

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

CWP No.9319 of 2018
Date of decision: 04.07.2022

Raj Singh and others

....Petitioners

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ajay Jain, Advocate
for the petitioners.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

Mr. P.R. Yadav, Advocate
for respondents No.4 and 5.

AUGUSTINE GEORGE MASIH, J.

An application was preferred by respondent No.4-Nemi Chand son of Shri Mohar Singh under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'Consolidation Act'), praying for correction of a clerical error in the *Aks Shajra* and as a consequence thereof for correction in Khasra No.751 and Khasra No.632/1 as the land on both sides of the passage does not tally with each other in these two khasra numbers.

In this regard, it has been stated that *rasta shaream* in Khasra No.632/1 has been shown as 4 *karams* as per the field book and 1 *karam* area towards Khasra No.750 had not been deducted from the original land/area during consolidation. In Khasra No.751, *rasta* has been shown as 37 *karams* and has been found to complete 34 *karams* according to the field book, so on the eastern side of the original part of Khasra No.751, it should be 34 *karams* instead of 37 *karams* and similarly eastern side of Khasra No.632/1 should be 3 *karams* instead of 4 *karams*.

Vide the impugned dated 07.03.2018 (Annexure P-7), direction has been issued by the Commissioner, Gurugram Division, Gurugram, exercising the powers under Section 42 of the Consolidation Act by remanding the case back to the Tehsildar-cum-Consolidation Officer, Rewari, to demarcate Khasra No.751 and other concerned khasra numbers with the satellite machine at the spot in his own presence and keeping in view the judgment dated 26.02.2016 (Annexure P-4) of the Civil Court and decide the same on merits.

2. It is the contention of learned counsel for the petitioners that the impugned order cannot sustain as an application under Section 42 of the Consolidation Act could not have been entertained after a delay of 55 years. It has been asserted that the said action on the part of the Commissioner vide the impugned order dated 07.03.2018 is contrary to the judgment of the Hon'ble Supreme Court in ***Gram Panchayat, Kakran Versus Addl. Director of Consolidation 1997 (2) PLJ 375***. If there is no period prescribed as limitation under the statute, the application must be filed within a reasonable time and the delay has to be sufficiently and satisfactorily explained. That apart, it has been asserted that the findings which have been recorded by the Commissioner, Gurugram Division, Gurugram exercising the powers under Section 42 of the Consolidation Act are contrary to the records and, therefore, cannot sustain. Effort has been made by the counsel for the petitioners to explain on the basis of the *Aks Shajra* the issue involved in this case as also the reason and the purpose as to why the land bearing Khasra No.751, which belongs to the petitioners has a length of 37 *karams*, whereas Khasra No.632/1 has lesser area. Even the calculation chart has been provided by the counsel for the petitioners. On the basis of the same, counsel has asserted that there is a glaring

illegality on the part of respondent No.2 in accepting the prayer made in this application on behalf of respondent No.4.

3. On the other hand, learned counsel for the State as well as counsel for respondents No.4 and 5 have submitted that a civil suit has been filed by the petitioners, wherein on the basis of the demarcation report, findings have been returned by the trial Court in paras 16 and 17, which read as follows:-

“16. The plaintiff has relied upon Ex.P4 and Ex.P8. Ex.P8 is site plan and from perusing of same, it is evident that rasta has shown in khasra No.632 while property of plaintiff has shown in Khasra No.752. The plaintiff has relied upon demarcation report conducted by Tehsildar as Ex.P5 and from perusing of same, it is evident that eastern side of khasra No.751 should be 4 karam and eastern side of khasra No.632/1 should be 3 karam instead of 4 karam.

17. Plaintiff has relied upon x-sajra as Ex.P7 and from perusing of same, southern side of property in dispute has shown 37 karam while eastern side has shown 32 karam. The plaintiff has relied upon jamabandi for year 2002-03. From perusing of same, it is evident that plaintiff along with defendants No.2 to 9 are owner-in-possession of the property in dispute. The defendant has filed site plan Ex.P1 which has been proved by the plaintiff. From perusing of this site plan Ex.P1, it is evident that property shown with blue colour is property of Raj Singh etc. By perusing the oral evidence as well as documentary evidence it is proved that plaintiff is owner-in-possession of the property shown with blue colour in site plan Ex.P1 of the plaintiff. The defendant did not rebut the case of plaintiff, therefore this issue is decided in favour of the plaintiff.”

4. It is on the basis of these findings that an injunction has been

granted restraining the respondents from interfering in the property of the plaintiffs. Based on these findings, Commissioner has proceeded to pass the order impugned for demarcation through the satellite machine in the presence of the parties so that the matter can be sorted out once and for all, especially with regard to the area in occupation of the petitioners as also the Gram Panchayat. Commissioner, on the basis of the revenue record and the consolidation record, has come to a conclusion that there is a mistake which has occurred during the consolidation with regard to 37 *karams* of Khasra No.751, whereas it should have been 34 *karams*. To resolve the controversy, it is the right approach on the part of the Commissioner to have resorted to the demarcation through the satellite machine at the spot in the presence of the parties. It is on this basis that the counsel for the respondents have supported the impugned order.

5. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

6. It is true that when there is no period prescribed for filing an application, the application has to be moved within a reasonable time. In the present case, it can safely be said that the issue has been raked up by the petitioners themselves by approaching the Civil Court by way of a suit for permanent injunction, which they preferred in the year 2011 which was decreed *ex parte* on 26.02.2016 (Annexure P-4). The findings as have been reproduced above clearly indicate that there is some mistake which has occurred during the consolidation, which needs to be rectified and accordingly an application was preferred by Nemi Chand-respondent No.4 which was filed on 12.06.2017 (Annexure P-2). Therefore, it cannot be said that there is an inordinate and unexplained delay on the part of respondent No.4 in approaching the

competent authority for redressal of the grievance which is claimed to be in the form of a mistake. It would not be out of context to mention here that Section 43-A of the Consolidation Act deals with the correction of a clerical error. The same reads as follows:-

“43A. Correction of clerical errors.-- Clerical or arithmetical mistakes in a scheme made, or an order passed by any officer, under this Act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties.”

A perusal of the same would show that an arithmetical mistake in the scheme from an accidental slip or omission can at any time be corrected by the authority on an application of any of the parties or on its own motion. If that be the position, the objection as has been raised by the petitioners with regard to the delay in approaching the authority, cannot be accepted.

7. In any case, the Commissioner while passing the order dated 07.03.2018 has been very fair, just and reasonable as he has ordered demarcation of Khasra No.751 and other concerned khasra numbers with the satellite machine at the spot and the Tehsildar has been ordered to be present in person at the time of such demarcation. The cost for such a demarcation is to be borne by respondent No.4. It is always open to the petitioners to participate in the said demarcation so that the truth can come out. In the garb of and in the shadow of technical objections which are being sought to be projected by the petitioners, they cannot illegally encroach and grab the Gram Panchayat land nor can such an act be permitted. No prejudice would be caused to the petitioners in case the impugned order is given effect to.

8. As regards the calculations which have been projected by the petitioners before the Court through their counsel, suffice it to say that these

calculations are left for the departmental officials to look into after the demarcation has taken place. We, therefore, do not opine on the same with regard to the correctness and otherwise thereof.

9. In view of the above, we do not find any ground to interfere with the impugned order dated 07.03.2018 (Annexure P-7) passed by the Commissioner, Gurugram Division, Gurugram exercising the powers under Section 42 of the Consolidation Act.

10. The writ petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

04.07.2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned Yes

Whether reportable No