

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CWP-21647-2022 (O&M)
Reserved on:- 22.04.2025
Pronounced on:- 29.05.2025

SATNAM SINGH

...PETITIONER

vs.

DIRECTOR CONSOLIDATION PUNJAB
JALANDHAR AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HONBLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Arun Abrol, Advocate for the petitioner.

Mr. Shekhar Verma, Addl.A.G., Punjab.

Mr. Dheeraj Mahajan, Advocate for respondent No.2.

HARPREET KAUR JEEWAN, J.

1. Petition under Article 226/227 of the Constitution of India has been filed by the petitioners seeking issuance of a writ in the nature of *Certiorari* for quashing of order dated 04.05.2022 (Annexure P-3) passed by respondent No.1-Director Consolidation Punjab, Jalandhar, whereby, petition filed by respondent No.2 under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (*hereinafter referred to as "the Act of 1948"*) has been accepted after delay of more than 63 years from the date of finalization of consolidation proceedings.

2. As per the version of the petitioner, he is a resident of District Gurdaspur and presently residing in Canada. Consolidation proceedings had taken place in Village Jewanwal in the year 1955-56 under the provisions of the Act of 1948. The petitioner purchased land measuring 02 *kanals* comprising of *Khewat* No.34, *Khasra* No.2R/20 (1k-6M) 21 (7k-9M) 22/1 (OK-14M) situated in village Jewanwal, *Hadbast* No.341, *Tehsil* and District Gurdaspur, vide registered sale deed dated 30.11.1999. Being a property-dealer, respondent No.2 wanted to purchase the afore referred property of the petitioner, who is a NRI and mostly remains away from the village. Upon refusal by the petitioner, on 16.12.2019, in order to put pressure on the petitioner, respondent No.2 filed a petition under Section 42 of the Act of 1948 with the prayer for correction of *Kurukans* (dimensions) of *Khasra* No.2//22/1 of village Jewanwal, *Hadbast* No.341. The said petition was filed only against the petitioner, whereas, other co-sharers of the petitioner were not joined, with the sole motive to harass the petitioner so that he may be coerced into selling off his land to respondent No.2. Respondent No.1 passed the impugned order dated 04.05.2022 in haste, while totally ignoring the fact that there was an inordinate delay of 63 years in filing of the said petition.

3. In pursuance to the notice of motion, respondent No.1-Director Consolidation Punjab, Jalandhar, filed a short reply submitting therein that the impugned order has been passed in a *quasi* judicial capacity and that no interest of either the Consolidation Department or the State of Punjab was involved. It was further submitted that the dispute is *inter se* the petitioner and the private respondent, so prayer was made that the writ petition be

dismissed *qua* respondent No.1.

4. Respondent No.2 also filed written statement taking preliminary objections that the petition was not maintainable as the petitioner had no *locus standi* to file the same; the petition was liable to be dismissed on account of concealment of material facts; the petitioner had never pleaded the issue of limitation before the competent authority, knowing fully well that the correction sought by respondent no.2 was only with regard to the omissions in *karukans* (dimensions) of *khasra* No.2//22/1 (0-14) in Village Jewanwal and as such, the dispute was well within limitation.

4.1 On merits, it was contended that dimensions of *khasra* No.2//22/1 have been wrongly written as 18-23-20, whereas, the actual dimensions of the said *khasra* No. are 15-23-17. Since there was a clerical mistake in recording the dimensions of the *khasra* No.2//22/1, as such, the question of limitation would not arise and that the petition of respondent No.2 was rightly allowed by respondent No.1.

5. Petitioner filed replication to the written statement filed by respondent no.2. It was contended that respondent No.2 had purchased land measuring 02 *kanals* in Village Nabipur, *Hadbast* No.339, bearing *khasra* No.45//22/1, but he was in possession of land measuring more than 02 *kanals*. The allegations levelled in the written statement were denied and those made in the petition were re-asserted.

6. We have heard the learned counsel for the parties and perused the paper-book.

7. Learned counsel for the petitioner submitted that respondent

No.2 had filed a petition under Section 42 of the Act of 1948 and as per Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (*hereinafter referred to as the "Rules of 1949"*), the prescribed period of limitation for filing of such a petition is 06 months. The petition was misconceived as all the co-sharers of the land in question were not joined as parties in the proceedings. Learned counsel for the petitioner further contended that respondent No.2 was a subsequent purchaser and he was not the owner of the land in question at the time of the alleged consolidation proceedings, therefore, he was not competent to file such a petition. Reliance was placed on the decision of the Hon'ble Apex Court in Gram Panchayat, Village Kot-mana Vs. Addl. Director, Consolidation of Holdings & others, 1998(9) SCC 269; decisions by Division Benches of this Court in Jaswinder Kaur and others Vs. Additional Director, Consolidation and others, 2003(3) R.C.R. (Civil) 131; Pale Ram Vs. State of Haryana and others, 2013(4) R.C.R. (Civil) 185; Attar Singh and others Vs. Commissioner Rohtak Division and others, CWP-14078-2021; and a decision by this Court in Gram Panchayat, Village Slampur Vs. The Director, Consolidation of Holdings, Punjab, 1999(1) R.C.R. (Civil) 135;

8. On the other hand, learned counsel for respondent No.2 submitted that at the time of demarcation, it came to the notice of the revenue authorities that there was a clerical error in the revenue record regarding the dimensions of *khasra* No. 2//22/1, as such, the respondent No.2 filed a petition for correction of the said clerical error and the same has been rightly allowed by the authorities. It was further contended that

the question of limitation would not arise since the prayer made in the application was to correct a clerical error in recording the dimensions of a *khasra* number and rights of the parties were not to be affected. Learned counsel for respondent No.2 placed reliance on a decision of a Full Bench of this Court in Jagtar Singh Vs. Additional Director, Consolidation of Holdings, Punjab & another, AIR 1984 (Punjab and Haryana) 216; the decision of another Full Bench of this Court in Mansa Ram Vs. State of Haryana, 2002(1) R.C.R. (Civil) 558; a decision of this Court in Jati Singh Vs. Additional Director, Consolidation of Holding, Punjab and others, 2004(3) R.C.R. (Civil) 287 and a decision of the Hon'ble Supreme Court in State of Jharkhand and others Vs. Pakur Jagran Manch and others, AIR 2011 (Supreme Court) 675;

9. Learned State counsel appearing on behalf of respondent No.1 contends that the present writ petition is premature, since by passing the impugned order, rights of the parties have not been decided on merits. The Director, Consolidation Punjab-respondent No.1 has only remanded the matter to the District Revenue Officer-cum-Consolidation Officer, to give hearing to the parties, go through the record and thereafter, pass an appropriate order. The State counsel also relied upon the decision by this Court in LPA No.185 of 2004-Jati Singh Vs. Additional Director, Consolidation of Holdings, Punjab and others, decided on 22.12.2009.

10. In view of the above admitted facts on record, the following questions arise for determination in the matter:-

- (i) *Whether the petition under Section 42 of the Act, 1948 is maintainable after a period of 63 years from the date consolidation proceedings?*
- (ii) *Whether a person, who is a subsequent purchaser and was not a*

stakeholder/owner at the time of consolidation proceedings, has a legal right to file a petition under Section 42 of the Act of 1948?

Question No.1 Whether the petition filed by respondent No.2 before the Director Consolidation Punjab was within limitation:

11. The factual aspects are not disputed. The consolidation proceedings took place in the year 1955-56. The petition under Section 42 of the Act of 1948 was filed by respondent No.2 on 16.12.2019 and that the impugned order has been passed on 04.05.2022. The petition has been filed by respondent No.2 under Section 42 of the Act of 1948. The prayer in the petition was for correction of a mistake which allegedly took place during the consolidation proceedings. The correction sought by respondent No.2 was that *karukans* (dimensions) of a particular *khasra* number be corrected as 15-23-17 (the dimensions in *karam*) which are allegedly incorrectly recorded during the consolidation proceedings as 18-23-20 (the dimensions in *karam*). In para No.3 of the petition, it has been specifically pleaded that the mistake was committed during repartition and can be ordered to be corrected by exercising the powers under Section 42 of the Act of 1948. Regarding limitation, it has been pleaded in the application that there was no limitation for correcting a mistake committed during partition.

12. Learned counsel for respondent No.2 in this regard has placed reliance on the decision of a Full Bench of this Court in **Jagtar Singh's** case (*supra*). In the said matter, the question for determination before the Hon'ble Full Bench was as to whether the bar of limitation under Rule 18 of the Rules of 1949 would also apply to a petition filed under Section 42

of the Act of 1948, whereby, the scheme prepared or confirmed or repartition made by an officer is under challenge. While interpreting the old provisions under Section 42 of the Act of 1948, amended provisions under Section 42 of the Act of 1948 and Rule 18 providing for a period of limitation to the filing of a petition under Section 42, the Hon'ble Full Bench of this Court observed that the period of limitation of 06 months provided under Rule 18 would be applicable only where an order passed by an officer under Section 42 has been challenged. However, it was observed that where the scheme prepared or confirmed or repartition proceedings have been challenged, the period of limitation under Rule 18 would have no implication since the corresponding amendment under Rule 18 was not carried by the State Government.

13. Keeping in view the facts of the present case, the said decision of the Full Bench of this Court is of no help to respondent No.2. Subsequent to the decision of the Hon'ble Full Bench in Jagtar Singh's case (*supra*), the Hon'ble Apex Court considered a similar question in an SLP filed by the Gram Panchayat of a village. The decision of the Full Bench in Jagtar Singh's case (*supra*) was also considered and the Hon'ble Apex Court in Gram Panchayat, Vill. Kot-mana's case (*supra*) has categorically held that it cannot be understood to enable a party which is aggrieved by the scheme or by repartition to make an application under Section 42 of the Act of 1948 after an unreasonably long lapse of time. The Hon'ble Apex Court observed that even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for seeking relief within a reasonable time. The observations by

the Hon'ble Apex Court read as under:-

“2. The appellant is Gram Panchayat of village Kakran. In consolidation proceedings which took place in the year 1956 under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948, the net entitlement of Sangha Singh, father of the 2nd respondent was held to be of the value of 152-15-9 pai and after making deduction of the value 3-4-3 paid for common purposes, he was allotted 149- 10-6 paid of land. The Resolution No. 120 which is dated 16.6.56 is under Section 20 of the Act confirming the Consolidation Scheme. Prior to such confirmation, under Section 19 the draft scheme is required to be published and objections have to be invited which have to be considered within the time prescribed in Section 19. Thereafter under Section 20, after considering the objections, the final scheme has to be confirmed. Under Section 21 the consolidation Officer is required to carry out repartition in accordance with the scheme of consolidation in the manner set out therein. Under sub-section (2) of Section 21 any person aggrieved by repartition is entitled to file a written objection within 15 days of the publication before the Consolidation Officer. There are further provisions for appeal under Section 21. Under Section 42, a power is given to the State Government to call for, inter alia, any scheme prepared or confirmed or repartition made by any officer under the Act for the purpose of examining legality or propriety thereof. The Section provides that this can be done by the State Government at any time. In the present case no objections under Section 21 appear to have been filed by the father of the 2nd respondent who was then alive. However, after 40 years, in the year 1996 the 2nd respondent made an application under Section 42 for reopening the repartition, on the ground that there should not have been any deduction from his land for common purposes. This application has been entertained and an order as been passed by Additional Director, Consolidation dated 23.5.96 directing that a portion of the Bachat land be given to the 2nd respondent. The Writ Petition filed by the present appellant - Gram Panchayat has been dismissed. Hence the present appeal has been filed before us.

3. Rule 18 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Rules, 1949 prescribes that an application under Section 42 shall be made within six months of the date of the order against which it is filed. Under the 2nd proviso to that Rule, there is a power to admit the application after the period of limitation, which

requires the applicant to satisfy the authorities that he has sufficient cause for not making the application within such period. The 2nd respondent has relied upon a decision of the Full Bench of the Punjab & Haryana High Court in the case of Jagtar Singh vs. Additional Director, Consolidation of Holdings, Jalandar (AIR 1984 Pb. & Haryana 216). In this decision the High Court has held that the period prescribed under Rule 18 will apply only in respect of orders which are passed under the Act and will have no application to a scheme which is framed r repartition which has been effected under the Act.

4. *This, however, cannot be understood as enabling the party which is aggrieved by the scheme or by repartition to make an application under Section 42 after an unreasonably long lapse of time. Even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. In fact this Court in the case of Gram Panchayat, Village Kanonda vs. Director, Consolidation of Holding (1989 Suppl. (2) SCC 465) dealing with Rule 18 itself, said that when no limitation is prescribed for an application under Section 42 dealing with confirmation of the scheme, the application should be made within a reasonable time and this question will have to be decided on the facts of each case. In that case the delay of about 3 years and 8 months in filing an application under Section 42 by the Panchayat was held to be not unreasonable. In the present case, however, the delay is of 40 years. We have tried to ascertain from the 2nd respondent whether there is any explanation for this unreasonable and inordinate delay. But no satisfactory explanation appears to be there for this inordinate delay in making the application under Section 42. The only contention which has been urged before us by respondent No.2 relates to the application of Rule 18 and the period of limitation prescribed therein not being applicable where the challenge is to the consolidation scheme and repartition. But even if Rule 18 is not directly attracted, an application which made after such inordinate delay ought not to have bee entertained. It is also contended by the 2nd respondent that the appellants have no locus standi to challenge the order of the Additional Director of Consolidation in a writ Petition because the land in question continued to remain in the name of the proprietary body. He drew our attention to Rule 16(ii) of the said Rules. Rules 16(ii), however, quite clearly provides that the management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary party and the Panchayat shall have to utilise the income and*

the benefits of the estate or estates concerned. Even before Additional Director, the appellants were made a party-respondent. This contention, therefore, has no merit.”

14. Similarly the Hon’ble Coordinate Bench of this Court in **Jaswinder Kaur’s** case (*supra*), set aside the order passed by the Additional Director Consolidation, Punjab, accepting the application for correction of “clerical mistake” after 40 years of the consolidation proceedings.

15. The Coordinate Bench of this Court in **Pale Ram’s** case (*supra*) also quashed the order passed by the Director Consolidation Department, Haryana after 40 years of consolidation proceedings while assigning no reasons for condoning such a long delay.

16. In **Attar Singh’s** case (*supra*), the Division Bench of this Court upheld the order passed by the Commissioner, Rohtak Division Rohtak under Section 42 of the Act of 1948, dismissing the application seeking correction of error in consolidation scheme with a delay of 50 years.

17. In **Jagtar Singh’s** case (*supra*) the Coordinate Bench of this Court set aside the order passed under Section 42 of the Act of 1948 where the delay was found to have been condoned on extraneous considerations.

18. In **Jati Singh’s** case (*supra*) decided 22.12.2009, a Division Bench of this Court observed that where parties continued in possession contrary to the entry made in the record for more than 12 years in two rounds of civil litigation, exercising powers under Sections 42 & 43 of the Act of 1948 by the Director Consolidation by passing a different order will not be merely a correction of the “clerical error”, but would amount to disturbing the rights of the parties. It was observed that “*if such a power is*

invoked after adjudication by the Civil Court wherein rights of the parties are crystalized and finality reached and after more than 20 years of the event, exercise of power would be beyond reasonable time.”

19. In view of the ratio of the decision of the Hon'ble Apex Court in Gram Panchayat, Vill. Kot-mana's case (*supra*), we are of the considered opinion that the impugned order dated 04.05.2022 (P-3) passed by the Director Consolidation Punjab, after a period of 63 years of the consolidation proceedings, is a misuse of the process of law and that the power has been exercised after an unreasonably long delay and that too without recording any reasons for exercising such power after such a long delay. Therefore, this question is accordingly answered in favour of the petitioner and against the respondents.

Question No.2 – Whether a subsequent purchaser who was not a stakeholder/owner at the time of consolidation proceedings has a legal right to file a petition under Section 42 of the Act of 1948:

20. It is not disputed that the respondent No.2 was not the owner of any property situated in Village Jewanwal at the time when consolidation proceedings took place under the provisions of the Act of 1948 in the year 1955-56. The petitioner has specifically alleged in the replication that Sarabjit Singh, respondent No.2 had only purchased 02 Kanals land in Village Nabipur, *Hadbast* No.339 out of *khasra* No.45//22/1.

20.1 During the course of arguments, learned counsel for the petitioner submitted that the respondent No.2 has purchased the said land in

the year 2018. However, in the written statement specific date regarding purchase of land by respondent No.2 has not been mentioned. During the course of arguments, learned counsel for respondent No.2 did not dispute the fact that respondent No.2 had purchased the said land subsequent to finalization of the consolidation proceedings.

21. In Jaswinder Kaur's case (*supra*), a coordinate Bench of this Court, while setting aside the order passed by Addl. Director, Consolidation, providing a path to respondent Nos.3 to 5 therein, observed that a subsequent purchaser had no right to seek a path alleging only a "clerical mistake". While relying upon the decision of this Court in various petitions, it was categorically held that a subsequent purchaser had no right to seek a path in respect of a scheme finalized earlier. Such right is available only to the right holders at the time of consolidation and not to the subsequent purchasers. The relevant observations of the coordinate Bench in this regard are as under:-

"5. Counsel for the petitioners has relied upon Banarsi Dass and others v. Director Consolidation of Holdings Haryana and others, 1995(3) RRR 357 (P&H) : 1995 PLJ 314, Smt. Nasib Kaur v. The Additional Director, Consolidation of Holdings, Punjab, 1998(2) RCR (Civil) 650 (P&H) : 1998(1) PLJ 114 and Bakhtawar Singh v. State of Haryana, 2001(2) RCR (Civil) 16 to contend that the subsequent purchaser has no right to seek path in respect of a scheme finalized earlier. Such right is available only to the right holders at the time of consolidation and not to the subsequent purchaser. The claim of the respondents is based on the basis of recital of the sale deed of the year 1989.

6. As per the respondents themselves, one path is available which was not considered sufficient by the Consolidation authorities. The fact remains that the respondents are claiming another path on the basis of recital in the sale deed. Such recital cannot affect the rights of the petitioners who are not a party to such sale deed. There is no other

cogent evidence that path as sought by respondent No. 3 to 5 was being used since the time of consolidation. The path now claimed was to be provided in the Scheme by Consolidation Authorities. But there is no evidence on record that such path in fact was ever used and provided. Therefore, keeping in view the judgments mentioned above, we are of the opinion that the subsequent purchasers have no right to seek path alleging only a “clerical mistake”.

7. Still further the application for correction of “clerical mistake” was moved in the year 1999, and that too, without any application for condonation of delay, after 40 years of consolidation.”

22. In view of the detailed discussion as above, we are of the considered opinion that the decisions relied upon by the learned counsel for respondent No.2 in Mansa Ram’s case (*supra*), Jati Singh Vs. Additional Director, Consolidation of Holdings, Punjab and others, 2004(3) R.C.R. (Civil) 287 and State of Jharkhand’s case (*supra*) are completely distinguishable on facts.

23. In view of the ratio of the decision by the Coordinate Bench in Jaswinder Kaur’s case (*supra*) and in view of the admitted fact that the petitioner was neither a co-sharer nor stakeholder at the time when consolidation proceedings took place, we are of the considered opinion that the Director, Consolidation Punjab, Jalandhar-respondent No.1 could not have invoked the powers under Section 42 of the Act of 1948 at the instance of respondent No.2. As such, this question is also decided in favour of the petitioner and against the respondents.

24. As a sequel of the above discussion, we are of the considered opinion that the impugned order is a misuse of the process of law. The powers have been invoked by respondent No.1 beyond the period of limitation and in favour of a person who was not competent to challenge

the consolidation proceedings. Consequently, the impugned order is liable to be set aside.

25. As such the present petition is allowed. The impugned order dated 04.05.2022 is set aside.

26. Parties to bear their own costs.

(DEEPAK SIBAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

29.05.2025
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Whether Speaking	Yes/No
Whether Reportable	Yes/No