

(1995) 06 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7590 of 1993

Gurdev Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-06-1995

Acts Referred:

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

Citation : (1995) 111 PLR 185

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : H.S. Sangha and Bhupinder Singh, for the Appellant; Azad Singh, A.A.G. for Respondent Nos. 1 and 2 and Arun Jain, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—Petitioners seek quashing of order Annexure P-3 or for issuance of any appropriate order or direction as the Court may deem fit in the circumstances of the present case.

2. Pursuance to the notification u/s 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1949, a scheme of consolidation was framed on 2.11.1957 which was confirmed and published. No objection was raised in terms of Section 21(1)(2) and (3) of the Consolidation Act. According to the petitioners separate abadi plots were allotted to the petitioners as well as private respondents. Shri Sant Singh respondent No. 3 with a view to get passage to his residential plot earlier filed a suit before the Court of Sub Judge 1 Class, Ambala, for a declaration to the effect that he is owner in possession of Rasta Khas which is shown in the map attached towards the South of the house of Phalel Singh and Kartari and towards the North of the house of Barkha Ram, Sant Singh also prayed for permanent injunction restraining the petitioners from interfering in any manner or causing any obstruction in the Rasta Khas. Interim injunction application filed by the respondent No. 3 was

dismissed by the trial Court vide order dated 17.8.1992. Appeal too was dismissed by the District Judge on 2.11.1992. Thereafter, the suit was withdrawn by Santa Singh. It is, thereafter, that respondent No. 3 filed an application u/s 42 of the Act claiming a passage to his plot as the same had not been provided under the Consolidation of Holdings Act. The Director, Consolidation of Holdings vide annexure P3 dated 21.5.1993 accepted the petition of Santa Singh and so allowed him a passage of 3 karams to reach residential plot from Phirni which order is being challenged on the ground that the same is illegal mala fide and based on extraneous considerations.

3. Written statement has been filed by respondent No. 3 Santa Singh. The respondent in his reply admitted that no objection were filed in terms of Section 21(2) and Section 21(3) of the Act. According to the Respondent, the demarcation of plot No. 108 (of the answering respondent) was given as ABCDEF where as demarcation of plot No. 109 (of the writ petitioner) was given as GHBA. According to the respondent, there is common passage for both the plots and as a matter effect both of them have been making use of this common passage so as to reach to their respective residential plots. It is on account of the closure of the plot by the petitioner that the respondent filed the suit seeking a restrain order and since the Court came to the conclusion that there does not exist any passage as per record, withdraw the suit and filed a petition u/s 42 of the Act before the Director for providing him with a passage. This may, approaching by the respondent No. 3 before the civil court in no way debars him from approaching the Director, Consolidation of Holdings u/s 42 of the Act. Referring to the error committed by the authorities while allotting the abadi plot to petitioners as well as the respondent, it has been stated that whereas the respondent's entitlement is for an area measurement 1 Kanal 11 Marias, he had in fact been allotted 1 Kanal 7 marlas whereas the writ petitioners were entitled to an area measuring 9 marlas as had been allotted 14 marlas of land. It is on account of this mistake in the scheme that no title under the scheme has been provided to the answering respondent. To correct such a mistake or omission, no period of limitation is prescribed and the department is duty bound to rectify such a mistake even when nobody has filed an application in this regard. According to the respondent in the present case, Director before -finally deciding the matter sought report from the Assistant Consolidation Officer as well as the Consolidation Officer and it is thereafter on carefully perusing respective contentions raised by the parties and in the light of the factual material placed on record as well as the report of the Assistant Consolidation Officer and Consolidation Officer that the impugned order. Annexure P-3, was passed removing the commission/mistake omitted by the department. The order of the Director, Consolidation of Holdings, Annexure P-3, is legal and just and so the writ petition deserves to be dismissed.

4. The learned counsel for the petitioners at the outset has challenged the maintainability of the petition u/s 42 on the ground of in-ordinate delay. According to the counsel, the consolidation of holding in the village was

completed way back in the year 1957-58, whereas the petition u/s 42 of the Act was filed in the month of January, 1993. There is no explanation for this inordinate delay and in the absence of the same the Director Consolidation infact erred in law in entertaining as well as condoning the delay in filing the petition. Secondly, the respondent earlier filed a suit and since no interim injunction was granted by the Court the same was got dismissed as withdrawn. Concededly, no permission was sought from the Court in terms of Order 23(3) C.P.C. Decision of the Civil Court binds the parties and so the respondent could not re-agitate the matter by filing the petition u/s 42 of the Act. According to the counsel, even on merits the respondent has no case as another passage exists to reach his residential plot. Thus, it is not a case of non-existence of a path to a plot or to a residential accommodation. In any case, pursuance to the allotment of the area in consolidation of holding, the petitioner has raised construction thereupon and so no such area can be given out of the holding of the petitioner for a path to the contesting respondent.

5. The learned counsel for the respondent justifying the filing of the petition u/s 42 urged that the same was necessitated as the civil Court in his order prima-facie came to the conclusion that no path has been provided by the Consolidation authorities and in the absence of the same respondent possibly cannot tie restrained. To the similar effect was the observation of the appellate Court. It is on account of this prima-facie conclusion of the Court that the respondent has no option but to approach the Director, Consolidation of Holdings, for an appropriate relief i.e. for providing of a path to him to reach his residential plot bearing No. 108. Referring to the Scheme of the Consolidation of Holdings, counsel highlighted that Clause 8 and 9 of the scheme specifically envisage the providing of a path to the properitors as well as to non-properitors of 2 karam width leading to the Phirni. Plot No. 109 owned by the petitioner has an access to the Phirni whereas Plot No. 108 owned by the respondent has no such access as per record. It so happened that during all these years the answering respondent had been making use of about 2 karams of land in between point I and F leading to village Phirni (site plan placed on record during arguments marked R-8) which was blocked by the petitioner by raising a room as depicted in the site plan, Annexure R-1 thereby compelling the respondent for removal of this obstruction and in the alternative for providing with a path so as to connect his residential plot with the Phirni. Thus, if the case is examined as per the allotment made no path infact had been provided for Plot No. 108 and so the authorities under the Consolidation Act did not adhere to the scheme. For redressal of such grievance, no period of limitation has been prescribed and it is precisely for this reason that Director chose to condone this in-ordinate delay and decided the matter on its merit. Defending the order passed by the Director, Consolidation of holdings, the learned counsel for the respondent made reference to the report of the Assistant Consolidation Officer as well as of the Consolidation Officer and further highlighted the factum of entitlement of abadi plot measuring 1 kanal 11 marlas whereas he has been allotted only 1 Kanal 7 Marlas and allotment of an excess

area (abadi plot) to the petitioner, i.e. against his entitlement of 9 marlas, he had been allotted 15 marlas. To remove this apparent error and to do justice between the parties, the Director, Consolidation ordered that passage be given to Santa Singh on the Southern side of Plot No. 109.

6. I have heard the learned counsel for the parties and have perused the impugned order as well as the other documents including the site plans produced by the respective parties. Admittedly, Plots No. 108 and 109 adjoins each other. Plot No. 109 is by the side of the Phirni whereas plot No. 108 has no such Phirni as per Annexure P-1. It is the case of the respondent that he had been making use of an area of Khasra No. 109 towards the South side to the extent of approximately 2 karams for ingress to his residential accommodation in plot No. 108. Since, there was no obstacle to his use of this area as a passage, the matter remained dormant and became alive when the petitioner in an unjustified manner raised a room measuring 15"X 12" thereby blocking the respondent's passage to reach his plot No. 108, thereby leading to the filing of the suit and filing the application u/s 42 of the Act. The Director, Consolidation of Holdings, after noticing the contentions raised by the contesting respondent as well as the petitioners thought it proper to get the matter examined on spot inspection. Report from Assistant Consolidation officer was sought. The Assistant Consolidation Officer after spot inspection reported that the house of Gurdev Singh adjoins the abadi plot of respondent Sant Singh of Plot No. 108. He further observed that towards the South Western side of Khasra No. 109, there is a newly constructed kotha and rest of the whole abadi is vacant. According to the Assistant Consolidation Officer the flow of the rainy water of plot no. 108 is also towards the Phirni. It was also found by the Assistant Consolidation Officer that doors of the house of Santa Singh open in the passage towards plot No. 109 and since the petitioner has raised a room, the path cannot be made use of by the contesting respondent, Consolidation Officer was directed to forward a proposal. The Consolidation Officer suggested that land out of Khasra No. 109/1, 2/3 karams and 1x3 karams from khasra No. 109/2, be permitted as a path for the use of the contesting respondent. The Director, Consolidation of Holdings after examining the report of the Assistant Consolidation Officer and Consolidation Officer directed the respective parties to file written arguments, Director came to the conclusion that though the petitioner was entitled to an allotment of 9 marlas but in-fact had been allotted 15 marlas of land. Similarly, Santa Singh, the contesting respondent though entitled to 1 kanal 11 marlas was infact allotted 1 kanal 7 marlas of land and this was against the Scheme. Similarly, 2 Karam passage has to be provided to all plot holders connecting it with the Phirni, no such path was provided to the answering respondent. Thus, to rectify the mistake as well as to provide the path the Director of Consolidation of Holdings accepted the petition and granted a path of 2 karams to Santa Singh on the Southern side of the plot No. 109. The learned counsel for the petitioner while assailing the order of the Director, Consolidation of Holdings has not adverted to the factual aspects highlighted by the Director in his order dated 21.5.1993 i.e.

more area having been allotted then the entitlement to the petitioner nor a mention has been made as to non-existence of any path for plot No. 108 connecting it with the Phirni. Both these aspects have material bearing upon the point of controversy. As per Scheme a 2 karams passage had to be provided to each of the plot holders. Admittedly, there has been non-compliance of this salient feature of the scheme. To correct such an error or omission no period has been prescribed and so the authorities rightly chose to ignore the point of limitation to redress this grievance. Not only this, the authorities also found a fact that though the answering respondent was entitled to 1 kanal 11 marlas of land but infact had been allotted 1 kanal 7 marlas. Thus, the authorities took a very reasonable view of the matter and chose to grant a passage of a width of about 2 karams from Phirni to the plot of respondent-Santa Singh comprising in Khasra No. 108. A bare perusal of site plan, Annexure R-8 (placed during the course of arguments) shows the alignment of the path from point LKJ and I thereby protecting the existing structure raised by the petitioner in the form of a room.

7. The learned counsel for the petitioner placed reliance upon the decision of this Court in Ramu alias Ram Kishan and Anr. v. The Director, Consolidation, Haryana and Ors. 1994 1 P.L.R. 650 for the view that in case a path has been closed down or blocked, for its restoration one has to approach the civil court and Section 42 is not appropriate remedy. This authority has no bearing upon the point in controversy. In the present case, the contesting respondent filed an application for providing him with a path so that he can reach his residential plot from the Phirni. The Consolidation authorities on the basis of material on record came to the conclusion that no path had been provided under the Scheme and so chose to correct this omission by passing the order u/s 42 of the Act. In fact, contesting respondent was compelled to file the petition for providing him with a path as the civil court came to the conclusion that no path has been provided so far. This judgment in a way supports the case of the respondent.

8. As regards the delay in filing the petition, the same is also devoid of merit. This Court in Chetan Singh v. Additional Director, Consolidation of Holdings, Punjab and Ors. 1987 RL.R. 102 has held that in case there is an error apparent on the face of the record the same can be corrected without any limitation to the period prescribed. In that case, the petition was entertained after a gap of 27 years and the necessary correction is ordered by the concerned authority. Similarly, in Gurmukh Singh and Ors. v. Director, Consolidation of Holdings, Punjab, Chandigarh and Ors. 1989(1) Rev.L.R. 129 the Court held that in case no path is provided to the take of a person, such a person is entitled to a path to reach his fields and the relief granted cannot be termed to be illegal or wrong requiring interference in the writ petition.

9. Since, the impugned order has been passed after procuring reports from the subordinate staff as per spot inspection and also the fact that no path exists from Phirni to reach plot No. 108, the order of the Director is perfectly legal and just

and is not vitiated in any manner. Thus, finding no merit in this writ petition the same is ordered to be dismissed. No order as to costs.