

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-16393-2020

Reserved on: 01.12.2022

Pronounced on: 05.12.2022

Bant Singh and Another

.....Petitioners

Versus

Director Land Records and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Lalit Goyal, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab
for respondents No. 1 to 3.

SURESHWAR THAKUR, J.

Factual Background

1. After the finalization of the consolidation proceedings in the *mohal* concerned, though *rasta*/path was reserved for the exercising thereons of easementary rights by the land owners concerned, but the petitioners became yet aggrieved, owing to the factum that the said *rasta*/path rather not providing the relevant access to the petitioners. The said claim was founded qua the reserved *rasta*/path being used by them being very small, in size, and, that there being an interruption caused by trees and plants inter-se the earmarked path, to the fields of the petitioner. Further, the access to their agricultural land through the said *rasta*/path was claimed to be not straight and the petitioners being

led to cross a *Khal* through a temporary constructed way.

2. Therefore, to facilitate the exercising of easementary rights at the instance of the aggrieved, the son of petitioner no. 1 and petitioner no. 2, made a prayer that at the relevant place after increasing the appositely assigned karams from 1-5 to 1-15, the apposite corrections be made in the revenue records. The above prayer was ventilated through their rearing a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act, 1948 (hereinafter for short call 'the Act'), before the learned Director Land Records, Punjab, Jalandhar, petition whereof is appended as Annexure P-2 to the instant petition.

Order on the petition, as carried in Annexure P-2.

3. After considering the entire records, through an order, as carried in Annexure P-4, the learned Director Land Records, Punjab, made an order of remand of the *lis* to the District Revenue Officer-cum-Consolidation Officer but with a direction that the parties concerned, be heard, spot inspection be done, and, the records be looked into, and, as the passage is existing at the spot, hence the same way be kept intact in the record. Furthermore, a direction was given that in case the proposed correction causes any harm/loss to anyone, then the aggrieved shall be given an opportunity of hearing, at his own level.

Verdict of the Remandee Court

4. Through an order, as comprised in Annexure P-5, the learned Remandee Court, after giving an opportunity to all the litigants concerned, and, also after perusing all the relevant records, it came to a conclusion that the *rasta*/passage earmarked in the consolidation proceedings, and, the *khal* are respectively existing at their respectively

assigned sites. The passage at the spot was concluded to be going straight, and, that there was no need of any alteration of any kind being made. Further, since there was difference in calculation of the area in the carved out khasra no. 862/1, therefore, the learned Remandee Court ordered the correction of the area of the Khasra number concerned in the field book Isatkharaj.

Appeal against the verdict of the Remandee Court

5. The aggrieved concerned, preferred an appeal against the order, as carried in Annexure P-5, before the learned Deputy Director Records-cum-Management Officer, Consolidation Punjab, Jalandhar. In the apposite appeal, the authority concerned through an order, as comprised in Annexure P-6, after hearing both the parties, and after perusing the record hence proceeded to dismiss the apposite appeal.

**Appeal against the verdict of the Management Officer,
Consolidation Punjab, Jalandhar.**

6. Thereafter, the aggrieved-petitioners preferred an appeal against the order, comprised in Annexure P-6, before the learned Director Land Records, Punjab, Jalandhar, thereons, the learned appellate authority concerned, through an order embodied in Annexure P-7, also dismissed the appeal of the aggrieved petitioners.

7. Since a dis-affirmative verdict, appended as Annexure P-7 to the instant petition, became made recorded thereons, thus, the petitioners have been led to rear a challenge thereto, through theirs' instituting the instant petition.

Submissions of the learned counsel for the petitioners.

8. The learned counsel for the petitioners contends, that the learned Remandee Court, through its order, as carried in Annexure P-5,

falsified the argument raised by the petitioners, that the relevant

rasta/path, as became earmarked in the consolidation proceedings being obstructed by a *khal*, as the passage and *khal* respectively exist at the respectively assigned thereto khasra numbers. However, he contends that the above reason, as assigned, for rejecting the claim of the petitioners rather is not legally sound.

Reasons for rejecting the submissions of the learned counsel for the petitioners.

9. The reasons for rejecting the above submissions, becomes founded in the factum, that the said order was anived upon the evaluation of records of rights, and, if the aggrieved concerned, were yet pained, then they could seek a valid demarcation of the sites concerned. However, there is no material on record suggestive, that the “reserved passage” meant for exercising thereons easementary rights, and, “the *Khal*”, which respectively are shown in the records, to be existing at different locations, and whereto different khasra numbers were assigned, rather are existing on khasra numbers, other than the ones, as became assigned respectively to them. Moreover, there is also no evidence suggestive that on the khasra number assigned to the reserved path, rather the *khal* hence existing, resulting in an obstacle or impediment being caused to the petitioners to exercise thereons their easementary rights. The above material could have emanated, only if a valid demarcation was carried out, and, it resulting in a binding and a conclusive finding, that the *khal* and the village *rasta*, as depicted in the finalized consolidation proceedings, did become, assigned a common khasra number hence leading to both existing at the same location. Thus resulting in the reserved path becoming unamenable for user. However the above evidence is grossly amiss. Therefore, it has to be concluded, that different khasra numbers became assigned to the

khal, as well as, to the village *rasta*. Moreover, a further conclusion also emanates that both the *khal* and passage are existing at the respective sites, besides on the khasra numbers, as became respectively assigned to them. Moreover, it has also to be concluded, that hence the *rasta* when it exists on the site assigned to it, as such does not fall in the stream/*khal*, nor any impediment or obstacle ensues to the petitioners concerned, in theirs exercising thereons hence their easementary rights.

10. Resultantly when only in the event of no passage being carved by the consolidation authorities in the finalized consolidation scheme, the aggrieved could cast a motion under Section 42 of 'the Act', whereas, in the instant case when evidently a passage has been reserved in the finalized consolidation scheme. Therefore, any endeavour, at this stage, on the part of the aggrieved to ask for a mandamus that respondents concerned, be directed to yet carve a passage/village *rasta* for the relevant purpose, is a completely mis-founded argument, and, is consequently rejected.

11. The learned counsel for the petitioners could also make an able claim for establishing that even upon the earmarked village *rasta* rather there was an unlawful obstruction/resistance, despite the aggrieved evidently using it for the relevant purpose. Thus, he could further argue that yet the petition is maintainable. However, even the above ground is neither pleaded nor obviously it fell for consideration, nor any findings became recorded thereons.

Conclusion

12. The result of the above discussion is that in the finalized consolidation scheme there was a reserved village path for the relevant purpose. Therefore, it alone was meant to the land owners concerned

for theirs' exercising thereons their respective easementary rights. The said reserved village path has also not been proved to be assigned a khasra number alike the one which became assigned to the village *khal* nor both the *rasta* and the village *khal* have been proven to be existing at the very same site. If so, the petitioners may use the assigned village path and if they opt to access their lands through some other/alternative path, thereupon, their remedy is not the one which became resorted by them, rather the remedy available to them is comprised in theirs filing a suit before the civil Court concerned, claiming therein a declaratory relief qua the claimed path comprising the servient heritage, and that it being open to user by them, on the grounds of necessity or prescription.

Final Order

13. In consequence, this Court does not find any merit in the writ petition and the same is dismissed. The impugned orders, passed by the authorities below, are maintained and affirmed.

14. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

05.12.2022

kavneet singh

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