

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-9533-2021

Date of decision : 07.05.2021

Balbir Singh since deceased through his legal heirs and others

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Ravinder Rana, Advocate
for the petitioners.

(Proceedings through Video Conferencing)

AUGUSTINE GEORGE MASIH, J.(ORAL)

Challenge in this writ petition is to the orders dated 17.10.2016 passed by the Consolidation Officer, Gurgaon (Annexure P-5) whereby, the claim of the petitioners for passage to approach their land has been declined. Order dated 05.05.2017 passed by the Settlement Officer (Annexure P-7), order dated 29.04.2019 passed by the Deputy Commissioner-cum-Assistant Director Consolidation Officer, Gurugram (Annexure P-8) and the order dated 16.03.2021 passed by the Commissioner, Gurugram Division (Annexure P-10) whereby the appeals and the revision which has been preferred by the petitioner stands dismissed by the Consolidation Authority.

It is the contention of the learned counsel for the petitioners that the petitioners have no access to the land i.e. Khewat no.95, khata no.109, Rectangle no.9, Killa no.23/2(7-0), 24/1 (5-10) in village Sarhol, Tehsil Gurugram, District Gurugram. He asserts that the petitioners have

matter of fact the petitioners were using the passage in Rectangle no.25, Killa no.5/1 having Rasta no.107 which belongs to respondent no.6- Mahabir son of Jaimal. It is at subsequent date that respondent no.6 started interfering in the ingress and outgress from the passage and raised construction over the land and blocked the passage in the year 2013 which led to the petitioners filing an application under Section 42 of the Punjab Consolidation Act, 1948 before the Commissioner, Gurugram Division for carving out the passage for the petitioners by reducing the area of the same land from that of the petitioners. The said application of the petitioners was accepted on 31.05.2016 and the matter was remanded back to the Consolidation Officer, Gurugram. The Consolidation Officer, Gurugram, after calling the report from the Assistant Consolidation Officer proceeded to decline the said application vide order dated 17.10.2016 (Annexure P-5). The petitioners thereafter approached the District Revenue Officer-cum-Settlement Officer, who vide order dated 05.05.2017 dismissed the appeal of the petitioners and declined the relief to the petitioners of the said passage. Aggrieved by this order, the petitioners preferred an appeal before the Deputy Commissioner -cum- Assistant Director, Consolidation, Gurugram, who also did not accept the contention of the petitioners and proceeded to dismiss the same vide order dated 29.04.2019 (Anneuxre P-8). The petitioners left with no choice but to file another petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948, before the Commissioner, Gurugram Division, Gurugram, who vide order dated 16.03.2021 rejected the revision petition of the petitioners. This the learned counsel for the petitioners contends is not sustainable in the light of the fact that the petitioners do not have any

access to the land owned by him and therefore, is unable to use the said land. He has also disputed the finding which has been recorded by the Consolidation Authority wherein it has been asserted that the nature of the land has changed and it is no more an agricultural land but is a commercial land. The finding with regard to the Rectangle No. 25, Killa No. 5/1 having been now owned by the Central Government and under the management of CPWD where there is an emergency landing air strip has also been disputed. In this regard, he has placed reliance upon the revenue record which is in the form of site plan by asserting that the assertions as recorded are not sustainable.

We having considered the submissions made by the learned counsel for the petitioners are unable to accept the same as the findings recorded by the Consolidation Authority below are consistent to this effect that the land is not being used for agricultural purposes and is being used as for commercial purposes. Apart from that it has also come on record in the order which has been passed that air strip has been built on the land which the petitioners assert that the passage earlier which is now owned by the Cental government and is under the management and control of the CPWD. It has also come on record that the land of the petitioners as well as respondent No. 6 is no more agricultural land but is being used for various commercial purposes.

In the light of the change of nature of the land the primary prayer of the petitioners with regard to seeking passage to agricultural land can not sustain. Even an observation has come that the petitioners have themselves constructed rooms on their land and have rented them out. It has come on record in the order dated 29.04.2019 passed by the Deputy and

Assistant Commissioner, Consolidation, Gurugram, that the petitioners have access to their land to the road built by the HSIDC which connects to Village Sarhol and is used by the petitioners on the northern side of the land. Apart from this, delay of about 60 years has been taken as a ground for non-acceptance of prayer of the petitioners. It is apparent that the consolidation proceedings had taken place in the year 1955-56 and the grievance, if any, which has been raised by the petitioners in the year 2013 which itself speaks with regard to delay having been caused by the petitioners at their instance.

We do not find ourselves in agreement with the contention raised by counsel for the petitioners and rather agree with the orders which had been passed by the Consolidation Authorities.

In the light of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

May 07, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No