IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21444 of 2020(O&M)
Date of Decision:29.11.2022

Takdir Singh and others **......Petitioners**

Versus

The Commissioner, Rohtak and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. S.S.Mor, Advocate
for the petitioners.

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LISA GILL, J(Oral).

Prayer in this writ petition is for setting aside order dated 20.10.2020, Annexure P-1 (wrongly mentioned as Annexure P-2 in the writ petition) passed by respondent no.1-the Commissioner, Rohtak Division, Rohtak, whereby application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Consolidation Act') filed by respondents no.2 and 3, has been allowed.

Brief facts as stated in the writ petition are that respondents no.2 and 3 had filed a suit for mandatory injunction for directing the revenue officer to carry out necessary correction regarding mutation no. 992 by entering name of the respondents therein as owner in possession of 1/8th share in the agricultural land as described therein. It is stated that the said civil suit filed by respondents no.2 and 3 along with others was dismissed by the learned Additional Civil Judge (Senior Division), Jhajjar on 30.07.2013, Annexure P-3.

Appeal filed by the plaintiffs therein, challenging judgement dated 30.07.2013 was dismissed by the learned District Judge, Jhajjar vide order dated 30.05.2015, Annexure P-4.

Regular Second Appeal preferred by the plaintiffs therein was also dismissed by this High Court on 26.11.2015, Annexure P-5. It was held that the Civil Courts have no jurisdiction to entertain the matter and the suit was not maintainable.

Private respondents thereafter filed a petition under Section 42 of the Consolidation Act. The said petition was allowed by the Commissioner, Rohtak Division, Rohtak, exercising the powers under Section 42 of Consolidation Act, vide order dated 20.10.2020. The case set up by the private respondents was that *Khata* of ancestors of the appellants therein and the defendants i.e., the present writ petitioners was joint from the time of consolidation. It is stated that Sadhu, father of respondents no.2 and 3 i.e., applicants before the Consolidation authorities along with one Kamla had purchased $1/4^{th}$ share in equal share of agricultural land as described in the petition from Deepu and Todar, sons of Indraj. Mutation no. 992 dated 04.04.1959 was referred by the Collector, Rohtak, as the vendors were described as Gair Kabij in the revenue record. However, on consideration, mutation was sanctioned in favour of Sadhu and Kamla on 25.08.1961. It is stated that in the year 1961 at the time of consolidation, entry of *Gair Kabiz* before the name of Sadhu was incorrectly mentioned in the *Misal Haqiyat* and this mistake continued to be reflected in the subsequent jamabandis. Order dated 25.08.1961 by the Collector, Rohtak, was not incorporated in the revenue record, though said persons continued to be the owners in possession of the suit property as per their share. It is further the case of said respondents that they came to know about the mistake in February 2006. Accordingly, a representation was made before the revenue authorities for carrying out necessary correction in the revenue record. Correction memo no. 2 (*Fard Badar*) was entered by the Patwari and the said memo was sanctioned by the Assistant Collector IInd Grade, Jhajjar on 23.02.2006. However, necessary entries were not carried out in the revenue record. Correction memo no. 9 (*Fard Badar*), it is stated incorrectly showing Kamla to be the sole owner in possession of the land in question, which had been purchased by Sadhu and Kamla in the year 1957, was compared on 27.03.2007 by the Kanungo. *Fard Badar*/Correction Memo 10 was statedly verified by the concerned Patwari, but no order was passed by the Assistant Collector. Entry at Mutation No. 992 is claimed to have been left out due to a mistake.

Petition under Section 42 of the Consolidation Act, was allowed by the Commissioner, Rohtak Division, Rohtak, while observing as under:-

> "After carefully hearing both the parties and after perusal of the evidence on file, I reached to the conclusion that as per the report prepared by Consolidation Officer, Jhajjar dated 15.11.2016, mutation sanctioned vide no. 992 as per registry no. 1822 dated 23.11.1957, which is entered as Deepu etc., Vs. Sadhu etc., and accepted on 26.05.1959 after permission dated 25.08.1961. At the time of consolidation, while preparing file, mutation no.992 was mentioned, in which Sadhu Ram son of Deepu son of Bhakhtawar was entered as gair kabaj and kabaj jugal lal son of Babar son of Bhu ½ share, Kamla son of Bhagwana son of Babar ½ share, which is coming till today, whereas Sadhu and Kamla purchased land from Deepu and Todar. Sadhu and Kamla has been entered as Gair Kabjaan, but as per order dated 25.08.1961, not shown as gair kabjaan. So, at the time of preparing record, Kamla has rightly been shown as Gair Kabij, but Sadhu son of Deepu has wrongly been shown as Gair Kabaj and share was wrongly entered. There is force in the claim of appellants. Delay in filing the appeal is condoned. As

per sanctioned mutation no. 992, jamabandi for the year 2011-12 in khewast no. 226 Sadhu son of Deepu and Bhaktawar each 1/8 share and Azad Singh, Randhir Singh and Takdir Singh sons of Kamla son of Bhagwana having 13/28 share should be entered, which was not done. By keeping in view khewat no. 275 of jamabandi for the year 2016-17, in place of Sadhu son of Deepu son of Bhaktawar gair kabij, Azad Singh, Randhir Singh, Takdir Singh, sons of Kamla son of Bhagwana each four having 515/1302 share, instead of Azad Singh, Randhir Singh, Takdir Singh sons of Kamla sons of Bhagwana each three having 1409/5208 share and Manphool-Gamandi-Sri Bhagwana-Mahabir-Ram Sarup-Ved Singh sons of Sadhu son of Deepu each six having 367/1302 share instead of 2119/5208 share by correction of entry, this case is accepted. Orders of this case was reserved. So, separate information be sent to parties."

Aggrieved therefrom, present writ petition has been filed.

Learned counsel for the petitioners vehemently argues that the impugned order has been incorrectly passed without taking into consideration the fact that petition under Section 42 of the Consolidation Act was barred by limitation by nearly 54 years. Delay has been condoned without any rhyme or reason and specifically ignoring the fact that the learned Additional Civil Judge (Sr. Division) Jhajjar, dismissed the suit filed by the said respondents and others on merits. Entertaining the petition under Section 42 of the Consolidation Act, at this belated stage, it is submitted, is a cause of manifest injustice to the petitioners. It is further submitted that there is concealment of facts by the private respondents inasmuch as they did not reveal the filing of the civil suit by them before the Consolidation Authorities. It is thus prayed that this writ petition be allowed.

It is relevant to note at this stage that this petition was adjourned on 15.01.2021 to enable learned counsel for the petitioners to place on record the revenue record to substantiate the contentions as raised in the writ petition. Despite number of opportunities since then including last opportunity, relevant record is not forthcoming.

The following order was passed on 31.10.2022:-

> "Order dated 15.01.2021 has not been complied with despite last opportunity being afforded.
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> Learned counsel for the petitioners prays for more time to comply with order dated 15.1.2021.
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> In the interest of justice and to obviate any kind of injustice to the petitioners, if at all, adjourned to 29.11.2022.
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> In case, needful is not done, this writ petition shall automatically stand dismissed."

Today, learned counsel for the petitioners submits that he would address arguments on the basis of the present pleadings itself. Accordingly arguments have been heard and we have perused the file with the able assistance of learned counsel for the petitioners.

First and foremost, the argument raised by learned counsel for the petitioners is that application under Section 42 of the Consolidation Act should not have been entertained after a delay of 54 years. It is pertinent to note that the registered sale deed no. 1822 dated 19.09.1957 pleaded to have been executed in favour of Sadhu, Kamla by Deepu and Todar, is not denied. Admittedly, the sale deed was executed prior to the consolidation proceedings. Neither is there any denial of the sanction of mutation no. 992 on 25.08.1961. It is the case of the private respondents that there is specific mention of mutation no. 992 in the Consolidation Scheme, with reference of Khewat no. 83. However, needful pursuant thereto was not done by the Consolidation authorities, due to which possession of the said respondents as per their share is not reflected in the subsequent revenue records. There is indeed nothing on record to indicate that said stand is incorrect. In-fact, on a pointed query, learned counsel for petitioners submits that petitioners do not deny execution of sale deed dated 19.09.1957 and neither is it denied that the private respondents have not staked claim to any portion of land beyond the one as mentioned in the sale deed.

It was claimed by the respondents that mistake came to notice of the plaintiffs therein in the month of February 2006 and they represented before the authorities for carrying out necessary correction regarding the ownership on 28.05.2007 and thereafter on 30.05.2007, but the necessary correction (*Fard Badar*), though verified was not carried out for rectification of the revenue record leading to filing of civil suit by the said respondents and others. Civil suit filed by respondents was clearly not maintainable.

In the given factual matrix, we find that once the basic foundational facts as alleged by the private respondents have not been denied inasmuch as execution of the sale deed dated 19.09.1957 or the sanction of mutation no.992 or the fact that private respondents do not claim a centimeter beyond the share as detailed in the sale deed, is not denied, we do not find any ground to interfere in the impugned order only on the ground of delay or that private respondents had approached the revenue authorities only after dismissal of their **Regular Second Appeal No. 4167 on 22.01.2010**. Civil suit filed by the private respondents was held not maintainable in the said appeal. In the peculiar facts and circumstances of this case, non suiting the private respondents on the ground of delay, would thus be unjust and lead to denial of substantial justice.

At this stage, it would be useful to refer to the decision of the Full Bench of this Court in **Jagtar Singh Vs. Additional Director, Consolidation of Holdings, Punjab, 1984 PLR 364.** Question before the

Full Bench was:

> 'whether the bar of limitation under Rule 18 of the Rules would also apply to a petition filed under Section 42 of the Act impugning the scheme prepared or confirmed or repartition made by an officer under the Act?'.

It was held by the Full Bench as under:-

> "13. As is evident from his arguments there is no dispute that the preparation or confirmation of scheme, making of repartition in accordance with the scheme and passing of orders are three distinct connotations and concepts envisaged under S. 42 of the Act. Even this is evident from the amendment carried out in Section 42 of the Act. That being so, if still it has to be held that an order would include preparation or confirmation of scheme or making of repartition in accordance with the scheme, then the amendment would become meaningless.
>
> Xxxx
>
> 14. xxxxx A bare perusal of Rule 18 of the Rules would show' that it provides limitation only for petitions filed against order passed. There is no reference in the Rules to a scheme prepared or confirmed or repartition made. The fact that is Section 42 of the Act the words 'scheme prepared or confirmed or repartition made' have been added as a result of amendment, cannot justify the conclusion that in Rule 18 of the Rules these words have also to be read. If the State Government had intended to provide a limitation even with regard to the petitions filed against a scheme prepared or confirmed or repartition made, then after the amendment in Section 42 of the Act, corresponding amendment in Rule 18 of the Rules would have also been made. But no such amendment was made. As to why no amendment was made in the rules, the Courts are not concerned. The rule has to be interpreted as it exists. The words of Rule 18 are precise and unambiguous and no more is necessary than to expound these words in their natural and ordinary sense. The Courts are not to read into the context the

> words which are not to be found there nor is any duty cast upon the Court to apply itself to the extremely difficult task of finding out the mind of the framers of the rule that it had also intended to bring within the purview of Rule 18 of the Rules a scheme prepared or confirmed or repartition made after the amendment in Section 42 of the Act."

The said judgment of the Full Bench was approved by the Hon'ble Supreme Court in case of **Gram Panchayat, Village Kanonda, District Rohtak through its Sarpanch Vs. Director, Consolidation of Holdings, Haryana, 1990 AIR (Supreme Court) 763** and it was observed as under:-

> "We have already extracted section 42 of the Act and Rule 18 of the Rules. It would be clear that though section 42 envisaged orders, preparation or confirmation of scheme and repartition separately, Rule 18 provides for limitation only in respect of an application under that section in a proceeding where an order was passed. There is the maxim expressio unius est exclusio alterius: expression of one thing is the exclusion of another. Mention of one thing implies the exclusion of another. When certain persons or things are specified in a law an intention to exclude all others from its operation may be inferred. When mention has been made only of 'Orders', the inference would be that preparation or confirmation of scheme and repartition are excluded. Again, Ex praecedentibus et consequentibus optima fit interpretation. The best interpretation is made from the context. As we have seen, while section 19 and 20 did not envisage passing of any order section 21 envisaged passing of orders. Section 42 deals with applications against orders, preparation or confirmation of scheme and repartition. Rule 18 mentions only orders and hence by inference excludes 'preparation and confirmation of scheme and repartition'. We have accordingly no doubt in approving the Full Bench decision in Jagtar Singh v. Additional Director, Consolidation of Holdings (supra)."

Doubtlessly, even when no limitation is prescribed, the concerned party is expected to avail its remedy within reasonable time. It was held by Hon'ble Supreme Court in the case of **Gram Panchayat, Village Kanonda (Supra)** that 'what is reasonable time is always a question of fact depending upon the facts and circumstances of each case'. No absolute or precise period of limitation or instances or strait jacket formula can be laid down and each case has to be considered on its own given facts and circumstances as to the reasonable period of limitation within which the revisional power is to be exercised. It is reiterated that in the present case, wherein the basic foundational facts are not denied, scuttling the cause of private respondents on the ground of delay shall lead to gross denial of substantial justice.

No other argument has been raised and neither any document produced before us to substantiate the case of petitioners as presented before us.

Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in this writ petition.

Accordingly, this writ petition is dismissed with no order as to costs.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 29, 2022.
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.