

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 14869 of 1995(O&M)
Date of Decision:30.11.2022

Kitab Singh

.....Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: None for the petitioner.

Mr. Amit Aggarwal, DAG., Haryana.

LISA GILL, J(Oral).

Prayer in this writ petition is for setting aside order dated 31.08.1995 passed by the Director, Consolidation of Holdings, Haryana on a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short – 'the Act') filed by respondent No. 3.

It is the case of respondent No. 3 in the petition under Section 42 of the Act that during consolidation proceedings finalized in 1961-62, three karam path was provided between khasra Nos. 135 and 136. The said path was used to link with path No. 277 from the eastern side leading to Phirni bearing No. 129 towards West. It is further averred that after consolidation, owner of plot No. 135 encroached upon part of the path and unless a formal number to the path is provided, same will get completely encroached and path will get closed causing difficulty to all the inhabitants

of the area. Director, Consolidation of Holdings, Haryana, considered the report of the Consolidation Officer, Karnal, wherein it is stated that only ½ karam path was left on the spot with the rest being blocked and encroached upon. While observing that remedy for restoration of the existing path would lie before the civil Court, it was directed that there was a need to designate the remaining portion of the path with proper khasra number so that the said area is not encroached upon. Accordingly, the matter was remanded to the Consolidation Officer with a direction to get the vacant area demarcated and provide a formal number to the path.

Aggrieved therefrom, present writ petition was filed with the averments that petitioner alongwith his brother Ram Singh were in peaceful possession of land comprising khasra No. 135 situated in village Jorasi Khalsa. Suit for permanent injunction, it is averred, was filed by the petitioner alongwith his brother on 25.10.1994 for restraining the defendants therein including respondent No. 3 from interfering in their peaceful possession over khasra No. 135. It is further averred that defendants in the said suit, demolished the boundary wall of the petitioner's house on 01.11.1994 trying to carve out a passage in the disputed property. The impugned order is claimed to be illegal and arbitrary with the averment that as per *Aks Shajra*, there is no path or passage to khasra No. 135 and 136.

Notice of motion was issued in this writ petition on 30.10.1995 with status quo directed to be maintained with respect to the passage in question. Writ petition was thereafter admitted on 22.11.1996 with the direction that operation of impugned order passed by the Director Consolidation, shall remain stayed, but the same would not be taken note of by the Civil Court while deciding the suit on merits.

As none appeared on behalf of the petitioner, when the petition

was listed for final hearing, actual date notice was issued to the petitioner on 06.09.2022.

As per office report, petitioner has passed away.

None appears for seeking impleadment of the legal representatives of the petitioner.

Learned counsel for the respondent-State submits that he does not have any information regarding the fate of the Civil Suit.

Keeping in view the facts and circumstances as above, we do not have any option but to dismiss the writ petition in default.

Writ petition is accordingly dismissed in default and for non prosecution. However, liberty is afforded to legal representatives of the petitioner, if any, to move appropriate application in this writ petition within four weeks in case of survival of cause of action.

Copy of this order be conveyed at the address of the petitioner given in the memo of parties.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 30, 2022.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.