

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-18506-1997
Reserved on: 06.03.2024
Pronounced on: 12.03.2024

ASHOK KUMAR AND ANOTHERPetitioners

Versus

STATE OF HARYANA AND ORS.Respondents

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

Argued by: Ms. Palak Jain, Advocate for
Mr. C.B.Kaushik, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Sudhir Aggarwal, Advocate
for respondent No. 3.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners seek the quashing of order dated 16.05.1997 (Annexure P-6), whereby the application filed by one Gobind Ram-respondent No. 3 herein, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Act of 1948'), thus praying for the carving of a path to his fields, hence became allowed.

Factual Background

It has been averred in the writ petition that the

consolidation proceedings in the *mohal* were completed in the year 1956 and a sanctioned path was provided to the land situated in khasra numbers 77/10 and 77/11/1 alongwith other co-sharers belonging to various owners. That one Gobind Ram-respondent No. 3 herein, filed a petition under Section 42 of the 'Act of 1948', on the ground that no path has been provided in the consolidation scheme, for access to his land comprised in khasra No. 77/11/1 measuring 3 bigha 7 biswa.

3. Through an order drawn thereons on 16.05.1997 (Annexure P-6), the learned Director, Consolidation, Haryana, thus allowed the same.

4. It has been averred that respondent No. 2, through the impugned order has taken land from petitioner No. 1 in khasra No.77/10, the same being given as path and area 0-2 was given out of Khasra No. 77/11/1 (40 x 1). Further, it has been averred that the land 2 x 2 has been taken out from the land of petitioner No. 2 in khasra No.77/11/3, but nothing has been given to her in lieu of the area taken. The area from the land of petitioner No. 2 has been taken out for giving path to respondent No. 3 to go to the well which is stated to be situated in khasra No. 77/26 (Chahi).

5. The learned counsel for the petitioners submits, that the impugned order has been passed without following the prescribed procedure under Section 42 of the 'Act of 1948'. The application is highly belated and was liable to be quashed on the ground of delay and laches. The petitioner No. 2 was never given any compensation nor any land in lieu of the area taken from her ownership provided to her.

Reply of respondent No. 3

khasra No. 77/10 and in lieu of that 0-2 area was given to petitioner No.1. This area as became taken out from khasra No. 77/11/3 earlier became allotted to petitioner No. 2. It was just corner of the land which was allotted to respondent No. 3, to use as a path to go to the common well.

7. The respondent No. 3 was not provided any path in the consolidation scheme for access to his land i.e. khasra No. 77/11/1. Since the consolidation authorities alone can provide path to the land owners, thus, the petition filed under Section 42 of the 'Act of 1948' was maintainable and also was not barred by any limitation. Even otherwise, the delay, if any, was condoned by respondent No. 2.

Inference of this Court.

8. From an incisive reading of records, it appears that after the completion of consolidation proceedings, a sanctioned path was provided to the land owners. The said consolidated path was comprised in khasra No. 77/10 and 77/11/1. The said area was in the joint ownership of 4 brothers namely S/Sh. Dewan Chand, Jeewan Dass, Inder Bhan and Gobind Ram. That subsequently after the finalized consolidation scheme coming into force, thus an oral partition became effected amongst the joint estate holders. That one of the co-sharers i.e. Gobind Ram filed a petition under Section 42 of the 'Act of 1948', for providing of path to his respective tak, which was allowed by the authority concerned. However, the said exercising of jurisdiction by the authority contemplated under Section 42 of the 'Act of 1948', rather was an inaptly exercised jurisdiction.

9. The reason for making the above conclusion spurs, from

filed under Section 42 of the 'Act of 1948', is limited to correction of clerical or arithmetical errors, as occur in the records of rights, as became prepared in sequel to the consolidation operations conducted in the *mohal* concerned, and/or is confined to the creation of a consolidation *rasta*, but if the said *rasta* is not carved in the consolidation scheme.

10. Since, further it is stated, at the bar by the learned Additional Advocate General at the bar on instructions from the concerned, that in the finalized consolidation scheme rather a consolidation *rasta* became carved. Therefore, despite a consolidation *rasta* being carved, yet through the impugned order (Annexure P-6), an alternate thereto *rasta* becoming carved, thereby makes the carving of a *rasta* alternate to the *rasta* carved in the finalized consolidation scheme, rather to be outside the exercisable jurisdiction vested in the authority contemplated under Section 42 of the 'Act of 1948'.

12. The reason for making the above conclusion spurs, from the factum that, when in terms of the verdict made by a Full Bench of this Court in '***Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others***' reported in **2014 (2) R.C.R. (Civil) 721**, especially when in relevant paragraph whereof, paras whereof is extracted hereinafter, it has been expostulated that there is a complete interdiction against the authority exercising jurisdiction under Section 42 of the 'Consolidation Act, 1948', to after the finalization of the consolidation scheme, by the consolidation officer, rather re-distribute or re-partition, the disputed lands amongst the estate holders concerned.

13. Contrarily, when it is mandated therein, that the remedy to

estate holders concerned, after the completion of the finalized consolidation scheme, is through, the makings of a challenge to the purported untenable allotment(s) made either to the estate holders or to the Gram Panchayat concerned, rather through a declaratory suit being filed, before the jurisdictionally competent Civil Court concerned.

46. We, therefore, have no hesitation in recording that it is beyond debate that, if a question arises, before an officer exercising power under the Consolidation Act, regarding any right, title or interest in “Shamilat Deh” “vested” or deemed to have vested in a Gram Panchayat, a Consolidation Officer, the State or its delegate exercising plenary power under Section 42 of the Act, are not empowered, while examining the correctness of any scheme prepared during consolidation or order passed thereunder to record a finding on such a question of title or to hold that land is or is not “Shamilat Deh” and as a consequence whether any right, title or interest vests or does not vest in the Gram Panchayat. The only authority empowered to answer such a question is the Collector, exercising power under Section 11 of the 1961 Act. As a necessary corollary an order passed under Section 42 of the Consolidation Act, holding that the land vests or does not vest in a Gram Panchayat would be illegal and nonest for assumption of jurisdiction where there is none, as opposed to a mere erroneous exercise of jurisdiction or may, at best be construed to be an order passed by a tribunal of limited jurisdiction, in the exercise of its limited powers to correct errors in the scheme or orders passed during consolidation and nothing more. The latter conclusion would require a degree of explanation.”

Final Order of this Court.

14. In aftermath, it was but yet not open to create the

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impugned path especially when a consolidation path was evidently

created. The remedy, if any, to the aggrieved qua his exercising easementary rights on some other path, thus on the basis of prescription and necessity, was through his raising a declaratory suit before the Civil Court of competent jurisdiction. However, the remedy as became instantly availed by the aggrieved and that too post the finalization of the consolidation scheme, thus to attempt to create a *rasta* alternate to the consolidation *rasta* rather was but an untenable attempt to tinker with the consolidation scheme, tinkerings whereof, was completely unlawful and were beyond the scope and the jurisdiction invested in the authorities under Section 42 of the 'Act of 1948'.

15. In sequel, finding merit in the writ petition, the same is allowed. The impugned order Annexure P-6 is quashed and set aside. However, this Court reserves liberty to the private respondent concerned to access the legally permissible remedies in terms of ***Parkash Singh’s case (supra)***, inasmuch as, his filing a suit for his exercising easementary rights qua/on the disputed path, but on the basis of prescription and necessity.

16. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

12.03.2024
kavneet singh

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