

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

**CWP-16959-2020 (O&M)
Date of Decision: 10.11.2022**

**RATTAN SINGH
Versus**

..... Petitioner(s)

STATE OF HARYANA AND OTHERS

..... Respondent(s)

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

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

Mr. Amit Aggarwal, DAG, Haryana.

**LISA GILL, J.
CM-13989-CWP-2022**

Replication to the reply filed on behalf of respondents no. 1 to 3, is taken on record, subject to just exceptions.

Application is disposed of.

CWP-16959-2020

Prayer in this writ petition is for quashing of impugned order dated 26.11.2019 (Annexure P-5), passed by the Commissioner, Gurugram Division in a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short Consolidation Act, 1948), filed by the petitioner.

Learned counsel for the petitioner submits that claim of the petitioner in his petition under Section 42 of the Consolidation Act, 1948 was that during consolidation he was given lesser area as he had claimed entitlement to 15 Kanals 10 Marlas (standard), whereas he was allotted only 10 Kanals (standard). Petitioner thus sought for the deficiency to be made good.

Learned counsel for the petitioner submits that the Commissioner, Gurugram Division vide order dated 30.07.2019 (Annexure P-2) called for a report from concerned Tehsildar-cum-Consolidation Officer on the petitioner's assertion that he was not given the Bessi Abadi area at the time of consolidation. Report dated 11.09.2019 by the Tehsildar-cum-Consolidation Officer, Gurugram was duly submitted wherein it is observed that area allotted to the applicant is in fact deficient. Learned counsel for the petitioner further submits that the Commissioner, Gurugram Division while passing impugned order dated 26.11.2019 has not even considered the report dated 11.09.2019, which had been specifically called for by him. Learned counsel for the petitioner also asserts that report dated 11.09.2019 is correct because as per Clause 4 and 7 of the Consolidation Scheme, partition of the area, 32 anne (double) inside and outside the abadi would be partitioned and land of the petitioner measuring 14 Biswa reflected as Bessi Abadi in the Naqsha Haqdarwar has not been converted into standard Kanal/Marla although the other area has been converted. Reference is specifically made to para 2 of the replication filed by the petitioner. It is thus prayed that impugned order dated 26.11.2019 may kindly be set aside.

Learned counsel for the State while referring to the reply filed by Tehsildar-cum-Consolidation Officer, Gurugram on behalf of respondents no.1 to 3, submits that report dated 11.09.2019 has not been recorded in the impugned order dated 26.11.2019 only due to inadvertence. It is further submitted that report dated 11.09.2019 has been prepared without inspecting the spot in the presence of the parties and without following proper procedure. Moreover the report is factually incorrect,

therefore, no prejudice has been caused to the petitioner in view of the said report not being mentioned or considered in the impugned order. In fact, there is no shortage in the allotment of area during consolidation as evident from the Taksim Resolution No.51 (Annexure P-9) and the Naqsha Haqdarwar (Annexure P-10). It is thus prayed that this writ petition be dismissed.

We have heard learned counsel for the parties and have gone through the file with their able assistance.

It is a matter of record that the Commissioner, Gurugram Division specifically called for a detailed report from the Tehsildar-cum-Consolidation Officer vide order dated 30.07.2019 (Annexure P-2). Report was in fact submitted pursuant to said order wherein it is held that deficient area has been allotted to the petitioner. Learned counsel for the State is unable to deny that leave alone consider, there is not even a reference to the said report in the impugned order dated 26.11.2019. Whether the report is incorrect or not as has been urged by learned Counsel for the State, is not for us to consider and decide in the present proceedings. It was incumbent upon the Officer concerned to have taken note of the said report and in case it was not found worthy of reliance, needless to say, it could have been discarded by recording reasons therefor.

Keeping in view the facts and circumstances as above, but without any expression of opinion on the merits of the controversy, order dated 26.11.2019 (Annexure P-5), passed by the Commissioner, Gurugram Division is set aside and the matter is remanded to the Commissioner, Gurugram Division, to decide the same afresh in accordance with law, after considering the said report and all the facts and circumstances/evidence on

record within a period of three months. Parties to appear before the Commissioner, Gurugram Division on 23.11.2022. Liberty is afforded to both the parties to place on record any relevant document on record before the Commissioner within two weeks of appearing before the said authority.

Writ petition is accordingly disposed of in the aforesaid terms.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

10.11.2022

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