

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

CWP-10978-2022 (O&M)
Date of Decision: 28.09.2022

ABHAY KUMAR SHRIVASTAVA AND ANOTHER

...Petitioners

Versus

THE DIRECTOR CONSOLIDATION HARYANA-CUM-
COMMISSIONER FARIDABAD AND OTHERS

...Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

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

Mr. Amit Aggarwal, D.A.G., Haryana.

Mr. Sanjiv Kumar Aggarwal, Advocate
for respondent No.3.

HARSH BUNGER, J.

In this writ petition, the petitioners are aggrieved of order dated 31.05.2016 (Annexure P-9) passed by the Director, Consolidation, Haryana, whereby, order dated 31.05.2006 (Annexure P-6) passed by the Settlement Officer, Consolidation, Rohtak, has been set aside.

Perusal of the file shows that petitioners purchased land measuring 8 *biswas* vide registered Sale deed dated 06.01.2006 from one Khushi Ram s/o Hemanchal, out of the joint land comprised in *Khasra No.255(0-10), 256(0-13), 254(0-8), 260(0-4) and 104//15(2-0) and 6(3-0)*, situated in the revenue estate of Anangpur, Tehsil and District Faridabad. It appears that the said sale deed was executed during pendency of the

consolidation proceedings. Petitioners claim that during consolidation, *Misal Haqiat (Jamabandi)* was prepared, wherein, Khasra No.105//3/6 (2K-1M) was allotted to them. It is stated that during consolidation proceedings itself, Khushi Ram (vendor of the petitioners) was allotted Khasra No.255, 256, 259 and 105//3/2 **north** (2K-0M) and similarly, respondent No.3-Mahinderi was allotted Khasra No.105//3/2 **south** (2K-8M). It further appears that one Shish Pal s/o Kehri had instituted an appeal under Section 21(3) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (here-in-after referred to as 'the Act, 1948), claiming that since his land has been bifurcated into various parts, it may be clubbed together. Said appeal was allowed vide order dated 31.05.2006 passed by the Settlement Officer, Consolidation, Rohtak, whereby, the following modification of *Khasra Nos.* was ordered ;

<i>Sr. No.</i>	<i>Name of owner</i>	<i>Land excluded</i>	<i>Land included</i>
1	Pamila Kapoor Serial No.510	77//25 (2-2) Darmayaan	87//19 Garv Janoob 0-16 22 Garv Shumaal 0-3 19 Min Garv Janub 1-4 Total 2-3
2 to 11 (Not Relevant)			
12	Khushi Ram & others Serial No.35	104//7 Darmayaan 1-15	105//3/2 Garv Shumaal 1-15
13	Smt. Mahendri & others Serial No.612	105//3/2 Janoob Ka Garv 1-15	104//7 Min Darmayaan 1-15

On the other hand, the writ petitioners also filed a petition under Section 42 of the Act, 1948, claiming that they had purchased land and prayed that their *khata* be separated. Said petition under Section 42 of the Act, 1948 filed by the petitioners was accepted by the then Director, Consolidation, Haryana vide its order dated 18.10.2008 (Annexure P-7) and

the matter was remanded to the Consolidation Officer-cum-Tehsildar, Faridabad with a direction that after hearing the affected parties, a separate *khewat* may be carved out for the applicants (present writ petitioners), in accordance with the provisions of the Consolidation Act.

It is further revealed from the file that order dated 31.05.2006 (Annexure P-6) passed by the Settlement Officer, Consolidation, Rohtak was challenged by Mahinderi (respondent No.3) and others, by filing a petition under Section 42 of the Act, 1948, *inter alia* on the ground that land comprised in *Khasra No.105//3/2 (1K-15M)* has been wrongly taken out of their share without even issuing summons to them and they claim to be in possession of said land. Said petition was allowed by the Commissioner, Gurgaon Division, Gurgaon vide its order dated 31.05.2016 (Annexure P-9) by observing as under :-

“Settlement Officer, Consolidation has passed the order dated 31.05.2006 in contravention of the provisions contained in Section 21(3), which is wrong. Therefore, while partially setting aside the order dated 31.05.2006 passed under Section 21(3) (concerning Serial no.13) the present case is remanded to the Tehsildar and Consolidation Officer, Faridabad.”

Since, the matter had been remanded to the Tehsildar-cum-Consolidation Officer, Faridabad vide order dated 31.05.2016 (Annexure P-9) and no final adjudication had taken place in pursuance thereto, accordingly, respondent No.3-Mahinderi filed ***Civil Writ Petition No.5469 of 2020***, which came to be disposed of vide order dated ***24.03.2022*** (Annexure P-10) on the statement made by Tehsildar/Consolidation Officer, Faridabad that the said proceedings shall be completed within a period of two months from the date of passing of the order.

The instant writ petition has been filed by the petitioners, challenging the order dated 31.05.2016 (Annexure P-9), *inter alia*, on the ground that the same has been passed without impleading them as party to the petition under Section 42 of the Act, 1948 filed by respondent No.3-Mahinderi; although they were necessary, proper and affected parties.

Upon issuance of notice of motion, counsel for respondent No.3 appeared and filed a written statement on her behalf, stating therein that the petitioners in collusion with said Khushi Ram (since deceased) filed a petition along with other proprietors before the Consolidation Officer titled as ***“Shishpal vs Pamila Kapoor”*** without impleading her as party and the Consolidation Officer vide order dated 31.05.2006 (Annexure P-6), illegally and unlawfully gave *Khasra No.105//3/2* to said Khushi Ram, which is against the principles of natural justice and when, she acquired knowledge of the said order, the same was challenged before the Court of learned Commissioner, Gurgaon Division, Gurgaon and vide order dated 31.05.2016 (Annexure P-9), the order dated 31.05.2006 was set aside and the matter was remanded to the Tehsildar-cum-Consolidation Officer, Faridabad. It has further been stated that respondent No.3 had filed a Civil Suit No.1945 of 2021 against the writ petitioners, wherein, the Court of Civil Judge (Senior Division), Faridabad had passed an order dated 07.04.2022 directing the parties to maintain *status quo* regarding possession and has further restrained the petitioners from creating third party interest in the said land.

We heard learned counsel for the parties and went through the record with their able assistance.

During the course of arguments, learned counsel for the petitioners has submitted that in pursuance to the impugned order dated

31.05.2016 (Annexure P-9), the matter is still pending before the Tehsildar-cum-Consolidation Officer, Faridabad and accordingly, the parties can agitate their claim before the said authority. However, the direction issued in the impugned order dated 31.05.2016 (Annexure P-9) to the effect that applicant (respondent No.3 in this writ petition) be given *Killa No.105//3/2* be set aside and the matter be decided in accordance with law, after hearing the affected parties.

Learned counsel for the respondents have not raised any serious dispute with regard to the said prayer made by the petitioners.

Even otherwise, once the learned Commissioner, Gurgaon Division, Gurgaon had remanded the case to the Tehsildar-cum-Consolidation Officer, Faridabad, for deciding it after hearing the affected parties and as per the provisions of the Consolidation Scheme, there was no scope for issuing any direction that the specific *Killa No.105//3/2* be allotted to any specific party as the same would render the remand order otiose.

In the case in hand, both the contesting parties namely, the writ petitioners as well as respondent No.3 have submitted that the different orders were passed by the Consolidation authorities without impleading them as parties and thereby violating the principles of natural justice. In fact, while issuing notice of motion in this writ petition on 23.05.2022, Co-ordinate Bench has taken note of the fact that cases were being decided by the consolidation authorities without even issuing notice to persons, who are likely to be affected by passing of an order and not even the *Gram Panchayat* is called. Learned counsel for the State was directed to get instructions from the Director Consolidation as also the Secretary, Revenue, so that this recurring menace can be brought to an end by issuing of

appropriate instructions/directions or making amendment in the statute, whichever is required.

Learned counsel for the State has handed over a copy of Memo No.1262-ARS-1-2022/3455 Chandigarh, Dated 10.08.2022, wherein, the Financial Commissioner, Revenue & Additional Chief Secretary to Govt. Haryana, Revenue and Disaster Management & Consolidation Department, Chandigarh, pursuant to order dated 23.05.2022 passed by this Court, has issued directions to all the Divisional Commissioners in the State of Haryana, which reads as under :-

“ Sub : To follow the proper procedure while deciding the application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

Kindly refer to the subject noted above.

The Hon'ble High Court of Punjab and Haryana while hearing CWP No.10978 of 2022 on 23.05.2022 has made the following observations :

“off and on it has been observed by this Court that in an application moved under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, an order is passed by the Director on the basis of the report received from the Collector/Tehsildar on the basis of the records without even issuing notice to the other persons, who are likely to be affected by passing of such an order. Not even the Gram Panchayat at times is called. Such orders cannot be said to be legal and valid as the affected parties are required to be heard and an opportunity of hearing is mandated being violative of principles of natural justice. Notice of motion. On the asking of the Court, Ms.Rajni Gupta, Additional Advocate General, Haryana, accepts notice on behalf of respondents No.1 and 2. Mr.MunishBehl, Advocate, puts in appearance on behalf of respondent No.3. Service is complete. Let the counsel for the State get instructions from the Director Consolidation as also the Secretary, Revenue, so that this recurring menace can be brought to an end by issuing of appropriate instructions/directions or making amendment in the statute, whichever is required.”

Pursuant thereto, the observations of the Hon'ble Court have been considered in a meeting held under the Chairmanship of Financial Commissioner Revenue-cum-Additional Chief Secretary to Govt. Haryana, Revenue & Disaster Management Department.

*During discussion, it has been observed that Section 42 of the East Punjab (Consolidation & Prevention of Fragmentation) Act, 1948 specifically provides the exhaustive procedure to be followed while processing application/petition under Section 42 of the Act *ibid*. For the sake of brevity, the provisions of Section 42 of the Act *ibid* is reproduced under for reference :-*

“42. Power of (State) Government to call for proceedings :-

The (State) Government may at any time for the purpose of satisfying itself as to the legality or propriety of (any order passed, scheme prepared or confirmed or repartition made by any officer under Act), call for and examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto as it thinks fit:

Provided that (no order or scheme or repartition shall be varied) or reversed without giving the parties interested notice to appear and opportunity to be heard (except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration)”.

It is pertinent to mention here that the power of the Govt. under Section 42 have been delegated to the Divisional Commissioners since 15.01.2010.

*You are, therefore, requested to ensure the compliance of provisions of Section 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 while deciding matters under section 42 of the Act *ibid*.*

Any laxity in this regard will be viewed seriously and would entail disciplinary action against the erring Officer.

Superintendent

For: Financial Commissioner, Revenue & Addl. Chief Secretary to Govt. Haryana, Revenue and Disaster Management & Consolidation Department, Chandigarh.”

In view of the above extracted instructions issued by the Financial Commissioner, Revenue & Addl. Chief Secretary to Govt. Haryana, Revenue and Disaster Management & Consolidation Department, Chandigarh, no further directions are called for.

Accordingly, the writ petition is partly allowed to the extent that the direction issued by the learned Commissioner, Gurgaon Division, Gurgaon in its order dated 31.05.2016 (Annexure P-9) that **“the applicant**

(respondent No.3 herein) be given Killa No.105//3/2”, is set aside. It is further directed that the concerned authority shall pass a speaking order after considering the claims of all the affected parties and after giving due opportunity of hearing to them, within a period of three months from the date of receipt of certified copy of this order.

Status quo qua possession, as on today, regarding *Killa no.105//3/2* be maintained till then.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

September 28, 2022
gurpreet

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No