
(2002) 09 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19071 of 2001

Jaipal Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

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

Citation : (2003) 133 PLR 43 : (2002) 4 RCR(Civil) 369

Hon'ble Judges : V.K. Bali, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : P.N. Aggarwal, for the Appellant; Sanjay Vashisth, D.A.G. for
Respondent Nos. 1 and 2 and C.B. Goel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioners in the present petition, filed by them under Articles 226/227 of the Constitution of India, have challenged the order dated 25.9.2001 (Annexure P-7) and order dated 29.11.2001 (Annexure P-8) passed by the Director, Consolidation of Holdings, Haryana, in exercise of powers u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act"), vide which a two karams passage has been provided from the land of the petitioners to the land of respondents No. 3 and 4 by giving equivalent land to them in lieu of the land coming under the said passage.

2. Respondents No. 3 and 4 filed an application u/s 42 of the Act before the Director, Consolidation of Holdings for providing a passage to their land measuring 69 Kanals 1 Maria, situated in village Kachhwa, as mentioned in the petition, which they had purchased from the previous owner, as no passage was provided to the said land during the consolidation. A prayer was made that a passage of two Karams be provided from southern boundary of Killa No. 27//15 of village Badanpur to their land measuring 69 Kanals 1 Maria situated in village

Kachhwa because the vendors of the petitioners were using this passage since the time of consolidation. The area of village Badanpur adjoins the Killa Nos. of village Kachhwa purchased by respondents No. 3 and 4. Path No. 48 from the area of Badanpur is already existing up to the west southern corner of Killa No. 27//1. If respondents No. 3 and 4 are given two Karams passage from Killa No. 27//15 of village Badanpur, then they can use the passage from path No. 48 for going to their land measuring 69 Kanals 1 Maria. After hearing both the parties, the Director, Consolidation allowed the application filed by respondents No. 3 and 4 and two Karam wide passage was provided to them from Killa No. 27//15 in village Badanpur from the land of the petitioners. To compensate the petitioners, an equivalent land was given to them from the land of respondents No. 3 and 4, which was given to them from the land of the petitioners. The Director, Consolidation provided this passage to respondents No. 3 and 4 after recording a positive finding that no passage was given to the land measuring 69 Kanals 1 Maria situated in village Kuchhwa during the consolidation.

3. The counsel for the petitioners contended that the Director, Consolidation has acted without jurisdiction while providing passage to respondents No. 3 and 4 as they have purchased the land subsequently and a subsequent purchaser has no legal right to demand passage to the land purchased by him, by filing an application u/s 42 of the Act. In support of his contention, the learned counsel placed reliance upon decisions of this Court in *Smt. Nasib Kaur Vs. Additional Director, Consolidation of Holdings and Others*, and *Banarsi Doss v. Director, Consolidation of Holdings*, Haryana 1995 P.L.J.314.

4. We have considered this submission of the counsel for the petitioners and in our view the same is without any force. There is no difference between a person who is holding the land from the day of consolidation and a person who has purchased the same after the consolidation from the original owner. The important factor is whether a passage was provided to that Kurra/land during the consolidation or not. If no passage was provided to that land at the time of consolidation, then subsequently the owner of the land, whether original or the subsequent purchaser, can maintain an application u/s 42 of the Act before the Director, Consolidation for providing a passage to the land which was not provided at the time of consolidation. In *Mehar Din Vs. The State of Haryana and Another*, this Court had upheld the order passed by the Director, Consolidation providing path to the subsequent purchaser when no path was provided to the vendors at the time of consolidation. The facts of the above cited cases are slightly different. In *Nasib Kaur (supra)*, initially the passage was provided to the owners, but after the purchase, the subsequent purchasers wanted for effecting some change in path provided in the consolidation. In those circumstances, this Hon"ble Court has held that the persons acquiring title to the property after consolidation have no right to move the Consolidation Authorities for effecting change in path during consolidation. In *Banarsi Dass (supra)*, also the passage was provided to the vendors during consolidation. In view of that fact, this Court held that the subsequent purchaser has no right to claim passage to land

purchased by him subsequently u/s 42 of the Act. But in para 24 of the judgment, the decision given in Mehar Din (supra) has been distinguished as under:-

"24. Mehar Din Vs. The State of Haryana and Another, is also not applicable to the facts of this case. Moreover, in the said case it has been specifically mentioned in Para 3 of the judgment that no path was provided to the vendor of the petitioner in that case even during consolidation proceedings. In the case in hand, not only one but three paths had been provided to the original owner."

5. The facts in the present case are different. Here, the Director, Consolidation has recorded a positive finding that no passage was provided to the land measuring 69 Kanals 1 Maria situated in village Kachhwa. The passage has to be provided by the Director, Consolidation from Killa No. 27//15 belonging to respondents No. 3 and 4.

6. Counsel for the petitioners further submitted that the land of respondents No. 3 and 4 is situated in village Kachhwa and the passage has been provided to them from the land situated in village Budanpur and, therefore, passage could not be provided from their land which is of a different village. In our view, this contention of the counsel for the petitioners is also not acceptable. Once it is found, as a matter of fact, that no passage was provided to a specific Kurra during the consolidation, then it is the duty of the Consolidation Authorities to provide passage to that Kurra. Since Path No. 48i passing very close to the land measuring 69 Kanals 1 Maria, therefore, the Consolidation Authorities rightly provided passage from Killa No. 27//15, which will connect P/6 the land of respondents No. 3 and 4 to path No. 48. For the reasons mentioned above, we find no jurisdictional error or impropriety in the impugned orders passed by respondent No. 2.

Resultantly, the writ petition is dismissed.

Sd/- V.K. Bali, J.