

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

**CWP-12640-2022 (O&M)
Date of Decision: December 23, 2022**

PRITAM SINGH AND OTHERS Petitioners

VERSUS

**DIRECTOR, REVENUE RECORD, PUNJAB, JALANDHAR &
OTHERS** Respondents

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

Present: Mr.Gopal Singh Nahel, Advocate for the petitioners.

LISA GILL, J.

Prayer in this writ petition is for setting aside order dated 25.08.2021 passed by Director, Land Records, Punjab, Jalandhar whereby petition under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short – ‘Consolidation Act’) filed by the petitioners has been dismissed.

Brief facts of the case, as averred in the writ petition, are that grandfather of the petitioners namely Arjan Singh had five sons i.e. Gurbachan Singh, Hari Singh, Dalip Singh, Chanan Singh and Gurdial Singh. Gurbachan Singh, Hari Singh and Dalip Singh i.e. fathers of petitioners No. 1 to 3 respectively, it is stated, had purchased land separately

in the year 1953. This land, it is further stated, was separate from the ancestral land of the parties in which all the five brothers had a share. At the time of consolidation, separate Hakdarwar No. 98 was prepared in respect to the land measuring 10 bighas 5 biswas purchased separately by Gurbachan Singh, Hari Singh and Dalip Singh. In respect to the ancestral land of 5 brothers, measuring 4 bighas 18 biswas a separate Hakdarwar No. 63 was carved out. Chanan Singh son of Arjan Singh is stated to have died unmarried and issueless. At the time of allotment of land, separate kawat in respect of the individual property purchased by three brothers was not prepared and joint khewat of the ancestral property as well as separate new property purchased later by three brothers was prepared. Civil suit No. 67 of 29.09.2009 was filed by the present petitioners alongwith their other brothers in this respect, while arraying respondents No. 2 and 3 and Kailo daughter of Gurdial Singh as defendants. In the Civil Suit, it was claimed by the petitioners that they are owners of land as per sale deed dated 31.12.1953 and the names of Chanan Singh and Gurdyal Singh are being wrongly reflected in the revenue record. Abovesaid Civil Suit filed by the petitioners was dismissed by the learned trial Court on 28.09.2012. It was concluded by the learned trial Court that the plaintiffs failed to bring any evidence on record to prove their case. Furthermore, plaintiffs had not arrayed the daughters of Gurbachan Singh, wife of Hari Singh and the four daughters and widow of Dalip Singh, who were admittedly alive at that point of time. Learned trial Court further observed that there was no specific averment in the plaint as to when the wrong and incorrect entries were carried out by the revenue authorities and if so, whether plaintiffs had approached the concerned revenue officials at any point of time. Plaintiffs, it was found, had

not approached the Court with clean hands. The suit was also found to be time barred, thus, not maintainable.

Appeal filed by the plaintiffs was dismissed by the learned Additional District Judge, Sangrur vide judgment dated 17.05.2014. Thereafter, Regular Second Appeal No. 1066 of 2015 filed by the plaintiff was also dismissed on 03.12.2015, while observing as under:-

“11. The appellants claimed to be owners-in-possession of the suit land on the ground that the said land was allotted during consolidation in lieu of the land purchased by them vide registered sale deed dated 31.12.1953 Ex.P1. To prove the said contention, it was not only necessary for the appellants to establish that the suit land was allotted during consolidation to their predecessors in interest but it was also necessary to link the allotted land with the land which was subject matter of the sale deed No.1033 dated 31.12.1953 Ex.P1 to prove that the suit land was allotted in lieu of the land purchased. For the reason that the respondents claimed to be owners-in-possession of the land with regard to which the appellants were raising dispute, by no stretch of imagination was sufficient to co-relate the Khasra numbers of the suit land with the old Khasra numbers incorporated in the sale deed Ex.P1. It was necessary for the appellants to produce the excerpt or atleast the relevant Jamabandis or the allotment order for connecting the suit land with the land detailed in the sale deed Ex.P1. In absence of link evidence, it was rightly held by learned trial Court as well as learned first appellate Court that the appellants had failed to prove their case.

12. It may be added further that the appellants had also been non suited on the ground of limitation, cause of action as well as the suit being bad on account of non joinder of necessary parties. The sale deed Ex.P1 relied upon by the appellants is dated 31.12.1953 whereas they filed the suit in the year 2009 without explaining any reason how the entries in the revenue

record were not in their knowledge and why for such long years they had never come forward to seek correction of the same. The appellants did not plead the date, month or year when they learnt about the entries and the cause of action arose to them for filing the present suit. Lastly, as observed by learned first appellate Court, during his statement PW1 appellant Pritam Singh admitted that the mutation of the suit property on the basis of the sale deed was sanctioned in the year 1953 only in the name of Gurbachan Singh and Dalip Singh whereas the case of the appellants was that Hari Singh, Gurbachan Singh and Dalip Singh had purchased the suit land. Gurmeet Kaur daughter of Gurcharan Singh; Bhagwan Kaur widow of Hari Singh, who admittedly were alive and four daughters and widow of Dalip Singh who were also alive, were not impleaded as party to the suit although they were necessary parties in view of the pleadings of the appellants. Thus, seen from every angle, the suit of the appellants deserved outright dismissal.”

Petitioners then filed petition under Section 42 of the Consolidation Act for rectification of alleged error committed in preparing the joint allotment instead of separate allotment. This application was dismissed by the learned Director Land Records, Punjab, Jalandhar vide impugned order dated 25.08.2021 while specifically observing that controversy already stands adjudicated upon as culminated in order dated 03.12.2015 passed in RSA-1066 of 2015 and it would not be appropriate and justified to pass any order in contravention of the order passed by the High Court. Aggrieved therefrom, present writ petition has been filed.

Learned counsel for the petitioner argues that proper remedy available to the petitioner was in fact the petition under Section 42 of the

Consolidation Act but only due to illiteracy and ignorance of the petitioners, remedy by way of Civil Suit and the appeal(s) thereafter were availed. The same cannot, it is contended, be a ground to non-suit the petitioners. Learned counsel for the petitioners relies upon decision dated 16.12.2021 of this High Court in **CWP-25585-2021 (Ram Saran and others versus Mehar Singh and others)** to submit that the correct remedy available to the petitioners in fact was by way of filing the petition under Section 42 of the Consolidation Act. In this view of the matter, learned Director, Land Records Punjab, it is submitted, has grossly erred in dismissing the petition under Section 42 of the Consolidation Act filed by the petitioners on the ground that the matter already stands adjudicated upon by the Civil Court and upheld by the High Court on 03.12.2015 in RSA-1066-2015. It is contended that it was incumbent upon the Director, Land Records to have decided the matter on its own merits. It is, thus, prayed that this petition be allowed.

We have heard learned counsel for the petitioners and have gone through the file with his able assistance.

Dismissal of the civil suit filed by the petitioners alongwith others seeking a declaration to the effect that they are owners of land as described in sale deed dated 31.12.1953 and names of Chanan Singh and Gurdyal Singh son of Arjan Singh being illegally entered into the revenue records, should be removed, is a matter of record. This decision has admittedly been upheld right up to this High Court as is evident from order dated 03.12.2015 in RSA-1066-20115.

Learned counsel for the petitioners was unable to deny that the matter was indeed agitated before the learned trial Court by the petitioners alongwith other plaintiffs and a specific finding has been returned against

them. In decision dated 03.12.2015 in RSA-1066-2015, it is specifically observed that it was incumbent upon the plaintiffs (present petitioners) to prove that the suit land allotted during consolidation was in fact the land allotted in lieu of the land purchased. Petitioners, however, failed to establish the same on the basis of evidence on record. Khasra numbers of the suit land could not be co-related with the old khasra numbers incorporated in the sale deed. Petitioners (appellants in RSA-1066-2015) had failed to produce the excerpts or at least the relevant jamabandis or the allotment order for connecting the suit land with the land detailed in the sale deed. Learned counsel for the petitioners even at this stage, is unable to point out any such document on record to substantiate this stand of the petitioners.

Moreover, it is relevant to note that no objection was ever raised by predecessors-in-interest of the petitioners at any time after consolidation of the land till the filing of the civil suit in 2009. There was admittedly inordinate delay on the part of the petitioners in seeking their remedy. Though there is no period of limitation which is prescribed in Section 42 of the Consolidation Act, it is a settled position that the aggrieved party cannot submit an application under Section 42 of the Act after an unreasonably long period of time without any cogent explanation. The Hon'ble Supreme Court in **Gram Panchayat, Kakran versus Additional Director of Consolidation and another** 1997 (8) SCC 484 after considering its earlier judgment in **Gram Panchayat, Village Kanonda versus Director, Consolidation of Holding** (1989 Suppl. (2) SCC 465 held that even where no period of limitation is prescribed, aggrieved parties are required to move an appropriate authority for relief within a reasonable time. What is reasonable time, necessarily would be dependent on each given fact,

situation to be considered by the competent authority. Litigant has to be vigilant in pursuing his remedy and jurisdiction under Section 42 of the Consolidation Act cannot be invoked at any belated stage without a reasonable explanation.

Division Bench of this High Court in decision dated 16.12.2021 in CWP-25585-2021 titled as **Ram Singh and another versus Commissioner, Gurugram Division, Gurugram and others** reiterated that litigant cannot be permitted to avail the remedy under Section 42 of the Consolidation Act after inordinate delay and at a belated stage without a reasonable explanation.

In the present case, the only explanation coming forth in the application under Section 42 of the Consolidation Act filed by the petitioners is that they are simple rural persons, having no knowledge of technical complicated records prepared by the Consolidation Department and that they had contacted their counsel for rectification of the error in the record but instead of filing the petition under Section 42 of the Consolidation Act, he filed the civil Suit and the civil Court instead of returning the suit for approaching the Court of competent jurisdiction, continued hearing the matter and decided the same incorrectly. There is no explanation whatsoever for the petitioners not having approached the competent authority at any stage prior to 2009 since consolidation which took place admittedly long years prior thereto. Furthermore, petitioners failed to prove their case on the basis of evidence on record.

Keeping in view the facts and circumstances of the case, we do not find any ground whatsoever for setting aside order dated 25.08.2021 passed by the Director, Land Records, Punjab, Jalandhar.

No other argument has been addressed.
Present writ petition is dismissed, accordingly.

(LISA GILL)
JUDGE

December 23, 2022
Rts

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No