



111

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

CWP-5195-2025 (O&M)

Date of Decision : 26.05.2026

OMPARKASH AND ANR

.... Petitioners

VERSUS

STATE OF HARYANA AND ORS

.... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN
HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI**

Present : Mr. Sunil Kumar Nehra (Sirsa), Advocate for the petitioners.

Mr. Pradeep Prakash Chahar, Addl. AG Haryana
for respondent Nos.1 to 3.

Mr. Ankur Mittal, Senior Advocate with
Ms. Kushaldeep Kaur, Advocate; Ms. Ashna Singh, Advocate
and Ms. Sharvi Dadhwal, Advocate for respondent No.4.

ALKA SARIN, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India challenging the order dated 11.02.2025 (Annexure P-4).
2. The facts which have been concealed in the present writ petition and are relevant to the present *lis* are being dealt with before adverting to the facts of the case. An application was filed by one Omparkash wherein he had raised an issue regarding the shifting of the *Phirni* and the fact that the villagers should be heard before changing the *Phirni*. Vide order dated 31.07.2015 (Annexure P-1) the said application was accepted and the matter was remanded to the Tehsildar-cum-Consolidation Officer, Adampur with a direction that the said Officer should provide an opportunity of hearing to the

affected parties, members of Mashavarti Committee, Panchayat and other stakeholders after inspecting the spot. The Tehsildar-cum-Consolidation Officer on 22.12.2015 (Annexure P-2) passed an order carving out the *Phirni*. The operative portion of the order dated 22.12.2015 (Annexure P-2) reads as under :

‘After personally hearing the parties and the members of the Mashavarti Committee and perusing the record available on the matter, I have come to the conclusion that the demand made by the appellants is justified. Therefore, it is ordered under Section 21(2) of the Consolidation Act, 1948 that the Phirni drawn between Khasra No.170//16-17-18-19-20 be cancelled and constructed on the southern side of Khasra No.152//16-17-18-19-20 and on the southern side of No.153//19-20 and the houses built in Khasra No.183//2 should be given a three-karam road straight from the road from the northern side of Khasra No.183//1-2-3-4-5 and the three-karam road on the eastern side of Khasra No.170//1-10-11-20 should be increased to five-karam and a Phirni be established. Apart from this, the Phirni established on the northern side of Khasra No.169//2-3-4-5 should be cancelled and a Phirni should be established on the western side of Khasar No.154//21 from the southern side of Khasra No.153//16-

17-18. A copy of this order should be sent to the Assistant Consolidation Officer Mohabbatpur for further action’.

Interestingly, the fathers of the petitioners herein preferred an appeal (Annexure R-5 appended with the written statement filed on behalf of respondent No.4) against the said order. The challenge laid by the fathers of the petitioners herein to the carving of the *Phirni* was inter alia that the *Phirni* had wrongly been carved out on the south-western side of land bearing Killa No.153//18 which fell in the proposed passage. The said appeal was dismissed vide order dated 20.07.2016 (Annexure R-6 appended with the written statement filed on behalf of respondent No.4). Subsequently, the order dated 20.07.2016 was challenged by the fathers of the petitioners by filing a revision petition which was dismissed in default vide order dated 29.10.2021 (Annexure R-8 appended with the written statement filed on behalf of respondent No.4). No steps were taken by the fathers of the petitioners for restoration of the said revision petition.

3. Adverting to the facts of the present case, the petitioners herein in the year 2023 filed an application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The format in which the application was filed has also not been appended with the present writ petition. However, the same has been appended by respondent No.4 as Annexure R-9 with the written statement. In column No.8 of the said application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 where the petitioners were supposed to mention whether any appeal had been filed previously under Section 21(2)

or (A), it had been stated 'NA'. Even in column No.10 of the said application where the copy of the order was to be appended, it had been stated 'NA'. What has been appended with the present writ petition is Annexure P-3 which is the grounds for filing the said application. In the said grounds also there is total concealment of material facts inasmuch as the previous round of litigation does not find mention therein. In the impugned order dated 11.02.2025 (Annexure P-4), which is now under challenge, all the said facts pertaining to the previous round of litigation were dealt with. However, yet again in the present writ petition there has been material concealment of facts inasmuch as none of these facts are mentioned. The said facts were again culled out by respondent No.4 in its written statement. In response thereto, in the replication, the facts have been admitted.

4. Learned counsel appearing on behalf of the petitioners has contended that the land of the petitioners has been taken away for carving out the *Phirni* without them being paid any compensation and the petitioners are being forcibly dispossessed. It is further the contention of the learned counsel that the *Phirni* is being sought to be carved out of Rect. No.153 in order to give undue benefit to the Sarpanch concerned. Learned counsel for the petitioners would further argue that the order dated 22.12.2015 is beyond the scope of the remand order dated 31.07.2015 (Annexure P-1). It is still further the contention of the learned counsel that the scheme is yet to be confirmed and till such time the scheme is not confirmed, the land does not vest in respondent No.4-Gram Panchayat. In support of his arguments, learned counsel for the petitioners has relied upon the judgment of the Supreme Court

in the case of **Bhagat Ram & Ors. Versus State of Punjab & Ors.** [AIR 1967 SC 927]. Learned counsel for the petitioners has yet further argued that there is no public interest involved in carving out the *Phirni* of the village and that it is only the personal interest of the Sarpanch concerned which has been catered to by carving out the *Phirni*.

5. At this point, a query was put to the learned counsel for the petitioners as to whether the same person was the elected Sarpanch in 2015 as the elected Sarpanch today, learned counsel for the petitioners has stated that the Sarpanch in 2015 was a different person.

6. *Per contra*, learned senior counsel appearing on behalf of respondent No.4-Gram Panchayat has contended that the construction of the *Phirni* has been stalled because of the stay granted in the present case. It is further the contention of the learned senior counsel that all material facts were concealed from this Court and the earlier round of litigation was not brought to the notice of this Court till the filing of the written statement by respondent No.4. Learned senior counsel has further contended that because of the stay on the completion of the *Phirni*, the repartition of the land has also been halted. It is further the contention of the learned senior counsel that till such time the *Phirni* is not completed, the repartition proceedings cannot take place. The learned senior counsel would argue that there is a compensatory mechanism in the scheme itself, which would be adhered to even in the present case. It is only the apprehension of the petitioners that they would not be compensated for the land which would fall in the *Phirni*. Learned senior

counsel would further contend that the mechanism as set up in the scheme would be diligently followed.

7. Learned counsel for respondent Nos.1 to 3-State submits that whatever provision for compensation has been laid down in the scheme would be duly adhered to.

8. We have heard the learned counsel for the parties.

9. It is well settled proposition of law that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and the petitioners approaching the Writ Court must come with clean hands and all relevant facts should be put before the Court without concealing or suppressing anything. The petitioners approaching a Writ Court are not to withhold any vital or relevant material in order to gain advantage or else they would be guilty of playing fraud with the Court as well as with the opposite party. The petitioners, as apparent from the facts narrated above, are guilty of *suggestio falsi* and *suppressio veri*. The entire earlier round of litigation has been concealed by the petitioners herein not only in their application filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 but even before this Court. The concealment before this Court is despite the fact that the factum of the earlier litigation had clearly been mentioned in the impugned order dated 11.02.2025 (Annexure P-4). The relevant portion of the order dated 11.02.2025 (Annexure P-4) reads as under :

‘The application is filed on 10.05.2023 under Section 42 of the East Punjab Holdings (Consolidation and

Prevention of Fragmentation) Act, 1948 is against the order dated 22.12.2015 of the Consolidation Officer and Tehsildar, Adampur. The application under Section 42 is to be filed in the prescribed format under Rule 17 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949. No facts have been mentioned by the applicants Omprakash etc. in columns 5 to 10 of the prescribed proforma, whereas the applicants Omprakash's father Shrichand son Mamachand and Rajendra etc. jointly presented an appeal on 23.05.2016 before the District Revenue Officer, Authorized Settlement Officer, Hisar against the order dated 22.12.2015 of the Consolidation Officer and Tehsildar Adampur, which was rejected by order dated 20.07.2016, after which an appeal was presented in the court of Assistant Director, Consolidation, Hisar on 02.08.2016, that appeal was not pleaded and filed in the record room by order dated 29.10.2021 of Assistant Director, Consolidation, Hisar. The appellants, by not trying to get the appeal restored, by concealing the facts submitted application under section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. Apart from this, during the hearing, he could not prove how his rights have been affected by

creating Phirni in 154//21 from the south side of Khasra number 153//16-17-18. At the time of consolidation, it is a natural process that some part of the land is affected by division for proper use of the land. According to the spot inspection report dated 16.11.2023 of the Consolidation Officer and Tehsildar Adampur, there is an engine tubewell at about 153//17 south between the Phirni which is less than one karam (3 to 4 feet) south of the tubewell. There is no electricity connection on the tubewell. The width of the Phirni is 5 karam (27.5 feet). After the scheme is approved, no person can construct a room or house or install a tubewell in his field and because of the Sheesham tree is in existence in the South of Phirni in Khasra No.153/18, no diversion can be made in the road. Only a tubewell (without electricity and a Sheesham tree cannot be made the basis for changing the Phirni of the village, the prevailing public interest is first and after examining the map, the road constructed by order dated 22.12.2015 is more easy and convenient. Therefore, in view of the above facts, the application submitted by the applicants under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is not found to be valid and is rejected. After the

amendment, the record room should be entered in the order.

Today this order was announced in a full gathering on 11.02.2025.'

10. The order dated 22.12.2015 (Annexure P-2) was specifically challenged by the fathers of the petitioners by filing an appeal which was dismissed vide order dated 20.07.2016 (Annexure R-4). Thereafter, the fathers of the petitioners preferred a revision petition which was also dismissed for non-prosecution vide order dated 29.10.2021. In the said appeal and the revision, the same very grounds were raised. *De hors* the fact that the earlier order dated 22.12.2015 was challenged by the fathers of the petitioners, the argument of the learned counsel for the petitioners is bereft of any merit. Learned counsel for the petitioners though has argued that the *phirni* has partly been carved out of Rect.153 to benefit the Sarpanch, however, the counsel for the petitioners has candidly admitted that in 2015 the Sarpanch was different from the one who is now the elected Sarpanch and no benefit is accruing to the Gram Panchayat. Learned counsel for the petitioners has also not been able to point out as to how the petitioners are being affected by the carving out of *phirni* from Rect.153 except for stating that the land has not vested in respondent No.4-Gram Panchayat and that the petitioners have been dispossessed without compensation.

11. Both the learned counsel for respondent No.s.1 to 3-State and learned senior counsel appearing on behalf of respondent No.4 have stated that there is a complete compensatory mechanism which has been provided in

the scheme itself which would be adhered to in the present case. The *phirni* which has been carved out is for the benefit of the village and in public interest. With the halting of the completion of the *phirni*, the entire process was halted. Once the repartition of the land is carried out, as stated by the learned counsel for respondent Nos.1 to 3-State and learned senior counsel appearing on behalf of respondent No.4, the compensatory mechanism would be adhered to.

12. The judgment relied upon by the learned counsel for the petitioners in the case of **Bhagat Ram** (*supra*) would not come to his aid inasmuch as in the said case the challenge was to the scheme made under the consolidation of Village Dolike Sunderpur.

13. In view of the statement made by the learned counsel for respondent Nos.1 to 3-State and learned senior counsel appearing on behalf of respondent No.4 that a compensatory mechanism already exists in the scheme which has been formulated and the petitioners would also be compensated for any land which would fall in the *phirni*, the apprehension of the petitioners is wholly misplaced.

14. In view of the above, we do not find any merit in the present writ petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

26.05.2026

Aman Jain

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No