

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

CWP-3949-2017

Reserved on: 14.02.2023

Date of decision: 21.02.2023

RAMSWROOP AND ANOTHER

...Petitioners

Versus

THE STATE OF HARYANA AND OTHERS

...Respondents

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

Present: Mr. Satbir Gill, Advocate
for the petitioners.

Mr. Pradeep Parkash Chahar, DAG, Haryana

Mr. Ashok Kumar Verma, Advocate
for respondents No.5 to 7.

SURESHWAR THAKUR, J.

1. Admittedly the predecessors in interest of the deceased-respondent No.5 now substituted by his LRs, was a *Gair Marusi*, upon the lands concerned, as, carried in Rect. No.55//16, 25, 56/19, 20, 21, 22, Rect. No.63//1, 2, 9, 10, 11, 12, Rect. No.64//6, 7, 15/1. However, through an order of mutation drawn on 23.09.1963 by the Assistant Collector, Ist Grade, the predecessors in interest of since deceased-respondent No.5 in the instant petition, hence became conferred title as owner of the lands concerned, and, also the order (*supra*), resulted in the drawing of mutation No.277 on 29.01.1964. It is not disputed amongst the contesting litigants, that the consolidation proceedings which occurred in the *Mohal* concerned, did lawfully terminate prior thereto. Importantly, also there is no evidence, on record suggestive, that in the lawfully terminated consolidation proceedings, which but occurred prior thereto 1963, rather the land owners

concerned, under whom the predecessor in interest of the deceased-respondent No.5, was a *Gair Marusi* rather did not become allotted a revenue passage, to their respective fields hence by the Consolidation Officer concerned. Therefore, initially an inference can be drawn, and, importantly when since the lawful termination of the consolidation proceedings but prior to 1963, and upto now, neither the land owners concerned, nor their successors in interest, have on the above ground rather made any motion under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “Act of 1948”), *qua* hence a revenue *rasta* did come to be validly carved for the relevant purpose for all concerned.

2. Be that as it may, it was only in the year 2015, that the deceased-respondent No.5, moved Annexure P-2 before the Tehsildar, Consolidation Officer, Rania, claiming that he may be assigned a passage to access Rect. No.55 of which 16, 25, 56/19, 20, 21, 22, Rect. No.63//1, 2, 9, 10, 11, 12, Rect. No.64 of which 6, 7, 15/1, and, the said claim was premised on the ground, that a passage to the above field numbers was not assigned in the finalized consolidation scheme. Succinctly he claimed passage out of Killa No.57//1, 2, 10, 11, 20. The above killa numbers were evidently also a part and parcel of the finalized consolidation scheme which occurred prior to 1963. Moreover, it also appears that the said killa numbers became allotted to the petitioners rather in the said finalized consolidation scheme.

3. The above application resulted in the drawing of Annexure P-1, on 08.12.2015 by the Commissioner, Rohtak Division, Rohtak. A reading of the operative part of Annexure P-1, reveals that the Authority concerned, remanded the *lis* to the Tehsildar, Consolidation Officer Rania but with a direction to him,

to hear the affected parties, and, to inspect the site so that to the land of the applicant the shortest passage is assigned.

IMPUGNED VERDICT IS ANNEXURE P-6

4. The Remandee Court through the drawing Annexure P-4, on 30.03.2016, allowed the petitioners' claim but subject to certain amendments as made therein. The amendments made in the applicants' application, to which Annexure P-1 is assigned, resulted in the applicant making an appeal against Annexure P-4, before the Appellate Authority. The learned Appellate Authority through the drawing(s) of Annexure P-6, on 29.08.2016, set aside the order as made on 30.03.2016, by the Consolidation Officer, Ranian, and, also set aside mutation No.1889 dated 27.04.2016, and, but obviously assigned the claimed passage to the deceased co-respondent No.5. It is from the verdict recorded in Annexure P-6, that the instant petition has been constituted before this Court.

REASONS FOR SETTING ASIDE THE IMPUGNED ORDERS

5. For the reasons to be assigned hereinafter the impugned orders Annexures P-1, P-4, and, P-6 are quashed, and, set aside.

6. The primary reason for doing so becomes planked, upon the factum that the predecessors in interest of deceased-respondent No.5, was a *Gair Marusi*, under the land owners concerned, and, it was only in 1963, that he acquired title as owner in respect of those lands, which he was earlier thereto cultivating as a *Gair Marusi* rather under the land owners concerned. However, admittedly prior to 1963, a finalized consolidation scheme did become validly prepared, and also since a reading of the orders occurring on the records of the case, do not suggest, that therein no revenue *rasta* became carved for the exercisings thereons of easementary rights by the land owners concerned, under whom, the predecessors in interest of deceased-respondent No.5, rather than was a

Gair Marusi. Moreover, also when there is no agitation imperatively, since the drawing of the finalized consolidation scheme prior to 1963, upto now, hence by the land owners concerned, or by their respective successors in interest, pointedly qua in the consolidate scheme (supra), rather no revenue *rasta*, becoming carved, for facilitating the exercising thereons of easmentary rights, by all concerned. Therefore, it has to be concluded that as a matter of fact, a revenue *rasta* was carved in the finalized consolidation scheme rather for the benefit of all concerned. If so, the predecessors in interest of co-respondent No.5, who then was a *Gair Mumkin*, did also become well enabled to exercise thereons, his easmentary rights. Resultantly, the then exercisings of the said easementary rights by the predecessor in interest of respondent No.5, on the relevant carved revenue *rasta*, rather in the finalized consolidation scheme, was to continue or was to survive even at the stage when he acquired title as owner to the lands concerned.

7. Be that as it may, even if there was any obstruction caused by land owners concerned, against the exercisings of easementary rights, by the predecessors in interest of the deceased-respondent No.5, on the revenue *rasta*, as became carved in the finalized consolidation scheme, then also the remedy available to the predecessors in interest of the deceased-respondent No.5 or to the latter, was to make a motion under Section 42 of the Act of 1948, with an espousal therein(s), that the validly carved revenue *rasta*, is being blocked, at the instance, of the landowners concerned, and that they be directed to be open the same, so as to enable them to exercise thereons rather their easmentary rights. However, even the above recourse became never endeavoured by the concerned, whereas, it was the only legally befitting remedy available to him, than the unbefitting alternate thereto re-coursed remedy by the concerned.

8. Contrarily, the successors in interest of the deceased *Gair Marusi* concerned, chose to seek the carving of a revenue *rasta*, other than the one which was carved, as such, in the finalized consolidation scheme. The assertion as made in the apposite application, for a *rasta* being carved for the relevant purpose, but was an assertion rather upon the land(s) owned, and, possessed by the petitioners herein, who were the lawful allottees of such lands, in the finalized consolidation scheme, whereons in the relevant scheme rather no revenue *rasta* became carved.

9. Therefore, the lawfully owned estates of the petitioners, could not be subjected to the encumbrance of a *rasta*, as has been untenably done, through the makings of the impugned orders. The effect of the makings of the impugned orders, is that, there has been an unlawful interference with the finalized consolidation scheme, besides also there is an untenable alteration of the revenue records, which became prepared in pursuance thereof, and, which were not amenable to be rectified, but have been untenably rectified, only for assigning, to the concerned, a *rasta* shorter in length than the one which became reserved, as a revenue *rasta*, as such, for all concerned, in the finalized consolidation scheme.

10. Conspicuously, the estate of the land owners concerned, under whom, at the relevant stage, the predecessor(s) in interest of deceased-respondent No.5, was a *Gair Marusi* rather was made subject to the encumbrance of a revenue *rasta*. The said encumbrance thereons, did make the said estate, to be throughout a servient heritage, yet hence facilitated even the then *Gair Marusi*, to rather subsequently also, on his becoming a valid title holder to, or qua the servient lands concerned, hence to singularly exercise thereons his easmentary rights. Obviously, he could not beyond that choose, to

even on those lands owned by the petitioners, exercise his easmentary rights, as, the estates of the petitioners were never a servient heritage. They could be well made a servient heritage, only through a civil suit, being filed for the relevant purpose, before the Civil Court concerned, claiming therein a declaratory relief, of theirs being permitted to ably exercise, rather on the estates of the petitioners, their easementary rights, but on the basis of necessity or on the basis custom but not in the above untenable manner. Therefore, the above adopted remedy is a completely misrecoursed remedy.

FINAL ORDER

11. Thus, there is merit in the petition, and, the same is allowed. Impugned orders carried in annexures P-1, P-4, and, P-6 are quashed, and, set aside. However, leaving liberty to the respondents concerned, to access the Civil Court concerned, to claim a revenue *rasta* on the relevant estates, but on the basis of necessity and prescription arising from prolonged user of the said *rasta*.

(SURESHWAR THAKUR)
JUDGE

21.02.2023

Ithlesh

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

(KULDEEP TIWARI)
JUDGE