

(2009) 03 P&H CK 0183
In the Punjab And Haryana At Chandigarh

Fauja Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

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

Citation : (2009) 154 PLR 230 : (2009) 3 RCR(Civil) 227

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—The petitioner claims to have been allotted a land measuring 42 kanals 3 marlas in village Kathaur, which was separated from the total land belonging to the Central Government. Subsequently, consolidation proceedings took place in the village and by mistake, the petitioner was not shown to be the owner in possession of the said land allotted to him. The said khasra numbers were shown to be owned by Central Government. The allotment was in the year 1952-53 and the consolidation also subsequently took place long ago. The petitioner apparently has not given the dates in this regard but claims that he came to village Kathaur and learnt that the area owned and possessed by him was wrongly shown to be in the ownership of the Central Government. After obtaining the records in this regard, the petitioner filed an application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 on 19.10.2004. This came up for hearing on 24.8.2006 and was dismissed on the ground of delay.

2. The petitioner has impugned the said order through the present writ petition filed on 27.2.2009. While dealing with the application of the petitioner, the Director, Land Records, has found that the petitioner has not explained the delay for presenting this petition after inordinate delay upon conclusion of the consolidation proceedings. The petition was accordingly dismissed on the ground of delay.

3. Learned Counsel for the petitioner by referring to number of judgments would contend that there is no limitation provided u/s 42 of the Act and as such, the Director was not justified in declining the application on this ground. In this regard, the counsel has referred to the case of Kheman v. Additional Director C/H, Ferozepore and Ors. 1970 P.L.J. 494, where while interpreting the words, "at any time" used in Section 42 of the Act, it is held that the power conferred on the State Government everlasting interminable or indefinite in duration are exercisable without any limitation in point of time. Reference is also made to Kundan Singh Vs. Additional Director, Consolidation of Holdings, Punjab, Jullundur and Another, , where it is viewed that in petition claiming right of watercourse in accordance with consolidation scheme, the plea of limitation in such a petition does not lie. In Jasmer Kaur and Anr. v. State of Punjab and Ors. 1983 (II) All ILLR 428, it is held that when petition is filed u/s 42 of the Act not against any order and relief is against repartition, then limitation prescribed under Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules is not applicable. The counsel would also seeks support from the observations made in the case of Darshan Singh and Ors. v. Mohinder Kaur (now Deceased) and Ors. 1986 P.L.J. 4, where it is viewed that if a person finds that he has not been allotted a land in consolidation proceedings in lieu of some land of which he was owner, he can approach the authorities mentioned in Section 42 of the Act for which there is no limitation. In Chetan Singh v. Addl. Director, Land Holdings, Punjab 1987 R.R.R. 113, it is held that the petition entertained after lapse of 27 years to correct an error apparent on the face of record would not call for any interference. Similarly, in Harcharan Singh and Ors. v. Additional Director, Consolidation of Holdings Punjab and Ors. 1991 P.L.J. 91, it is held that clerical mistake, if rectified, the question of limitation would not arise. Similar view has also been taken in Zile Singh v. Chunni Lal 1993 (1) R.R.R 570 and Gram Panchayat Shitabgarh Vs. The Director, Consolidation of Holdings and Others, . It is held that the Director can interfere to undo mistake at any time and no time limit is fixed for said purpose.

4. No doubt, in all these judgment it is viewed that there is no limitation provided for making any approach u/s 42 of the Act but recently the Hon'ble Supreme Court in Gram Panchayat Kakran v. Additional Director of Consolidation and Anr. 1998(1) RLR 170, has observed that though no limitation is provided for moving an application u/s 42 of the Act, but party aggrieved is required to move the appropriate authority for relief within a reasonable time and that application . made after inordinate delay is not to be entertained. Even otherwise, the petitioner has not disclosed any reason for delay on his part in making the present approach. The petitioner if was allotted any land was bound to be aware of the same. The petitioner claims that he came to the village recently and learnt that land owned by him has been wrongly shown to be in the ownership and possession of Central Government. The petitioner does not disclose either the date or the time when he learnt of the same and from where did he learn. No sufficient proof is placed on record to show that the allotment of the land was

made in favour of the petitioner. The petitioner filed this application u/s 42 of the Act on 19.10.2004, which was decided on 24.8.2006. The petitioner thereafter has also kept quiet for nearly a period of three years and then filed this writ petition on 22.2.2009. There is no explanation forthcoming on the part of the petitioner for the delay in filing the present writ petition. Entertaining the application at this delayed stage may have given indication that powers are not being exercised for bonafide purpose or are used in arbitrary exercise of power after such a long lapse of time. This does not appear to be a simple case of correction of mistake. The question of title may also come into play as concededly the land is shown to be in the ownership of the Central Government and it is being claimed to have been allotted to the petitioner. I am, thus, of the view that having regard to the facts and circumstances of the case, the Director has taken a correct view in the matter and no case for interference in exercise of writ jurisdiction is made out.

Dismissed.