

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9454 of 2020

Date of Decision: 11th August, 2020

Ram Kumar

....Petitioner

VERSUS

Commissioner, Hisar Division, Hisar and another

....Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Sharma, Advocate for the Petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. This is a petition seeking the quashing of an order dated 13th August, 2019 passed by the Divisional Commissioner, Hisar Division, Hisar rejecting the Petitioner's application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter, 'Act') that a passage should be provided from Khasra No. 154 for ingress and egress from his land in Khasra No. 98.

2. The background facts are that the plot in Khasra No. 98 was allotted to the Petitioner's father and uncle at the time of consolidation, which took place nearly 60 years ago. It has been noted in the impugned order dated 13th August, 2019 that according to the consolidation *jamabandi* for the year 1959-60, the land in Khasra No. 154 is identified as a 'Gairmumkin pond'.

3. According to the Petitioner, at present, there is in fact no pond in Khasra No. 154 and he was earlier using the the land in Khasra No. 154 to access his plot, which apparently has remained vacant in all these years. When the Gram

Panchayat of village Shahidan Wali prevented his access, he approached the authorities stating that he was ready to pay the charges involved in his being given passage through Khasra No. 154.

4. It appears that an order was passed on 10th February, 2016 by the District Development and Panchayat Officer, exercising the powers of Assistant Collector 1st Grade, for eviction of those in illegal possession of the land in Khasra No. 154. The said order noted that the Petitioner had a “passage from the land pertaining to Lal Dora, which is partly paved by the Gram Panchayat” and that a demand had been raised in the meeting of Gram Panchayat for paving the remaining portion of the said street. It was also noted that the Petitioner had “fitted a door towards that street, which is being used by him for ingress and egress through the said street”.

5. In the impugned order dated 13th August, 2019 the Divisional Commissioner has noted that from the report of the Tehsildar-cum-Consolidation Officer dated 19th April, 2019, it appeared that in Khasra No. 154, there was no pond till date and the land was being used for ingress and egress by the Petitioner. However, it was confirmed that in terms of the consolidation *jamabandi* the land in Khasra No. 154 “belongs to a Gairmumkin Pond”. The order further noted the settled legal position, explained by the Supreme Court in its judgments in ***Hinch Lal Tiwari v. Kamala Devi (2001) 6 SCC 496; Meghwal Samaj Shiksha Samiti v. Lakh Singh (2011) 11 SCC 800*** and ***Jagpal Singh v. State of Punjab 2012 AIR SC (Civil) 1453***, that the land earmarked for a pond cannot be utilized for any other purpose.

6. Learned Counsel for the Petitioner sought to place reliance on the photograph of the plot in Khasra No. 98 and the constructions surrounding it

to show that there was no passage available to him except through Khasra No. 154. He was, however, unable to point out any averment in the writ petition challenging the factual finding in the order dated 10th February, 2016 of the District Development and Panchayat Officer that he has passage from the land pertaining to *Lal Dora* and that he has also fitted a door towards that street. From the averments in para 12 of the writ petition, it appears that the Petitioner's grievance is about not having "no other rasta" to his plot in *khasra* No. 98 "from the phirni". In other words, it is not the case of the Petitioner that he has no access to a passage from the *Lal Dora*.

7. In any event, the prayer of the Petitioner that he should be granted a 'rasta' through Khasra No. 154 cannot possibly be acceded to, since it is identified as a 'Gairmumkin Pond' and the legal position in that regard is absolutely clear.

8. In view of the above conclusion, the Court leaves open the question raised by Mr. Ankur Mittal, Additional Advocate General, Haryana, whether the Petitioner's application under Section 42 of the Act itself was in fact maintainable in the first instance.

9. There is no merit in this petition and it is dismissed as such.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

11th August, 2020
jk

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