

108

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3515-2024
Date of decision:21.03.2024

RAJ KUMAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ketan Antil, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The learned State counsel submits, that despite a consolidation *rasta* becoming carved for thereons, the estate holders exercising their easementary rights, yet the present petitioner instituted a petition cast under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”), before the Divisional Commissioner, Rohtak Division, Rohtak, wherebys he asked for the carving of a *rasta* alternative to the consolidation *rasta*.
2. In the face of the above, the learned State counsel submits, that the dismissal order, as made on the relevant motion (Annexure P-3), was a validly made order, as the law declared on the subject manifests, that in case such a consolidation *rasta* is created, thereupon the asking for a *rasta* by any estate holder rather alternate to the said created consolidation *rasta*, is impermissible to be granted, thus by the authorities contemplated under

Section 42 of the Act of 1948.

3. The above made submission before this Court, by the learned State counsel is supported by earlier decisions recorded by this Court.
4. Though, the learned counsel appearing for the petitioner though does not contest the above made submission before this Court by the learned State counsel, but yet he submits that the said consolidation *rasta* has been blocked and obstructed for its becoming used by the present petitioner. If so, since in regard to removal of obstructions created vis-a-vis the consolidation *rasta*, thus the authorities contemplated under Section 42 of the Act of 1948, though may have jurisdiction to order for removal of such obstructions, but the learned State counsel further submits that the said *rasta* has been lawfully acquired.
5. Resultantly, this Court deems it fit, and, appropriate not to relegate the present petitioner to cast a motion before the authorities contemplated under Section 42 of the Act of 1948, for thus the latter ordering for the removal of obstacles and obstructions raised on the consolidation *rasta*, especially given the said *rasta* becoming acquired.
6. Be that as it may, in the larger interest of justice, if yet there is no *rasta* available for the petitioner for his exercising his easementary rights, thereupon the remedy available to the present petitioner is to institute a declaratory suit before the learned Civil Court of competent jurisdiction, and, his pressing the said declaratory relief, on the basis of necessity and prescription.
7. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

21.03.2024

Ithlesh