

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111(PROCEEDINGS THROUGH V.C.)

CWP-14078-2021

Date of decision: 04.08.2021

ATTAR SINGH AND OTHERS

...PETITIONERS

VERSUS

COMMISSIONER ROHTAK DIVISION AND OTHERS

....RESPONDENTS

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

Present: Mr. Mani Ram Verma, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Petitioners have approached this Court challenging the order dated 09.02.2021 (Annexure P-6) passed by the Commissioner Rohtak Division, Rohtak exercising the powers of the Director Consolidation under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'Consolidation Act, 1948'), whereby the application of the petitioners under Section 42 of the said Act for correction of the error which has crept in the scheme of consolidation and their shares have been wrongly recorded on the basis of the wrong mutation which was sanctioned prior to the consolidation scheme which led to the error at the subsequent stage as well, has been dismissed.

It is the contention of the learned counsel for the petitioners that the correct shares were recorded in Mutation No. 200 dated 19.04.1919 which continued, however, the mutation was wrongly entered in Jamabandis for the year 1951-52 resulting in the shares of the parties being not correctly recorded. These wrong entries continued in the Jamabandis for the subsequent years as well.

Consolidation in the village started in the year 1968-69 and concluded in the year 1978-79. First Jamabandi was prepared in the year 1979-80, where again wrong entries have been made. Counsel contends that the petitioners, through a petition under Section 42 of the Consolidation Act, 1948, had sought correction of the entries made in the Jamabandis consequent upon the consolidation having been carried out in the village.

It is asserted by the counsel for the petitioners that the petitioners came to know about the wrong entries in the Jamabandis in May, 2020 when possession from the petitioners was being sought to be taken of the land which had been in their continuous possession. There has been no partition of the land but now on the basis of the wrong Jamabandis, where the shares have not been rightly recorded, the private respondents are seeking partition of the land which may consequently result in the dispossession of the petitioners.

Faced with this position, petition under Section 42 of the 1948 Act was filed in June, 2020, which was duly entertained and after hearing the parties and calling for the report of the Naib Tehsildar-cum-Assistant Consolidation Officer, the application was rejected despite the fact that the report dated 19.01.2021 indicated that as per the Jamabandi Bandobast 1927-28, share of Khewat No. 44 comes to 11/12 which is wrong and no

earlier Bandobast of the aforesaid Khewat was available in the Patwar Circle. The Consolidation Officer should have got the same traced and thereafter proceeded to pass appropriate orders for correction of the shares of the parties in the Jamabandi. The Commissioner failed to notice that entry in the Jamabandi 1979-80 was not correctly made resulting in the loss in the share of the petitioners. He, thus, contends that the impugned order cannot sustain especially in the light of the fact that despite there being delay in approaching the competent Authority under Section 42 of the 1948 Act, once the petition had been entertained, the same could not have been rejected merely on the basis of the report of the Naib Tehsildar-cum-Assistant Consolidation Officer. He accordingly prays that the writ petition be allowed by setting aside the impugned order.

We have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the pleadings and the records but do not find ourselves in agreement with the said submissions.

As is apparent from the pleadings, mistake, if any, which had occurred in the Jamabandis, pertains to the year 1951-52. The petitioners should have immediately taken steps for correction thereof, which they failed. Even prior to the consolidation, which started in the year 1968-69 and continued up to 1978-79, no steps were taken. As per the admitted case of the petitioners, the first Jamabandi, after the consolidation proceedings were concluded in the village, was recorded in the year 1979-80. Petitioners had been sleeping over the said incorrect entries, if any, till they moved an application under Section 42 of the Consolidation Act, 1948 in June, 2020. It is apparent that the delay is of 50 years in filing an

application for correction of the error in the consolidation scheme, which, in our considered view, is not permissible as there is an inordinate delay. Further, it is only for correction of an entry in the Jamabandi which is not acceptable.

In any case, the order, which has been passed by the Commissioner, Rohtak Division, Rohtak under Section 42 of the Consolidation Act, 1948 dated 09.02.2021, makes it amply clear that there was no error during the consolidation proceedings and the shares were correctly recorded. The operative part of the impugned order dated 09.02.2021 makes it amply clear which reads as follows:-

“ After hearing the parties in detail and after persuing the documents available on file, I have come to the conclusion that consolidation of this village was done in the year 1978-79. After 52 years this appeal has been filed by the appellant. Regarding this appeal Naib Tehsildar cum Assistant Consolidation Officer made clear in their report No. 5370 dated 19.01.2021 that as per Jamabandi Bandobast 1927-28 share of Khewat No. 44 comes to 11/12 which is wrong. This was last Bandobast. There is no revenue record of earlier Bandobast of the aforesaid Khewat in the Patwar circle but as per consolidation Jamabandi of the year 1979-80, shares were found correct of Khewat No. 161, Khatoni No. 196-197. Shareholders were heard during consolidation and signature of advisory committee are there on record. This record was published in the open public. From this report it is clear that during consolidation proceedings shares were correctly

recorded, no error was found in the consolidation record, which is liable to be corrected. Therefore, in this situation and in view of the aforesaid facts and as per report of Tehsildar, finding no force in the appeal of the appellant the same is rejected. File be consigned to record after compliance.”

The jurisdiction and the power to be exercised by the authorities under Section 42 of the Consolidation Act, 1948 is limited to the extent of correction in the consolidation scheme and report which has been found to be none by the competent authority. The person who sleeps over his right over a long period of time, as in this case for more than 50 years, the same itself would be a good ground for non-interference by the competent authority.

In any case, we do not find any error in the order passed by the Commissioner Rohtak Division, Rohtak exercising the powers of the Director Consolidation and, therefore, do not find it a case fit for interference in exercise of our writ jurisdiction.

This petition is, therefore, dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

August 04, 2021
pj

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No