

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
111**

CWP No. 6188 of 2020

Date of Decision: 5th April, 2022

THAAN SINGH

...PETITIONER

Versus

STATE OF HARYANA AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Ram Bilas Gupta, Advocate,
for the petitioner.**

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 13.02.1992 (Annexure P-3), vide which the Director, Consolidation accepted the application of Bijender Singh-respondent No. 7, wherein prayer was that in plot no. 215 to 227, path no. 215, 223 were given of 2-2 karam as in the consolidation, the said path was so provided whereas at present, it was one karam, and the matter was remanded back to the Consolidation Officer, Gurgaon to dispose of the case on the basis of the records and on merits, order dated 07.07.1992 (Annexure P-4), vide which the Consolidation Officer, Gurgaon, in pursuance to the order dated 13.02.1992 (Annexure P-3), proceeded to accept the application of respondent No. 7 and ordered the said entry at the site and the field book, order dated 26.09.1994 (Annexure P-5) passed by the Consolidation Officer, Chakbandi, Rohtak, whereby the appeal preferred by the petitioner challenging the order dated 07.07.1992

was permitted to be withdrawn, order dated 21.08.2015 (Annexure P-11) passed by the District Revenue Officer and Collector Faridabad, wherein an application was preferred by the petitioner for restoration of the appeal, which was withdrawn on 26.09.1994, was dismissed being time barred as the same was preferred after a period of almost 20 years from the date of such withdrawal and after a gap of 13 years from dismissal of the revision petition by the High Court as also the order dated 13.11.2019 (Annexure P-14) passed by the Commissioner, Faridabad Division, Faridabad exercising the powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 1948 Act'), vide which the said revision was dismissed.

2. When this case earlier came up for hearing on 05.03.2020, following order was passed:-

“ Counsel for the petitioner has submitted that the order dated 13.02.1992 was passed by the Director, Consolidation, remanding the matter back to the Consolidation Officer to decide it afresh. Vide order dated 07.07.1992 (Annexure P-4), the Consolidation Officer passed the order which was challenged by the petitioner by way of an appeal. While the appeal was pending, he also filed a civil suit for declaration and withdrew the appeal filed by him on 26.09.1994 (Annexure P-5). After the dismissal of the suit, he again filed an application for restoration of the appeal which was dismissed on 21.08.2015 (Annexure P-11). Thereafter, the petitioner filed an appeal which was allowed on 27.03.2018. Against the said order, the appeal filed by respondent No. 7 was allowed.

The question involved in this case is as to whether the appeal which was withdrawn by the petitioner without reserving his rights for its revival can be restored after a long delay of 12 years.

Counsel for the petitioner prays for an adjournment to prepare his case.

On his request, adjourned to 26.03.2020.”

3. Learned counsel for the petitioner has submitted that although no permission has been granted by the Consolidation Officer, Rohtak while permitting the withdrawal of the appeal vide order dated 26.09.1994 (Annexure P-5) but it was very much mentioned in the said order that the petitioner had filed a case in the Civil Court and he would not like to pursue the appeal which has been preferred by him under Section 21 (3) of the 1948 Act and would withdraw the same. On a “no objection” given by the counsel for respondent No. 7, the appeal had been dismissed as withdrawn.

4. It is the further contention of the learned counsel for the petitioner that the suit, which has been preferred by the petitioner for declaration and permanent injunction as consequential relief, had been dismissed by the trial Court vide judgment dated 22.01.2001 (Annexure P-7), whereby the plaint has been returned to him being not maintainable.

5. An appeal, which was preferred by the petitioner, had been dismissed by the Appellate Court on 03.10.2001 (Annexure P-8) upholding the order passed by the trial Court followed by a challenge to these orders by the petitioner by way of a civil revision before the High Court which was dismissed by this Court vide order dated 22.07.2002 (Annexure P-9), wherein it was again mentioned that the jurisdiction of the Civil Court is

barred and the order of the trial Court returning the plaint to the petitioners was in accordance with law.

6. Counsel for the petitioner submits that it is after the passing of the above-said order by the High Court that an application was preferred on 22.09.2014 for restoration of the appeal, which was earlier withdrawn by the petitioner on 26.09.1994. Counsel contends that with the return of the plaint by the Civil Court holding therein that the Civil Court did not have the jurisdiction to entertain the same, petitioner had a right for restoration of his appeal to its original number and, therefore, was justified in moving such an application for restoration of the same. Rejection of the same by the District Revenue Officer conferred with the powers under Section 21 (9) of the 1948 Act vide order dated 21.08.2015 (Annexure P-11) is not sustainable.

7. When confronted with the fact that the District Revenue Officer, while passing order dated 21.08.2015, has dismissed the appeal being time barred holding that there is no explanation for the delay of 13 years on the part of the petitioner in approaching the Court for restoration of the appeal after it had been settled up to the High Court vide order dated 22.07.2002 (Annexure P-9) in the Civil Revision which was preferred by him, the counsel has no explanation to that. What has been asserted by him is that the respondents had proceeded to get an order from the Consolidation Officer by misleading and misguiding the authority. The question of limitation would not arise in a situation where the order has been obtained by way of a fraud having been played upon the Court/authority. The said order being a nullity can be challenged at any stage and time. It is, on this basis, that the counsel had tried to justify the delay on the part of the

petitioner in approaching the competent authority for restoration of the appeal after the finalization of the proceedings before the Civil Court.

8. Similar is the argument, which has been raised by the counsel for the petitioner challenging the order dated 21.08.2015 (Annexure P-11) and the order dated 13.11.2019 (Annexure P-14), whereby the appeal and the revision preferred by the petitioner had been dismissed by the revenue authorities there being a delay and upholding the order passed by the District Revenue Officer.

9. We have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the records of the case, the pleadings as also the impugned orders but do not find ourselves in a position to accept the prayer, as has been made by the counsel for the petitioner.

10. The facts need not to be repeated in detail except for mentioning therein that initially, an order was passed by the Director, Consolidation, Haryana, who, on an application moved by Bijender Singh-respondent No. 7, pointed out an error apparent on the record in the field book where, according to respondent No. 7, during the consolidation, the path had been mentioned as 2 karam whereas at the site, it was of one karam only. The matter was sent to the Consolidation Officer, Gurgaon for passing appropriate orders. The Consolidation Officer, Gurgaon, in his order dated 07.07.1992, came to the conclusion that according to the site and the field book, the orders had been appropriately passed and the necessary corrections, at the site, have also been made.

11. This order dated 07.07.1992 (Annexure P-4) passed under Section 21 (2) of the 1948 Act was challenged by the petitioner-Thaan Singh

by filing an application in the Court of Settlement Officer, Consolidation, under Section 21 (3) of the 1948 Act, which was, on an application preferred by him, permitted to be withdrawn vide order dated 26.09.1994 (Annexure P-5) by the said appellate authority. No permission was sought nor was any leave granted by the said authority while permitting withdrawal of the appeal to file a civil suit rather the stand of the petitioner was that he had already filed a civil suit and, therefore, wanted to withdraw the appeal.

12. The suit for declaration and permanent injunction with consequential benefit preferred by the petitioner was dismissed, so was the appeal and the civil revision, which was preferred by him, holding all through that the Civil Court did not have the jurisdiction. The final order, which has been passed in the revision petition, is dated 22.07.2002 (Annexure P-9). On this date, petitioner being fully aware that his remedy, which he had preferred in the Civil Court, was not the appropriate remedy and the same was barred and the Forum where he had been pursuing his claim/grievance was not sustainable, but still he did not immediately take any steps for revival/restoration of his appeal which he had withdrawn on 26.09.1994 before the Settlement Officer, Consolidation. The application for restoration of the appeal was preferred on 20.09.2014 after a gap of 12 years.

13. No explanation whatsoever has been given with regard to the delay on the part of the petitioner in approaching the Settlement Officer, Consolidation by way of such an application after such a long delay of 12 years and that too, unexplained. In these circumstances, the appellate authority was right in rejecting the application for restoration of the appeal being beyond limitation as the same was unexplained and there was no

justification or reason for not approaching the said authority earlier.

14. It would not be out of way to mention here that against the order dated 07.07.1992 (Annexure P-4) passed by the Consolidation Officer, Gurgaon and the order dated 21.08.2015 (Annexure P-11) passed by the District Revenue Officer-cum-Settlement Officer, Consolidation, Faridabad, petitioner had filed an appeal under Section 21 (3) of the 1948 Act in the Court of the Commissioner-cum-Assistant Director, Consolidation, Faridabad, which authority, vide order dated 27.03.2018 (Annexure P-12), accepted the appeal of the petitioner and remanded back the case to the District Revenue Officer and Settlement Officer, Consolidation, Faridabad, with a direction that after restoring the appeal of the appellant, the decision should be taken again on this on merit-demerit basis after perusing the records of the Consolidation Officer and after inspecting the site.

15. It needs to be mentioned here that the Commissioner-cum-Assistant Director, Consolidation, Faridabad, while passing the said order, did not take into consideration the fact that the Consolidation Officer, Gurgaon had passed his order dated 07.07.1992 in compliance with the remand orders dated 13.02.1992 passed by the Director, Consolidation and, therefore, the said authority did not have the jurisdiction to pass such an order.

16. Another aspect, which has not been taken into consideration by the Commissioner-cum-Assistant Director, Consolidation, Faridabad, was that the appeal, which has been preferred by the petitioner, was withdrawn by himself. There is no explanation whatsoever for the delay in filing an application for restoration after the finalization of the civil proceedings.

Taking this aspect into consideration, Commissioner, Faridabad Division, Faridabad, exercising its powers under Section 42 of the 1948 Act, passed an order dated 13.11.2019 (Annexure P-14) setting aside the order passed by the Assistant Director, Consolidation, Haryana and District Collector, Faridabad dated 27.03.2018 (Annexure P-12) which had been challenged by respondent No. 7. The Commissioner, in his order dated 13.11.2019 (Annexure P-14), went further to hold that the Consolidation Officer, Gurgaon had rightly proceeded to implement the order dated 13.02.1992 (Annexure P-3) vide order dated 07.07.1992 (Annexure P-4), which has been mentioned as follows:-

“ As far as the question of path of 2 Karam is concerned, then it is also clarified in the point no. 3B of notification dated 24.04.1970 of Chakbandi Department that “(i) Roads to serve as communication to village fields from the village abadi 3 to 4 karams wide, (ii) Path leading to individual plots 2 karam wide”. Hence, the appeal of the appellant is accepted and orders are passed for restoring the order dated 07.07.1992 passed by Chakbandi Officer, Gurugram.”

17. We are in agreement with the order passed by the Commissioner, Faridabad Division, Faridabad dated 13.11.2019 (Annexure P-14) and do not find any illegality in the same which would call for interference by this Court in exercise of its writ jurisdiction.

18. It is not a case where any fraud has been played by respondent No. 7 on the revenue authorities in obtaining any orders, rather it has been sheer lethargy and inaction on the part of the petitioner in pursuing his own rights once the proceedings before the Civil Court had attained finality and

it has consistently been held that the Civil Court did not have the jurisdiction with regard to the declaration and the consequential injunction which the petitioner had sought. A party, who sleeps over his rights, cannot be granted any relief even in equity.

19. In this case, the facts speak for themselves that the petitioner had been neither ignorant nor misguided, rather he is to blame himself for the inordinate and unexplained delay on his part of having not approached the appellate authority for restoration of his own appeal. The delay being more than 12 years in doing so, the revenue authorities are justified in passing the impugned orders. Even on merits, the Commissioner, Faridabad Division, Faridabad, while passing order dated 13.11.2019 (Annexure P-14), has found that there is no illegality in the order dated 07.07.1992 (Annexure P-4) passed by the Consolidation Officer, Gurgaon.

20. In the light of the above, we dismiss the present writ petition being devoid of merit.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(SANDEEP MOUDGIL)
JUDGE**

5th April, 2022

pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No