

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

222

**CWP-11458-2022(O&M)
Date of decision:28.09.2022**

SULTAN SINGH AND ANR

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present : Mr. Vikram Singh, Advocate for the petitioner.

Mr. AmitAggarwal, DAG, Haryana.

HARSH BUNGER. J.

Petitioners have filed this writ petition under Article 226/227 of the Constitution of India seeking quashing of the order dated 25.02.2022 (Annexure P-6) passed by respondent No.2-Commissioner, Karnal Division Karnal [exercising powers under Section 42 of the East Punjab Holding, (Consolidation and Prevention of Fragmentation) Act, 1948 {for short, 'the 1948 Act'}] and also the order dated 04.09.2004 (Annexure P-1) passed by respondent No.3-Tehsildar-cum-Consolidation Officer, Karnal, District Karnal.

It is the contention of the petitioners that Tehsildar-cum-Consolidation Officer, Karnal, District Karnal (respondent No.3) passed the order dated 04.09.2004 (Annexure P-1) under Section 43-A of the 1948 Act by relying upon a report submitted by the Assistant Consolidation Officer, Karnal.

By virtue of order dated 04.09.2004 (Annexure P-1), a path has been carved out

of killa No.24//10/1 (0-8) and 24//11/3 (0-8) in a totally wrong and illegal manner. On the basis of the order dated 04.09.2004, mutation No.1910 was also entered in the revenue record. It is further contended that before passing the order dated 04.09.2004 (Annexure P-1), no opportunity of hearing was afforded to the petitioners and neither they were associated with the proceedings. In fact, it is contended that the petitioners became aware of the order dated 04.09.2004 after the death of their father, when the petitioners got issued the Jamabandi and other documents for getting a loan sanctioned from some nationalized bank. It is further contended that the petitioners challenged the order dated 04.09.2004 (Annexure P-1) by filing a petition under Section 42 of the 1948 Act, however, the learned Commissioner, Karnal Division, Karnal dismissed the petition on the ground that the appeal had been filed after approximately 13 years and also that the petition against the mutations cannot be heard under Section 42 of the Consolidation Act.

Upon issuance of notice of motion in this case, the respondents, who are official respondents, are represented by the learned State counsel who submits that there is no illegality in the impugned orders. It is contended that the petitioners had challenged the order dated 04.09.2004 (Annexure P-1) after a gross delay of around 13 years and even otherwise, the authorities under the Consolidation Act do not have the jurisdiction to hear objections/appeal against mutations. Accordingly, it is prayed that the writ petition being bereft of any merit be dismissed.

We have heard learned counsel for the parties and with their able assistance perused the paper book.

In the present writ petition, grievance of the petitioners is that order dated 04.09.2004 (Annexure P-1) was passed by respondent No.3-Tehsildar-cum-Consolidation Officer, Karnal without issuing any notice which was a pre-requisite for passing such an order affecting the rights of the petitioners/their predecessors-in-interest. It is submitted that the learned Commissioner, Karnal Division, Karnal has dismissed the petition under Section 42 of the 1948 Act merely on the ground that the same was filed after a period of approximately 13 years without even taking into consideration the fact that the present petitioners were never provided any opportunity of hearing. Learned counsel for the petitioners vehemently argues that order dated 04.09.2004 was passed in an utter disregard to the principles of natural justice i.e. *audi alteram partem*, therefore, the same is unsustainable.

Learned Commissioner, Karnal Division, Karnal, it is contended, has brushed aside all these aspects and in fact, has not even considered the same while incorrectly dismissing the petition filed by the petitioners merely on the ground of alleged delay which in fact is not present. It is submitted that the petitioners have duly explained that order dated 04.09.2004 came to their knowledge only when they obtained the relevant revenue documents for the purpose of obtaining loan from the bank and they have immediately instituted the petition under Section 42 of the 1948 Act.

Learned counsel for the State is unable to deny that it *prima facie* appears from the available record that no notice was issued to the petitioners/their predecessors-in-interest and no opportunity of hearing was provided to them to enable them to put-forth their claim/stand, therefore,

dismissal of the petition by the learned Commissioner, Karnal Division, Karnal, primarily on the ground of delay is unjustified.

Keeping in view the facts and circumstances as above, order dated 25.02.2022 is set aside and the matter is remitted to the learned Commissioner Karnal Division, Karnal who shall afford due opportunity of hearing to the petitioners as well as any other affected parties and decide the matter afresh by passing a speaking order in accordance with law. Parties are directed to appear before the learned Commissioner, Karnal Division, Karnal on 14.10.2022.

Writ petition is, accordingly, disposed of in the above-said terms.

It is clarified that there is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

28.09.2022
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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*