

217

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

CWP-18118-2017

Date of decision:03.05.2023

BICHHA RAM (DECEASED) THROUGH LR_s

...Petitioner

Versus

THE COMMISSIONER KARNAL AND ORS.

...Respondents

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

Present: Mr. N.S. Sahu, Advocate
for the petitioner.

Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. One Gaje Singh instituted against the predecessors in interest of the present petitioner, a petition under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”). The dispute, as raised therein was in respect of there being a breach or an error in the consolidation scheme, as became drawn by the Consolidation Officer concerned. The above petition resulted in an order being made thereons, on 08.07.2010 (Annexure P-2) by the learned Commissioner, Rohtak Division, Rohtak (hereinafter referred to as the “Commissioner”), whereby he accepted the petition (supra) of one Gaje Singh.

2. The above Annexure P-2 became assailed before this Court, by the aggrieved therefrom, through the filing of CWP-1701-2011, and, on the said petition, this Court, on 27.03.2012, after accepting the said petition, and after quashing Annexure P-2, thus remitted the lis to the Commissioner, to enable him

to make a fresh lawful decision thereons. Though, necessarily the above order of remand, as, made to the Commissioner was required to be in letter, and, spirit thus enforced by the Commissioner, but yet as revealed by Annexure P-4, rather than his making a decision, as was required to be made on the remanded lis, he chose to remit or further delegated the lis to the District Revenue Office and Settlement Officer, Consolidation, Karnal, with a direction to him, that after hearing the contesting litigants, he proceed to, draw a decision in terms of the order made on petition (supra) by this Court. Therefore, but patently there is complete want of exercising of jurisdiction by the Commissioner, despite his being ordered by this Court to make a decision on the remanded lis, thus without further delegating the remandee jurisdiction to the authority below him. The said order Annexure P-4, became again challenged by the aggrieved Bichha Ram through his instituting CWP-12072-2014, and, on the said writ petition, on 11.12.2014, this Court after accepting the same, and, after quashing Annexure P-4, again made an order of remand to the Commissioner, to enable him to make a fresh decision, upon, the remanded lis thus to him.

3. The striking facet of the order of remand, as made by this Court, on writ petitions (supra), is that, certain observations are carried in paragraph 2 thereof, paragraph whereof becomes extracted hereinafter, and, which were in the operative part of the decision, as, made on the said writ petition, thus were directed to be borne in mind by the Commissioner.

“The Commissioner, Rohtak Division, Rohtak, has passed the impugned order dated 17.04.2014 (Annexure P-4) in purported compliance of the above stated directions but the said order is also totally silent as to why and in what circumstances the petition under Section 42 of the Act moved by the private respondents was entertained after about 40 years. It may be noticed here that according to the petitioners the objections of private respondents were rejected way back in 1964. The directions dated 27.03.2012

issued by this Court have thus not been complied with in true sense and spirit.”

4. Therefore, imperatively the Commissioner was required to be initially engaging himself in the exercise, whether the belated institution of the petition under Section 42 of the Act of 1948, at the instance of one, Gaje Singh, was thus hit by delay and laches, and, in case did record such record a finding, in favour of the petitioner, thereupon, he was required to, rather make a decision afresh on the merits of the remanded lis.

5. Be that as it may, instead of the Commissioner concerned, making completest compliance with the directions (supra), as made by this Court, in the writ petition (supra), rather he has yet again failed to exercise the jurisdiction, as, become conferred upon him, thus, in above manner by this Court, besides has also chosen to, but after condoning the delay, again remit or impermissibly delegated the lis to the Tehsildar and Consolidation Officer, Indri. The above has been done, despite the fact that the report of the Tehsildar, was already available before him, and, which was required to be borne in mind, rather than, his again asking the Tehsildar to make a re-report, about the veracity of the allegations carried in the petition, besides, irrespective of the contra pleadings being set up by the litigants concerned. The above further delegation of the remandee jurisdiction by the Remandee Court, thus reiteratedly rather is impermissible.

6. Though, obviously the observation (supra), as made by this Court while making a decision on 11.12.2014, upon the relevant petition, became validly considered, inasmuch, as the Commissioner after deliberating, upon, the relevant material, came to a conclusion, that the delay of 40 years, has been validly explicated, but he has yet disobeyed the order of remand, inasmuch as, though thereafter he was required to personally enter upon the merits of the remanded lis, and, thereafter was to record a valid speaking decision, on the

merits of the case. Since he has failed to do so, thus has failed to exercise the remandee jurisdiction. Therefore, this Court is constrained to interfere with Annexure P-6. Resultantly, the instant petition is allowed, and, Annexure P-6 is quashed, and, set aside, with a direction to the Commissioner concerned, to after restoring the lis, to its original number make a fresh decision, thus on the merits of the case. The Commissioner is directed to ensure, that the decision on the merits of the lis is made positively within 3 months from today, but after hearing all affected concerned.

(SURESHWAR THAKUR)
JUDGE

03.05.2023
Ithlesh

(KULDEEP TIWARI)
JUDGE

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