

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 21623 of 2017 (O&M)

Date of Decision: 27.1.2023

Gram Panchayat Saidpur-Mohammadpur

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

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

Present: Mr. Neeraj Gupta, Advocate
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

Mr. Atul Yadav, Advocate
for respondents No. 3 and 4.

SURESHWAR THAKUR, J.

1. Respondent No. 3 herein preferred an application cast under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act'). In the above application, the respondent herein claimed path measuring 4 karam i.e. 22 feet wide from rectangle No. 10 killa No. 10, belonging to Gram Panchayat, and, whereas the applicant has been given the area of rectangle No. 10 killa No. 2 adjacent land of Gram Panchayat, rectangle No.9, killa No.2 village Saidpur, Mohammadpur, Gurgaon. On the above application, the impugned order, as carried in Annexure P-3, became pronounced. The Gram Panchayat concerned, becomes aggrieved from the drawings of Annexure P-3, and, is led to institute thereagainst the instant writ petition.

2. It is not disputed amongst the parties at contest, that during the

course of the consolidation proceedings, rasta or passage was carved by the consolidation authorities for the exercising thereons of easementary rights by all the land holders concerned. One of the land holders one Mange Ram son of Badloo, did not, during the course of his holding a valid title to the land(s) concerned, make any protest to the said carved rastas, by the consolidation authorities, inasmuch as theirs, rather not enabling him, to ably exercise his easementary rights onto his land. However, subsequently the applicant acquired the land concerned, from the above one Mange Ram.

3. Moreover, after the lawful termination of the consolidation proceedings, the bachat or surplus land was allotted in favour of the Gram Panchayat concerned, and, a corresponding entry in respect of the disputed land, was recorded in the jamabandi obviously in favour of the Gram Panchayat concerned.

4. The legal permissibility to move a valid application under Section 42 of the Act (supra), would become sparked on two counts; (a) in case the consolidation authorities omitted to, during the course of the consolidation operations, rather create a passage for the exercisings thereons of easementary rights by all the land owners concerned. (b) In case a passage became carved by the consolidation operation, for the exercisings thereons of easementary rights by all the land owners concerned, yet subsequently there being unlawful obstructions or hindrances by any person against their user by the concerned.

5. However, as above stated, there is no wrangle amongst the contesting litigants qua on the lawful termination of consolidation operations in the mohal concerned, rather a lawful passage hence becoming carved for the exercisings thereons of easmentary rights by all the land

owners concerned. If so, the application preferred under Section 42 of the Act, was not maintainable nor any affirmative order thereons, was drawable by the competent authority concerned.

6. The effect, of a passage being carved rather after the lawful termination of consolidation operation in the mohal concerned, for exercisings thereons of easementary rights by all the land owners concerned, is that, only when there was an obstruction or hindrance(s) at the instance of any person concerned, qua the exercisings thereons, of easementary rights by the land owner(s) concerned, that thereupon, alone the land owners concerned, becoming ably facilitated to cast an application under Section 42 of the Act, before the competent authority concerned. However, there is no evidence on record suggestive, that there was any visible hindrances or obstacle(s), reared by any land owners concerned, against the person concerned, or his predecessor-in-interest against the exercisings thereons of easementary rights. Therefore, even on the above score, the petition filed under Section 42 of the Act, was not maintainable before the competent statutory authority.

7. Be that as it may, there is also no evidence on record suggestive, that there was any demur or protest raised by one Sadhu Ram, the vendor of the present petitioner, against the carvings of the passage, by the consolidation authorities, on the possible permissible premise, that yet his being disabled to exercise thereons his easmentary rights, rather for his making accesses onto his land. The effect, of the alienor of the present petitioner un-protestingly or without demur accepting the passage carved by the consolidation authorities concerned, for his exercising thereons, his easementary rights, is that, the said carved passage by the consolidation

authorities, was a validly carved passage, and/or, that it did provide the relevant accesses to him onto his lands, and/or subsequently also did it also provide the relevant accesses even onto the land of the present petitioner, who made purchases thereof from one Sadhu Ram. Therefore, even if the said accesses did not ably facilitate the present petitioner, thereupon, he is yet estopped, from his drawing a deed of conveyance with one Sadhu Ram, to at this belated stage contend, that the said carved passage, which became accepted without demur, by his alienor, was of no avail to him, as it did not ably enable him to access the lands, as became purchased by him from one Sadhu Ram. It appears that the petitioner, in the garb of moving the application, has attempted to make accesses to his lands from every possible corner, even through his recouring the untenable mode of his ensuring, that the land reserved as bachat, and, which became allotted to the Gram Panchayat, resulting in a corresponding entry in the revenue records being entered in the name of the Gram Panchayat, does also become allotted to him, even through an exchange order being made in his favour. His proposal for his land becoming exchanged to the land of the Panchayat, was also accepted, through the drawing of the impugned order, by the authority concerned. However, the above ordered exchange by the authority concerned, through its drawing the impugned Annexure, is completely outside the ambit of the jurisdiction vested in the authority concerned. The jurisdiction vested in the authority concerned, is limited only to (a) creating a passage for exercising thereons of easementary rights by the land owners concerned, but if only such a passage is not carved by the consolidation authorities concerned, (b) in case there is any resistance or obstacles reared by any land owners concerned, against the exercisings thereons of the

easementary rights by the petitioner, to thereupon make a lawful order. Adjudged in the face of the above parameters hence underlining the exercisings of valid jurisdiction by the authority concerned, thereupon obviously, the above said ordered exchange, as made through the impugned order, is completely outside the ambit of the jurisdiction vested under Section 42 of the Act, rather in the competent authority. In case, the petitioner intended to ensure his making accesses to all the corners of the land, as became purchased by him from one Sadhu Ram, thereupon, the remedy available for him was to, in the above regard, rear a civil suit against the Gram Panchayat concerned, before the Civil Court concerned, with the permissible relief, that on account of his making a prolonged user thereof or through custom, rather his perfecting his title over the dominant heritage, which otherwise, as above stated, is owned by the Gram Panchayat.

Principles

8. (i) The jurisdiction vested in the authority concerned, is limited only to (a) create a passage for exercising thereons of easementary rights by the land owners concerned, but if only such a passage is not carved by the consolidation authorities concerned.
- (ii) (b) in case there is any resistance or obstacles reared by any land owners concerned, against the exercisings thereons of the easementary rights by the petitioner, thereupon, the competent authority can pass lawful order thereon.
- (iii) In case, the petitioner intends to ensure his making accesses to all the corners of the land, as became

purchased by him from one Sadhu Ram, thereupon, the remedy available for him was to, in the above regard, rear a civil suit against the Gram Panchayat concerned, before the Civil Court concerned, with the permissible relief, that on account of his making a prolonged user thereof or through custom, rather his perfecting his title over the dominant heritage, which otherwise, as above stated, is owned by the Gram Panchayat

9. In the wake of the above, this Court finds merit in the instant petition, and, is constrained to allow it.
10. Consequently, the instant petition is allowed. The impugned order is quashed, and, set aside.
11. All the pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

January 27, 2023
Gurpreet

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