

CWP No.6678 of 2020 (O&M)

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

(PROCEEDINGS THROUGH VIDEO CONFERENCING)

CM-14972-CWP-2021 in/&

CWP No.6678 of 2020

Date of Decision: 25.10.2021

Nehpal Singh @ Naih Pal & others

...Petitioners

Versus

Director, Department of Consolidation, Haryana & others

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Vaibhav Jain, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

CM-14972-CWP-2021

Prayer in this application is for preponement of the hearing of the main writ petition, which is fixed for 14.12.2021.

For the reasons stated in the application, the same is allowed. Hearing of the main writ petition is preponed and the same is taken on board for consideration.

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Prayer in this writ petition is for quashing of the order dated 18.06.2007 (Annexure P-5) passed by the Consolidation Officer, Gurgaon, exercising the powers under Section 21 (2) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'Consolidation Act'), whereby, in compliance with the order

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dated 25.08.2005 (Annexure P-4) passed by the Director, Consolidation Haryana, Chandigarh, exercising the powers under Section 42 of 1948 Act, subsequent to consolidation scheme which was sanctioned on 28.04.1994, proceedings under Section 21 (1) were finalized on 30.04.1998 after partition of the area, considering two applications under Section 42 of the Consolidation Act moved by the Sarpanch of the Gram Panchayat, Bandhwari to the effect that the land which was reserved for allotment of the residential plots to the landless residents of the village i.e. Khasra No.748-749 was rocky, hilly and unequal, where plots cannot be demarcated, prayer was made for earmarking of 5 acres land in Khasra No.734-735 for the said purpose. The said application was accepted and the matter was remanded back to the Consolidation Officer, Gurgaon, for allotment of plots by going on the spot and the said work was to be done in the presence of the Sarpanch and Panches of the Gram Panchayat. It would not be out of way to mention here that prior to the finalization of the proceedings under Section 21 (1) of the Consolidation Act on 30.04.1998, Gram Panchayat had passed a resolution dated 16.07.1996 for providing residential plots to 241 persons and the same was taken into consideration while taking the decision for allotment of 5 acres land in Khasra No.734-735 to the landless persons of the village.

It is, in compliance of this order passed by the Director, Consolidation Haryana, order dated 18.06.2007 (Annexure P-5) was passed by the Consolidation Officer, Gurgaon, wherein the Kanungo, on having gone to the village and on enquiry, had concluded that out of 241 persons, whose names have been forwarded by the Gram Panchayat vide its

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resolution dated 16.07.1996, only 217 persons were found eligible. Remaining 24 persons were found to be ineligible by the Assistant Consolidation Officer as per the report submitted by the Kanungo. These 217 persons were accordingly allotted the residential plots in Khasra No.734-735.

2. Learned counsel for the petitioners has asserted that the persons, who were similarly placed as the petitioners and whose names were not included in the final allotment list despite their names figuring in the resolution dated 16.07.1996, which had 241 persons eligible for allotment of 160 square yards plots from the *shamlat deh* land being landless Scheduled Castes and Backward Class categories persons, approached this Court by filing CWP No.11728 of 2007, titled as 'Smt. Jaidevi & others Vs. Director, Department of Consolidation, Haryana & others', which came to be decided on 01.09.2009 (Annexure P-6), where this Court had proceeded to dispose of the said writ petition by directing that the names of the petitioners in that writ petition be forwarded by the Gram Panchayat, Bandhwari to the Competent Authority for consideration for allotment of residential plots measuring 160 square yards each in terms of the original resolution dated 16.07.1996. Counsel contends that the petitioners being similarly placed had been approaching the respondents for the grant of same benefit but when nothing came out of their visits to the authorities, they approached the counsel, who sent representations dated 10.10.2019 (Annexure P-7 colly) to the Sarpanch of the Gram Panchayat, Bandhwari, Tehsil Sohana, District Gurugram and the Deputy Commissioner, Gurugram but neither any benefit has been conferred upon the petitioners nor has any

reply been received forcing the petitioners to approach this Court by way of present writ petition. He submits that the petitioners pray for issuance of direction to the Deputy Commissioner, Gurugram, to consider their representations dated 10.10.2019 (Annexure P-7 colly) and take a decision thereon within some specified time.

3. On a specific question put by this Court as to why the petitioners did not approach the authorities prior to 10.10.2019, as there is nothing on record which would indicate that they had ever approached the said authorities, he again reiterates that they have been visiting the office of the authorities continuously. He asserts that since the petitioners are similarly placed as the petitioners in CWP No.11728 of 2007, titled as 'Smt. Jaidevi & others Vs. Director, Department of Consolidation, Haryana & others', wherein directions have been issued by this Court on 01.09.2009 for consideration of their claim for allotment of the residential plots, similar directions be issued to the respondents.

4. We have considered the submissions made by the learned counsel for the petitioners and have gone through the pleadings as well as the impugned orders.

5. The facts as have been narrated above makes it amply clear that while passing resolution dated 16.07.1996 in a special meeting of the Gram Panchayat, Bandhwari, names of 214 residents of the village for allotment of residential plots of 160 square yards each, who belong to the Scheduled Castes and Backward Class categories and other landless persons, were forwarded to the Panchayat Samiti for approval. This exercise under the Consolidation Act was sanctioned on 28.04.1994 but prior to finalization of

the consolidation partition of the Gram Panchayat, the above referred to resolution dated 16.07.1996 was passed and forwarded to the Panchayat Samiti. In the said consolidation scheme, which was finalized relating to the partition of the area under Section 21 (1) of the Consolidation Act, on 30.04.1998, wherein Khasra No.748-749 was earmarked for allotment of the residential plots to the landless persons specifying therein an area of 5 acres. However, since the terrain of the said khasra number was rocky, hilly and very much uneven, it was not possible for demarcation of the plots. Therefore, two applications under Section 42 of the Consolidation Act were preferred by the Gram Panchayat, Bandhwari, dated 08.04.2000 and 27.08.2004. One was relatable to the allotment of Khasra No.734-735 in place of Khasra No.748-749 and the other was for inclusion of 27 more names for allotment of the plots.

The Director Consolidation, on consideration of both the applications, proceeded to accept the prayer of the Gram Panchayat to the effect that the plots may be carved out and allotted to the landless persons upto the extent of 5 acres from Khasra No.734-735 in place of Khasra No.748-749 but other prayer as made in the application for including 27 other names of the persons which included the names of the petitioners herein, was not accepted. This is apparent from the fact that the Director, Consolidation Haryana, vide impugned order dated 25.08.2005 (Annexure P-4) accepted the report of the Assistant Consolidation Officer, dated 21.10.2004, according to which the eligible persons to be allotted the plots by going on the spot and that too, in the presence of the Sarpanch and Panches of the Gram Panchayat as also the related persons. The cause of

action, therefore, arose at this stage itself when the order dated 25.08.2005 (Annexure P-4) was passed by the Director, Consolidation Haryana.

6. In pursuance to the order dated 25.08.2005 (Annexure P-4), Consolidation Officer, Gurgaon, proceeded to pass the order dated 18.06.2007 (Annexure P-5), wherein it was clearly held that the report dated 21.10.2004 submitted by the Assistant Consolidation Officer clearly indicate that out of the list of 241 persons, only 214 persons have been found eligible for allotment of residential plots and the remaining 27 persons were found ineligible by the Assistant Consolidation Officer. He further states that since the Director Consolidation in the remand order had directed the said report to be given effect to vis-a-vis Khasra No. 734-735 in place of Khasra No.748-749, the claim qua the others has not been accepted. Here again, cause of action has arisen to the petitioners but there is nothing on the record which would indicate that they had ever approached the competent authorities pressing for their claim for allotment of the residential plots as per the initial consolidation scheme sanctioned on 28.04.1994 and the partition of area proceedings under Section 21 (1) finalized on 30.04.1998.

For the first time, petitioners have submitted their representations dated 10.10.2019 (Annexure P-7 colly) to the Sarpanch, Gram Panchayat, Bandhwari and the Deputy Commissioner, Gurugram, which is more than 14 years from the date of passing of the order by the Director, Consolidation Haryana and more than 12 years from the date of passing of the order dated 18.06.2007 by the Consolidation Officer, Gurgaon.

7. Even if a lenient view is taken and it is proceeded on the assumption although without any basis, that similarly placed persons had approached this Court by way of writ petition in the year 2007 by filing CWP No.11728 of 2007, titled as 'Smt. Jaidevi & others Vs. Director, Department of Consolidation, Haryana & others', which was decided on 01.09.2009, where directions were issued to consider their claim, still more than 10 years have passed from the date of passing of the order by this Court. There is no manner of doubt that the petitioners have been sleeping over their rights and they have not only been negligent and careless but have given up their claim for allotment of the residential plots.

That apart, records do not indicate that the petitioners were eligible for allotment of the residential plots except for the application which has been submitted under Section 42 of the Consolidation Act, dated 27.08.2004, which apparently has been considered by the Assistant Consolidation Officer and vide report dated 21.10.2004 found them ineligible for allotment of residential plots. The said decision or even the subsequent decisions dated 25.08.2005 (Anenxure P-4) passed by the Director, Consolidation Haryana and the order dated 18.06.2007 (Annexure P-5) by the Consolidation Officer, Gurgaon, were not challenged by the petitioners till the filing of the present writ petition.

8. It would not be out of way to mention here that the outcome of the directions which have been issued by this Court in CWP No.11728 of 2007, titled as 'Smt. Jaidevi & others Vs. Director, Department of Consolidation, Haryana & others', vide order dated 01.09.2009, have been complied with or not nor has it been said that as to whether the persons who

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were the petitioners in that writ petition have been ultimately found to be eligible and allotted the plots. This question was specifically put to the counsel for the petitioners, who has not responded to it which apparently makes it clear that they have not been found eligible nor have they been allotted plots, otherwise this fact would have been prominently mentioned not only in the representations which have been submitted by them to the Sarpanch of the Gram Panchayat and the Deputy Commissioner, Gurugram, but would have been a part of the pleadings in the writ petition, which further refrains this Court from issuing such direction as has been prayed for.

9. We, in view of the above, are unable to accept the prayer of the petitioners for issuance of a direction for consideration of their claim for allotment of the residential plots at this stage when the claim of the petitioner has become stale and is unsubstantiated and therefore, dismiss the writ petition on the ground of delay and laches and merits as well.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

25.10.2021
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No