and examine at any time the record of any case pending before or disposed of by any officer under the 1948 Act for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or re-partition made by such officer under the 1948 Act and to pass such order in reference thereto as it thinks fit.

Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (for short, "the 1949 Rules"), which prescribes the period of limitation of six months in respect of orders passed under the 1948 Act, has no application to scheme framed or confirmed or re-partition made by any officer under the 1948 Act as held in *Jagtar Singh Vs. Additional Director, Consolidation of Holdings, Jalandhar, 1984 RRR 31: AIR 1984 Punjab and Haryana 216* but this cannot be understood as enabling the party which is aggrieved by the scheme framed or confirmed or by re-partition made under the 1948 Act to make an application under Section 42 of the 1948 Act after the lapse of unreasonably long time and the party aggrieved is required to move to the appropriate authority for relief within the reasonable time which has to be decided on the facts of each case as held by the Hon'ble Supreme Court in *Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, 1989 Suppl. (2) SCC 465*.

Admittedly, consolidation took place in the village in 1989-90. The petition under Section 42 of the 1948 Act filed by petitioner No.2 on 15.10.2014 after inordinate delay of 24 years cannot

be ordered to be entertained and adjudicated upon.

In these facts and circumstances, the petitioners are not entitled to any relief and the petition, being devoid of any merit, is liable to be dismissed.

Accordingly, the petition is dismissed. No costs on the petitioner.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

17.10.2019

Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No