

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-6311-2015

Reserved on: 21.11.2022

Pronounced on: 30.11.2022

Nirmal Kaur

.....Petitioner

Versus

Director Land Records Punjab and Another

.....Respondents

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

Argued by: Mr. Paritosh Vaid, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

Factual Background

1. The facts relevant to decide the instant petition, are that, consolidation operations were concluded in village Akala/Karnail ganj in the year 1959-60. Resultantly the land comprised in khewat No. 49, Khasra No. 40//6, 7, 8, 13, 14, 15, 17, 18; 41//9, 10, 11, 12, 13, 14, was allotted to Bishan Singh son of Nahal Singh, and, to Ishar Singh son of Jawala Singh, but to the extent of $\frac{1}{2}$ share each. Sh. Ishar Singh died and was survived by his legal heirs one Sh. Gursharan Singh, and, Sh. Gursher Singh. Gursharan Singh and Gursher Singh, to the extent of $\frac{1}{2}$ share, sold their land to Rattan Singh, whereas, to the extent of $\frac{1}{4}$ share each, they sold land to Sangat Singh and Bishan Singh vide sale deed dated 19.01.1968, in pursuance whereof, mutation No.624 was recorded. Moreover, Rattan Singh and Sangat Singh sold lands measuring 11 Kanals 7 marlas, as comprised in Khasra No. 41/9, 10,

11, 12, 13 and 14.

Cause of Action

2. Since the finalization of consolidation operations in the village, the original owners and thereafter Rattan Singh were using the *rasta/path* on the eastern side of khasra No. 41//17, whereafter, the petitioner was also using this *rasta/path*, but now with the respondent party restraining her from using this *rasta/path*, the present petitioner, who is the vendee of the original allottee one Bishan Singh, became led to institute a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act, 1948 (hereinafter for short call 'the Act'). Since a dis-affirmative verdict, appended as Annexure P-7 to the instant petition, became made recorded thereons, thus, the petitioner is led to rear a challenge thereto through hers' instituting the instant petition.

Reply of the respondent.

3. A reading of the reply furnished to the instant petition, on behalf of the respondents reveals, that therein occurs an admission qua *rasta/path* shown in red colour in *Aks Shijra*, carried in Annexure R-2, as, appended with the reply dated 26.09.2019, as, furnished to the petition by co-respondent No.1, District Revenue Officer-cum-Consolidation Officer, District Kapurthala, rather becoming earmarked for the relevant purpose. Thereins, it is also unfolded that the path described in Annexure (supra), became allotted, hence in the finalized consolidation proceedings. The finalized consolidation proceedings are stated to be completed in the year 1958-59. Moreover, therein it has been reflected that the width of the said path is about 4 karma. In addition, the reply furnished to the writ petition by the above also

reveals, that the present petitioner purchased the land concerned, vide mutation No. 1686 drawn on 13.11.2009 from the recorded co-owner, and, whereafter she was depicted as co-sharer in Khewat Nos. 208 and 209 of village Karnail Ganj.

4. Moreover, it has also been reflected in the said reply that the petitioner has every right to access her land through hers' getting partition of the land being done through hers recouring the provisions of Section 111 of the Punjab Land Revenue Act, 1887. Therefore, the above meted replies by the respondents concerned, to the writ petition, do support the contention raised in the instant petition by the petitioner that on termination of consolidation proceedings, a path was reserved for the relevant purpose to the co-owners in the Khasra numbers concerned.

Submissions of the learned counsel for the petitioner.

5. Be that as it may, the learned counsel for the petitioner contends, that the co-respondent No. 2, one Bakshish Kaur is causing obstructions to the petitioner in hers' exercising her rights of easement qua the path comprised in Khasra No. 41//17. The reason for the said obstruction being caused at the instance of one Bakshish Kaur, is grounded, in the factum that the alleged path does not occur on the above khasra numbers.

6. Learned counsel appearing for the petitioner, on the basis of a judgement rendered by this Court in case titled as '**Daya Nand Vs. Joint Secretary, Govt. of Haryana**' to which CWP No. 12244 of 1999 is assigned, wherein, in paragraphs Nos. 2 and 3 thereof, paras whereof becomes extracted hereinafter, a mandate is cast upon the authorities conducting the consolidation operations, to make a

provision for a path. It is also mandated therein that in case such a provision is not made in the finalized consolidation scheme, then it is open for the jurisdictionally empowered statutory authorities, to amend the consolidation scheme, so as to make a provision for the *rasta*/path to the land(s) concerned.

“.....2. The first ground on which the impugned order is challenged before us is that since the consolidation proceedings came to an end in the year 1959 the authorities under the Act became functus officio thereafter and could not entertain the application under Section 42 of the Act. Learned counsel for the petitioners has relied upon a Division Bench judgment of this Court in ***Banarsi Dass v. Director, Consolidation of Holdings, 1995 PLJ 314*** in support of this contention. We find no merit in this contention. Section 42 of the Act provides that the State Government may at any time examine the legality or propriety of any order passed, scheme prepared or confirmed or re-partition made by any officer under the Act and may pass such order as it may think fit in the circumstances of the case. The only embargo put on the powers of the State Government is that it shall not vary or reverse any order or scheme or re-partition under the Act without giving the parties interested notice to appear and an opportunity to be heard. The powers of the State Government are wide enough and can be exercised at any time. It cannot, therefore, be said that the authorities under the Act had become functus officio after the finalisation of the scheme of consolidation. In Banarsi Dass case (supra) an application for a path had been made by a subsequent purchaser who was neither a right holder nor a party interested at the time of consolidation of holdings in the village. Since there was a change of land owners after the consolidation when the original land owner sold the land to other parties in small pieces this court observed that any

dispute about the title of the land or other rights in the land including the right to claim a path by a subsequent vendee from the original owner would be raised before the revenue authorities or in a civil court but not before the State Government under Section 42 of the Act. It was in this context that the learned Judges observed that the consolidation authorities had become functus officio after the records were consigned to the record room. This judgment, in our opinion, is of no assistance to the petitioners herein because the Committee inherited the land from the Gram Panchayat in which the land vested being bachat land. The Committee is not a subsequent purchaser. The present is a case where no path had been provided to the land in dispute right from the very beginning.

3. It was then contended by the learned counsel for the petitioners that the application under Section 42 of the Act was not maintainable because the Committee had not challenged any order passed under the Act nor was the application against any scheme prepared or confirmed or against any re-partition made under the Act. Reliance in this regard has been placed on a single Bench judgment of this Court in ***Ramji Dass and another v. State of Punjab and others, 1969 PLR 823***. We find no force in this contention either. The Committee had challenged the scheme of consolidation which did not provide a path to its lands which, in our opinion, could be challenged before the State Government. The Joint Secretary while allowing the application obviously modified the scheme to the extent that a path has been provided to the lands of the Committee. In Ramji Dass's case (supra) an application under Section 42 of the Act had been filed complaining against an apprehension about an order which was likely to be passed in the partition proceedings. Since no order had been passed nor was any scheme challenged this Court rightly observed that the application was not maintainable. This is not the case before us.....”

7. Moreover, he places reliance upon the expostulation of law occurring in paragraphs 4, 5 and 6 of the judgment (supra), paras whereof becomes extracted hereinafter, and wherein becomes propounded, hence the principles regulating the exercise of jurisdiction as created under Section 42 of 'the Act'.

“4. It was then urged that the application filed by the Committee under Section 42 of the Act was barred by limitation and the same could not be entertained by the State Government after a lapse of almost 40 years after the finalisation of the consolidation proceedings. Counsel for the petitioners placed reliance on the judgments of the Apex Court in *Loku Ram v. State of Haryana, 1999 (1) PLJ 1, Gram Panchayat, Kakran v. Additional Director of Consolidation and another 1997 (2) PLJ 375* and also on a judgment of this Court in *Lakshmi Bai and others v. The Additional Director, Consolidation of Holdings 1968 PLR 37....*”

5. In **Gram Panchayat Kakran's case (supra)**, the learned judges observed that a party aggrieved is required to move the appropriate authority for relief within a reasonable time and that an application under Section 42 of the Act cannot be entertained after an unreasonably long lapse of time. In the case before us the Gram Panchayat and thereafter its successor the Committee had been leasing out the land in dispute to different persons on yearly basis and the tenants were using the path which is shown yellow in colour in the site plan. The petitioners who are the owners of the land comprised in killa No. 362/6/1 did not object to the path being used by the lessees of the Committee. It was pleaded in the application that it was sometime before the filing of the application under Section 42 of the Act that the petitioners started objecting to the use of the path passing through their land which necessitated the filing of the application. In the

circumstances, it cannot be said that the committee approached the State Government after an unreasonably long delay. It approached the State Government soon after the petitioners started objecting to the use of the path and it was then alone that a cause accrued to the committee to make such an application. As is clear from the site plan there is no other approach to the land owned by the Committee and no one can virtually reach the land without a path being provided. This should have been done at the time of the preparation of the scheme of consolidation. As already observed, the path now provided was being used to which the petitioners did not object earlier.

6. **Loku Ram's case (supra)** is under the Haryana Ceiling on Land Holdings Act where the expression "at any time" used in Section 18(6) of that Act has been interpreted to mean that power has to be exercised within a reasonable time. It is true that the application under Section 42 of the Act has to be filed within a reasonable time and in the instant case we have found that it was filed soon after the petitioners started objecting to the use of the path. There was, thus, no delay as such in the filing of the application."

8. Even though, the jurisdictional empowerment created under Section 42 of Act, provisions whereof become extracted hereinafter, has to be exercised within a reasonable time, but he submits that since from the beginning, the predecessor in interest of the petitioner, and, thereafter the petitioner were making user of the said earmarked path, and, only when the respondent concerned, raised an objection in respect thereof, that the petitioner was promptly thereafter led to institute a petition under Section 42 of 'the Act', before the Competent Authority. Therefore, he argues that since this Court in paragraph 4 of the verdict (supra), has mandated that in the above situation, the enforceable cause of action would arise on the date of an

objection or obstruction being raised, and, not from the date of the finalization of the consolidation scheme, as occurred in the year 1959. Resultantly he argues that since promptly from the relevant objection being raised by co-respondent No. 2, the instant application was filed. Thus, he contends that there is no inordinate delay in the preferment of the instant application by the aggrieved petitioner before the competent authority concerned, and, nor it is time barred.

“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 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].”

Inferences of this Court.

9. As above stated, the respondents do not deny the fact, qua the consolidation authorities in the year 1959, finalizing a scheme, wherein, provisions for an earmarked path was made qua the co-owners concerned. The path has been depicted in Annexure R-2, appended with the reply dated 26.09.2019. A prima facie perusal of Annexure R-2(supra), wherein, the path concerned has been depicted, does not unfold, the khasra numbers which became assigned thereto, nor, obviously it speaks about the finalized consolidation scheme, as occurred in the year 1959, assigning Khasra No. 41//17 to the path

which became carved in the said year. Consequently, the judgment (supra) which grants latitude to the aggrieved concerned, to seek recourse to Section 42 of 'the Act', when the authorities concerned do not earmark or reserve a path for the relevant purpose, in the finalized consolidation scheme, rather does not become attracted to the facts at hand. It may have become attracted only when the path earmarked in the year 1959, did also then become assigned Khasra No. 41//17, besides it would hold the completest application, but only when there was within a reasonable time prior to the institution of the instant application, hence unlawful resistances or objection(s) with respect to its user, rather by co-respondent No.2.

10. However, since this Court has concluded that in the finalized consolidation scheme, as occurred in the year 1959, the authorities concerned, did not assign khasra No. 41//17 to the path concerned. Therefore, prima facie there was no lawful right in the petitioner to exercise any easement rights thereons, nor it can be concluded that there was any unlawful obstruction in respect of its user, nor, also it can be argued that the institution of the instant petition at the instance of the petitioner, even it was made in prompt sequel thereto rather was an apt or a well constituted remedy. The reason for making the above inference becomes grounded in the factum, that in the verdict (supra), when only in respect of an admitted path an unlawful protest is raised, qua then the cause of action hence arising and also requiring its promptest redressal, through the availment of the statutory mechanism created in Section 42 of 'the Act'. Therefore, the obstruction, if any, which became raised qua user of a path purportedly existing in the aforesaid khasra number, by one Bakshish Kaur rather appears to be

lawful.

11. The further fortifying reason for drawing the above inference, becomes cemented, from the fact that Bakshish Kaur had instituted civil suit bearing no. CS/0007798/2013, in the Court of the learned Civil Judge, (Junior Division), Kapurthala. In the above civil suit, the above Bakshish Kaur had claimed the rendition of a decree of permanent prohibitory injunction, against one Mann Singh, and, also against the petitioner in respect of theirs' not interfering or dispossessing or creating any charges in any manner in respect of land comprised in khasra no. 41//17/8-0 situated in village Karnail Ganj, Tehsil Bholath, District Kapurthala.

12. Ultimately, the above civil suit, as revealed by the operative part of the judgment and decree, appended to the petition as Annexure R-1, became decreed, and, the defendants inclusive of the present petitioner arrayed as co-defendant no. 2 therein, became restrained from interfering or creating any charge or carving any possession upon khasra no.41//17/8-0. The above made verdict completely ousts the petitioner from claiming any path in respect of the land comprised in khasra no.41//17/8-0 situated in village Karnail Ganj, Tehsil Bholath, District Kapurthala. Moreso, when no verdict made by the First Appellate Authority reversing the judgment and decree comprised in Annexure R-1 (supra), has been placed on record. Resultantly the above judgment, and, decree has a final, and, conclusive effect. A further sequel thereof, is that, the statutory authorities concerned, were completely barred from reopening the issue, which became conclusively and completely decided in civil suit (supra).

13. Even otherwise, when there is a contentious obstruction rather at the instance of one Bakshish Kaur, in respect of the legality qua the claim for the user of a path, upon, the above said khasra number, by the present petitioner, but yet with the said contentious claim becoming *prima facie* discountenanced, through a verdict passed by the learned Civil Judge, as carried in Annexure R-1 (appended to the petition). Moreover, with the said verdict/Annexure R-1 acquiring a conclusive and binding effect, then the claim reared in the instant petition is completely baseless.

Conclusion

14. In view of the above, this Court does not accept any of the above submission(s), as raised before this Court by the learned counsel for the petitioner. Thus, the claim as raised by the petitioner did become aptly rejected.

Summarization of principles

15. (1) The judgment (supra), as made in case titled as '**Daya Nand Vs. Joint Secretary, Govt. of Haryana**' to which CWP No. 12244 of 1999 is assigned, is applicable only when the consolidation authorities who conducted consolidation in the land/*mohal* concerned, rather evidently do not in the finalized consolidation scheme, make a provision for a path, to the land owners or to the lands concerned. In case the above provision is not made, thereupon, the aggrieved concerned, can at any stage seek modification or variation of the finalized consolidation scheme, hence through the rearing of a petition under Section 42 of 'the Act'.

(2) In case a provision for a path is made, in the finalized consolidation scheme, and, the said path is evidently continuously used, since the finalization of the consolidation scheme, but yet upon any evident unlawful obstruction or resistance qua its user becomes raised by the co-owner concerned, then the aggrieved can yet proceed to in the promptest sequel to the raising of objections, prefer a petition under Section 42 of 'the Act'.

(3) However, the above recourse would be valid only when the claim is raised only in respect of an admitted path to which a specific khasra number is assigned, and, may not be a valid recourse in case the path, whereons, the said right of easement is claimed, is not shown, to be holding the very same khasra number as assigned to it, in the finalized consolidation scheme. If so, the aggrieved concerned, can raise a plea for exercising easementary rights, either on the basis of prescription or on the basis of necessity, but only through his/her instituting a declaratory suit before the civil Court concerned, and, not through casting a petition under Section 42 of 'the Act'.

(4) In case, the civil Court makes a final and conclusive verdict in respect thereof, then the decree of the civil Court, if conclusive, holds the apt binding effect.

Final Order

16. In consequence, this Court does not find any merit in the writ petition and the same is dismissed. The impugned/dismissal order, as comprised in Annexure P-7, also hence becomes valid and is

maintained and affirmed.

17. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

30.11.2022

kavneet singh

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