

(2004) 02 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3137 of 1984

Dalbara Singh and Another	Vs	APPELLANT
The Additional Director, Consolidation of Holdings and Another		RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 42

Citation : (2004) 137 PLR 603(1) : (2004) 2 RCR(Civil) 597

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Manjeet Kaur, for the Appellant; Swati Gupta, A.A.G. for Respondent No. 1 and C.B. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.

(23rd February, 2004) - This is a petition under Articles 226/227 of the Constitution of India for quashing the order dated 24.5.1984, Annexure P1 passed by the Additional Director, Consolidation of Holdings, Punjab in petition No. 109 of 1983 filed by respondent No. 2-Raunqi Ram u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, "the Act").

2. Brief facts are that consolidation proceedings in village Rampur, Tehsil Phillaur, District Jullundur took place in the year 1952-53. Scheme under" Section 20 of the Act was formulated and in accordance therewith, repartition was finalised in the year 1954. The scheme stipulated that paths should be provided to every right-holder to whom the paths were duly aligned. There was no challenge to the alignment of path made in favour of the petitioners during partition.

3. After a lapse of 30 years, respondent No. 2 filed a petition u/s 42 of the Act

before the Additional Director, Consolidation of Holdings for an access path to "Jathere" measuring 11 Marlas in Killa No. 411, even though he (respondent No. 2) was not the right-holder of the village as he did not own any land and was resident of village Mayia Khurd, Tehsil Phillaur, District Jullundur. The Additional Director, Consolidation of Holdings, by order dated 24.5.1984 accepted the said petition and created a path. It is this order which has been impugned in the present writ petition.

4. Learned counsel for the petitioners has sought to challenge the order passed by the Additional Director, Consolidation of Holdings, Punjab on the following grounds:-

(a) Firstly, that the consolidation in the village took place in the year 1952-53, and it is after a lapse of 30 years that petition u/s 42 of the Act had been filed by respondent No. 2. The said petition was, therefore, barred by limitation;

(b) Secondly, Raunki Ram-respondent No. 2 has no locus standi to file the petition u/s 42 as he was neither the right-holder in the village nor had he any right otherwise.

(c) Thirdly, no provision of consolidation scheme had been violated. There is no provision in the scheme which provided alignment to any path to the Jathere. The path could be provided to the Kurrahs or to the wells. The Additional Director Consolidation by alignment of the new path has bisected the Kurrahs of the petitioners into three pieces which be repugnant to the consolidation scheme.

5. Learned counsel for the respondents made verbal submissions to refute the arguments of the petitioners though the record shows that written statement has not been filed by the respondents to the writ petition. The perusal of the file shows that the Motion Bench had stayed the implementation of the impugned order.

6. Learned counsel for the parties have been heard at length and in my opinion, this petition deserves to succeed.

7. The question whether an application filed for amendment or modification of the consolidation scheme can be filed after a long time-gap was considered by the Supreme Court in Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another, and it has been held that even though the limitation prescribed in Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 is not applicable to an application filed u/s 42 of the Act, the competent authority cannot entertain an application/petition filed under that section after long lapse of time. The proposition of law laid down in Gram Panchayat Kakran's case (supra) reads thus:-

"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 Holdings, Haryana, Chandigarh and Others, dealing with Rule 18 itself, said

that when no limitation is prescribed for an application u/s 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 the case, the delay of about 3 years and 8 months in filing an application u/s 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 u/s 42.

xxx xxx xxx But even if Rule 18 is not directly attracted, an application which is made after such inordinate delay ought not to have been entertained."

The foresaid decision was followed by a Division Bench of this Court in Jaswinder Kaur and Others Vs. Additional Director, Consolidation and Others, and the order passed by the Additional Director, Consolidation granting path to respondents Nos. 3 to 5 in that case was set aside.

Another Division Bench of this Court in Civil Writ Petition No. 7249 of 2001 Biru Ram and Ors. v. Additional Director, Consolidation of Holdings, Punjab and Ors. decided on 9.10.2003 by applying the ratio of the above noted decisions has held as under:-

"We hold that respondent No. 1 did not commit any illegality by dismissing the application filed by the petitioner u/s 42 of the Act on the ground of unexplained delay of 34 years."

8. The petition u/s 42 of the Act by respondent No. 2 was filed after a lapse of 30 years and there has been no reasonable explanation for the delay. Such a petition was thus, not maintainable being time bared. Respondent No. 2 did not file any application supported by an affidavit to explain the long delay of 30 years in filing the petition. The Additional Director, Consolidation of Holdings thus, erred in entertaining the petition u/s 42 after a lapse of such a long period of 30 years.

9. It has not been denied that Raunki Ram-respondent No. 2 is neither a resident of village Rampur, Tehsil Phillaur, District Jullundur nor he is a right-holder/ landowner, tenant or mortgagee in possession in that village. In Sadr Anjman Ahmedia v. Director Consolidation and Ors. 1983 Cri.L.J. 12 a Division Bench of this Court has laid down that interested persons as referred to in Section 42 of the Act are landowners, tenant or mortgagee in possession. Respondents No. 2 was not an interested person and consequently had no locus standi to file petition u/s 42 of the Act.

10. The last submission of the learned counsel for the petitioners also merits acceptance. The petitioners have categorically asserted that no provision of the consolidation scheme had been violated and on the other hand, by alignment as ordered by the Additional Director, petitioners' Kurrahs would be bisected into

three pieces which would be against the scheme. The contention of the petitioners has not been controverted by filing written statement. Moreover, a perusal of the impugned order Annexure P1 shows that three Kurrah bearing Killa Nos. 410-min, 412 and 417 have been bisected out of which the path has been provided to the "Jathere".

11. No other point has been urged.

12. In the result, the writ petition is allowed and the impugned order Annexure P-1 passed by the Additional Director, Consolidation of Holdings, Punjab is quashed. There will be no order as to costs.