

(1986) 01 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2077 of 1978

Inder Kaur

APPELLANT

Vs

Additional Director, Consolidation of Holdings, Punjab,
Jullundur .

RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Citation : (1986) PLJ 172 : (1986) RRR 84

Hon'ble Judges : G.C.Mital, J

Advocate : Mr. Iqbal Singh, Advocates., Mr. H.S. Mattewal,, Advocates for
appearing Parties

Judgement

G.C.Mital, J.

1. Two points have been raised in this writ petition. One, that the petitioners, who are cosharers with Hazara Singh respondent were not heard before the impugned order Annexure P. 1 was passed by the Additional Director under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act'), and, therefore, cannot affect their rights. I find no merit in this contention in view of the 'Full Bench judgment of this Court in Biru v. Suraj Bhan, 1983 PLJ 216, wherein it is specifically ruled that if one of the cosharers is heard, such a judgment would bind all the cosharers and if the cosharer who is not heard, can successfully show that the cosharers, who were heard had defrauded him or were in collusion with the opposite side or there was failure of any fair and real trial of the issues, then he can avoid the order. Hence, merely on the ground of non hearing of the petitioners, the order cannot be struck down.

2. It was then urged that Hazara Singh was not on good terms with the petitioners and, therefore, they can avoid the order in terms of the Full Bench decision in Biru's case (supra). Mere assertion that the petitioners, who are sisters' sons of Hazara Singh, were not on good terms with Hazara Singh, would not bring the case within the ambit of the exception. In any event, if the

petitioners think that they have been defrauded by Hazara Singh or that Hazara Singh was in collusion with the opposite side or there has been failure of fair and real trial of the issue, the proper remedy for them would be to take up the matter in accordance with law, if it is still open to them at such a belated stage. However, nothing can be done in this writ petition.

3. The second point raised was that the petition under Section 42 of the Act was filed by respondents 3 and 4 after a lapse of 18 months of the consolidation proceedings whereas there was limitation of six months only and, therefore, was barred by limitation and the impugned order should be set aside on this short ground. To understand the point the factual position will have to be kept in view. Respondents Nos. 3 and 4 came before the Additional Director for grant of path to them on the reasoning that by oversight or mistake no path was provided to their fields during consolidation. The matter of providing a path to a field owner relates to scheme or repartition and to such matters, rule 18 which provides for limitation is not applicable. This matter on identical facts came for consideration before a Division Bench of this Court in *Haqiqat Singh v. The Additional Director, Consolidation of Holdings, Punjab, Chandigarh*, AIR 1981 P&H 204, and it was ruled that the matter of providing a path to a landowner is not governed by the limitation provided in rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules and can be filed at any time. The aforesaid Division Bench judgment in *Haqiqat Singh's* case (*supra*) later got the approval of the Full Bench in *Jagtar Singh v. Additional Director, Consolidation of Holdings, Jullundur*, AIR 1984 P&H 216 : 1984 R.R.R. 31. Hence the limitation would not be applicable to the case in hand and the argument is rejected.

4. For the reasons recorded above, this writ petition is dismissed but with no order as to costs.