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RSA-3534 of 1998(O&M)

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

RSA-3534 of 1998

Date of decision: 05.05.2026

LAL CHAND AND OTHERS**.....Appellants****V/S****ISHAR SINGH AND OTHERS.****... Respondents****CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL, JUDGE**

Present: Mr. Raj Kumar Garg, Advocate for the appellants.

Mr. Sandeep Kumar Yadav, Advocate and

Mr. Angrej Singh, Advocate for the respondents.

PARMOD GOYAL, J. (Oral)

1. Present appeal has been preferred by appellants/plaintiffs being aggrieved by judgment and decree dated 14.05.1993 passed by the Sub-Judge Ist Class, Narnaul, vide which, the suit for permanent injunction and declaration preferred by the appellants/plaintiffs was dismissed and by judgment and decree dated 04.06.1998 passed by the District Judge, Narnaul, whereby the first appeal preferred by the appellants/plaintiffs was also dismissed.

2. Appellants/plaintiffs in their suit for permanent injunction and declaration had challenged the validity of order dated 09.03.1989 passed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the '1948 Act') as well as order dated 07.06.1989 passed under Section 43A of the 1948 Act. It was the

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case of the appellants/plaintiffs that the Authorities under the 1948 Act, had acted beyond their jurisdiction by carving out 'Rasta' out of land belonging to the appellants/plaintiffs after 28 years of consolidation proceedings. It is asserted that at the time of consolidation proceedings private respondents/defendants were specifically given 'Rasta' from another village, as their land falls in village Katkai. However, the Consolidation Authorities have granted 'Rasta' to private respondents/defendants from village Salimpur, which is a different village and has no concern with the land of private respondents/defendants, which is situated in different revenue estate of village Kariya. It was the case of the appellants/plaintiffs that they were not heard and the orders passed by the Consolidation Authorities were behind their back and therefore the orders are liable to be set-aside.

3. The respondents/defendants no.1 to 6 had duly contested the suit preferred by the appellants/plaintiffs, wherein, they have specifically asserted that the suit is not maintainable as Civil Courts have no jurisdiction. On merits, it was asserted that the respondents/defendants are residents of village Salimpur and they had no access to their land from village Salimpur and for that purposes they had sought amendment in the Consolidation Scheme by seeking extension of already existing 'Rasta', from village Salimpur to their fields. It was further asserted that both the orders passed by the Consolidation Authorities are in accordance with law for providing proper 'Rasta' to the land of respondents/defendants. It was further asserted that against one karam of land from which 'Rasta' was carved out of land owned by appellants/plaintiffs, they had already been compensated with two karams of land from the land owned by

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respondents/defendants, which is adjoining to Khasra No. 49//11/2 owned by appellants/plaintiffs. It was also asserted that due notice of application under Section 42 of the 1948 Act was given to appellants/plaintiffs, who were duly present at that time and had contested the same, thereafter, the order dated 09.03.1989 was passed. Accordingly, dismissal of suit was prayed for.

4. From the pleadings of the parties, following issues were framed:-

- i. Whether the orders dated 09.03.1989 and 07.06.1989 passed by the consolidation authorities are without jurisdiction illegal and null and void as alleged ? OPP
- ii. Whether the suit is not maintainable in the present form? OPD
- iii. Whether the plaintiff is estopped from filing the present suit? OPD
- iv. Whether the plaintiff has no locus standi to file the present suit? OPD
- v. Relief.

5. In present case, following facts are not in dispute and is clearly made out from the judgments and decree of both the Courts below, as well as the pleadings and evidence led by the parties:

- (i) That land owned by appellants/plaintiffs in Khasra No. 48//13, 14, 15, 49//11/2, 10/2, 11/1, 12/2, 12/3, 33//13/2, 18, 10, 19 and 20 is situated in Village Kariya and Katkai. (Marked with letter 'Y' in the Map)

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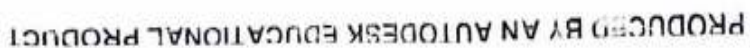


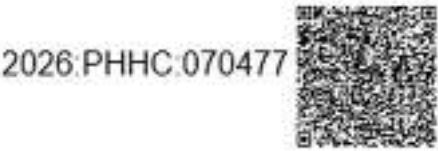
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- (ii) That on the other hand, land of defendants is comprised in revenue estate of village Katkai in Khasra No. 4/2, 5, 1, 7/1, 6 and 10. (marked with letter 'X' in the map)
- (iii) That Khasra Nos. 14, 15 49//11/2 owned by appellants/plaintiffs are adjoining to Khasra Nos. 7/1, 6 and 10 owned by defendants.
- (iv) That a duly approved passage from village Salimpur passes through the land of appellants/plaintiffs, which is situated in village Kariya and passes through Khasra Nos. 10, 18 and 19, 12/3, 12/2, 11/1 and 10/2. (Marked as 'A' to 'B' in the map)
- (v) That the lands owned by appellants/plaintiffs are situated in villages Katkai and Kariya bordering each other, which further goes to show that the Khasra No. 49//11/2 and Khasra No. 10/2, 11/1 are adjoining to each other but fall in different villages.
- (vi) Insofar as the public Rasta is concerned, which is duly approved in the consolidation proceedings, the same exists upto Khasra No. 49//11/2, owned by appellants/plaintiffs in village Katkai. (Marked as 'B' to 'C' in the map)

Dispute, in the present case, is confined to this limited portion alone. In order to understand noted issues, it would be appropriate to reproduce the map, which has been relied by both the sides at the time of arguments and part of *aks shajra* as under:-

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<u>MAP DEFINED</u>		
‘X’	Khasra Nos. 4/2, 5, 1, 6, 7/1, 10	Owned by respondents/defendants
‘Y’	Khasra Nos. 48//13, 14, 15, 49//11/2, 10/2, 11/1, 12/2, 12/3, 33//13/2, 18, 10, 19, 20	Owned by appellants/plaintiffs
A to B		Existing Revenue Rasta
B to C		Rasta Carved out/disputed by appellant
C to D		Double the land given to appellants/plaintiffs adjoining his land

Only dispute is regarding small passage of one Karam in Khasra No. 49//11/2, situated in Village Katkai (Marked as ‘B to C’ in map, which is matter of dispute in present case. Against one karam of land, the Consolidation Authorities have already granted two Karams of land to appellants/plaintiffs out of Khasra No. 10, which is owned by respondents/defendants and adjoins Khasra No. 49//11/2 owned by appellants/plaintiffs (Marked as ‘C’ to ‘D’ in map)

6. The above noted facts are not in dispute, the main dispute being raised on behalf of appellants/plaintiffs is that the order dated 09.03.1989 has been passed by the Authorities without having jurisdiction under Section 42 of the 1948 Act, as ‘Rasta’ already stood granted to the respondents/defendants at the time of consolidation, which is duly shown in revenue records and falls in Village Katkai, and, therefore, respondents/defendants have no right to seek ‘Rasta’ from Village Salimpur after 28 years of consolidation proceedings.

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7. On the other hand, it is the case of the respondents/defendants that they are residents of village Salimpur and that a public passage already exists from village Salimpur, passing through village Kariya, up to Khasra No. 49//11/2 at the boundary of village Katkai. The dispute, therefore, is regarding extension of this passage from the boundary of village Kariya to the land of the respondents/defendants situated in village Katkai.

8. The Authorities below have duly considered the hardship faced by respondents/defendants and have found that in order to reach their land, respondents/defendants have to cover extra distance of six kms., thus, Authorities had extended the existing 'Rasta' by carving out small portion out of Khasra No. 49//11/2 belonging to the appellants/plaintiffs.

9. The discretion of Consolidation Authorities under the 1948 Act to amend the consolidation scheme has been held to be wide enough to justify impugned change. Both the Courts below have found that this power is duly vested in Authorities below and had found that the suit is not maintainable in view of Section 44 of the 1948 Act.

10. Upon consideration, I find that present litigation, despite grant of double the land which is being used by appellants/plaintiffs, is only for the purposes of grabbing already existing 'Rasta' ('A to B') by making the 'Rasta' already existing in revenue records, redundant, as is made out clearly from perusal of map, which is reproduced above.

11. In order to appreciate the contentions raised by learned counsel for the appellants/plaintiffs, it would be appropriate to reproduce the Section 42,

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Section 43, Section 43A and Section 44 of the 1948 Act, which reads as under the for the facility of reference:-

Section 42- Power of [State] Government to call for proceedings

The [State] Government may at any time for the purpose of satisfying itself as to the legality or propriety of [any order passed, scheme prepared or confirmed or repartition made by any officer under this Act], call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that [no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard] [except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.]

Section 43. Appeal and Revision.

Except as provided in this Act no appeal or revision shall lie from any order passed under this Act.

Section 43A. Correction of clerical errors

Clerical or arithmetical mistakes in a Scheme made or an order passed by any officer, under this Act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties.

Section-44, Jurisdiction of Civil Court barred as regards matters arising under this Act.

No civil court entertain any suit instituted or application made, to obtain a decision or order in respect of any matter which the [State] Government or any officer is, by this Act, empowered to determine, decide or dispose of.

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12. The powers of the State Government to call for proceedings under Section 42 of the 1948 Act are wide enough and the State Government can always go through the scheme or order passed or confirmed earlier, at any time. The purpose of Section 42 of the 1948 Act granting powers to State Government is to deal with such cases where inconvenience is being caused to the citizens on account of Scheme framed by the Authorities. Merely because Authorities have omitted in doing something would not make a citizen remediless and that is why Section 42 of the 1948 Act has been enacted by the Legislature, granting appropriate remedy as against any scheme, which may result in inconvenience or which is required to be rectified by the Authorities, due to defect at time of framing scheme or subsequently due to passage of time on account of changed circumstances.

13. It must not be forgotten that consolidation of land holdings is done with the purpose to ensure that land does not get fragmented and while consolidating the land practical difficulties as regards to 'Rasta', watercourse etc. do arise. In many cases, 'Rasta' is not carved out to access the piece of land, as parties agree at that time to use the land jointly, but, subsequently, with the passage of time, when they start objecting to each other's use, then 'Rasta' is required to be carved out and in all such cases where with the passage of time or on account of any other reasons parties are put to inconvenience, Section 42 of the 1948 Act can be pressed in order to mitigate difficulties of citizens on account of consolidation of holdings.

14. Therefore, keeping in view the purpose and Scope of Section 42 of the 1948 Act, I do not find any error in exercise of jurisdiction by Authorities

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under the provisions of the 1948 Act. The Authorities have duly considered the hardship being faced by respondents/defendants and had duly compensated them by grant of adjoining land to the appellants/plaintiffs. In the same Khasra number, in fact there is no loss to appellants/plaintiffs, if some 'Rasta' is carved out from their land as additional land has been granted to them, which has become part of Khasra No. 49//11/2, owned by appellant.

15. It is worth noticing that Point 'B' to 'C' is the 'Rasta' which is carved out, shown in the above map and Point 'C' to 'D' is the land, which has been allocated to appellants/plaintiffs in lieu of the said 'Rasta'. In these circumstances, the jurisdiction exercised by Consolidation Authorities to grant appropriate 'Rasta' for use of land cannot be said to be erroneous or perverse. No interference in the finding of facts and exercise of discretion can be affected by this Court. It is no doubt that while exercising powers under Section 42 of the 1948 Act, the Authorities are bound to take into consideration all the facts and circumstances including the aspect of delay in approaching the Authorities after finalization of Consolidation proceedings.

16. Learned counsel for the appellants/plaintiffs has relied upon the judgments titled '*Gram Panchayat Kakran Versus Additional Director of Consolidation and Another*', (DOD 03.10.1997) and '*Lakhbir Singh Versus Additional Director, Consolidation of Holdings Punjab and another*', 2005 (3) RCR (Civil) 687, (DOD 23.02.2005) to argue that since there was a delay in seeking the 'Rasta' therefore application under Section 42 of the 1948 Act was not maintainable.

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17. However, the powers under Section 42 can be exercised by the Authorities at any time, though delay and laches is a relevant fact in a given case, where the vested rights of parties stand consolidated and prejudice is caused to other side, if an order is passed after a considerable delay. However, in the present case delay and laches has got no effect, as no prejudice is being caused to the appellants/plaintiffs by extending the existing 'Rasta' by one karam and that too after compensating the appellants/plaintiffs by allotment of land in Killa Number 10 of Rect. No. 49, without causing any bifurcation or without causing any loss of land to the appellants/plaintiffs.

18. In present case as noted above, only a small portion of land equivalent to one karam depicted in map as Point 'B' to 'C' has been carved out and against this lesser land depicted by Point 'C' to 'D' has been granted to the appellants/plaintiffs. In the facts and circumstances of the present case, no prejudice can be said to have been caused to the appellants/plaintiffs on account of delay and laches as being argued by learned counsel for the appellants/plaintiffs.

19. Therefore, I do not find any error in the order dated 09.03.1989 passed by the Authorities. Learned counsel for the appellants/plaintiffs has further challenged the order dated 07.06.1989, vide which, correction was made in the order dated 09.03.1989, on the ground that he was not given an opportunity to be heard before passing of the said order dated 07.06.1989. It is not in dispute that no notice was granted to the appellants/plaintiffs, before passing of the order dated 07.06.1989, however, perusal of order dated 07.06.1989 goes to show that only typographical mistake in the order dated

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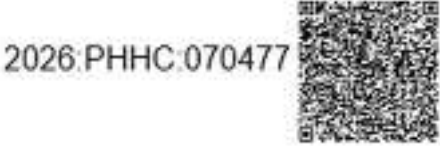


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09.03.1989 was corrected, thus no notice was required to be sent. None of the judgments referred by learned counsel for appellant has got any affect on present case as said judgments were based on peculiar facts of those cases.

20. It is worth noticing that while passing the order dated 09.03.1989, the Authorities have specifically granted two karams of land adjoining to Khasra No. 49//11/2 in favour of the appellants/plaintiffs. However by mistake, it was mentioned as 48/10 instead of 49//11/2 and this typographical mistake was subsequently corrected by order dated 07.06.1989. Therefore, in view of these facts, no prejudice has been caused to appellants/plaintiffs and therefore no notice was required to be issued by the Authorities before correcting the typographical error in the order dated 09.03.1989. Otherwise also, the correction has been made only in favour of appellants/plaintiffs if correction had not been made then the land which was allotted to appellants/plaintiffs would have remained ambiguous and therefore exercise of power under Section 43A of the 1948 Act cannot be faulted.

21. I am also in agreement with conclusion drawn by Courts below that present suit is barred by provisions of Section 44 of the 1948 Act, which clearly bars jurisdiction of Civil Courts in matter arising under the 1948 Act. Civil Court has no jurisdiction to entertain any suit instituted or application made to obtain a decision or order in respect of any matters, in which the State Government or any officer is empowered to determine by the 1948 Act. Therefore, any order passed under Section 42 and under Section 43A of the 1948 Act is not amenable to jurisdiction of Civil Court.



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22. The only remedy available to appellants/plaintiffs was to prefer an appeal or approach Hon’ble High Court by way of writ petition which actually has been done by the present appellants/plaintiffs, by filing CWP No. 2869 of 1991, which was dismissed by this Court and has attained finality. Once the appellants/plaintiffs have already availed their remedies, they cannot file civil suit, which is barred under the provisions of Section 44 of the 1948 Act.

23. Accordingly, present appeal is without any merits and the same is hereby dismissed.

24. All pending civil miscellaneous application(s), if any, also stand disposed of.

(PARMOD GOYAL)
JUDGE

05.05.2026
Kamal Gandhi

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