

(1981) 07 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 287 of 1969

Sardara Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 22-07-1981

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 —
Rule 18, 8

Citation : (1981) 3 ILR (P&H) 510

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Inderjit Pipat, for S.K. Pipat, for the Appellant; O.P. Arora, for the Respondent

Judgement

Rajendra Nath Mittal, J.—Briefly, the facts are that consolidation of holdings took place in village Khanpur District Ropar in 1966. A scheme was prepared wherein it was provided that every kurrah would be provided with two karams wide path. It is alleged that the Petitioners were allotted only one kurrah to which no path was provided. They filed a revision petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 which was dismissed vide order dated August 30, 1968, Annexure "B", on the ground that it was barred by limitation. They have challenged the order of the Additional Director through this writ petition.

2. It is contended by Mr. Pipat, learned Counsel for the Petitioners, that the Petitioners did not challenge any order before the Additional Director u/s 42 of the Act and therefore, the rule of limitation prescribed by Rule "8" of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 would not apply. In support of his contention he placed reliance on a Division Bench judgment of this Court in Haqiqat Singh Vs. The Additional Director, Consolidation of Holdings, Punjab, Chandigarh and Others, .

3. I have given due consideration to the argument of the learned Counsel and find force in it. It is not necessary to go in detail in the question as the matter has been settled by the Division Bench in Haqiqat Singh's case (supra). It has been observed by the learned Bench that the bar of limitation created by Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, would not operate when a petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is filed impugning only the scheme prepared or confirmed or repartition made by any officer and not any specific order of any of the authorities passed under the Act. The statute makes a clear distinction between an order passed by an officer under the Act and the performance of duties by the authorities under the Act in the matter of preparation and confirmation of scheme of consolidation and the repartition made in pursuance thereof. So, it cannot be held, that preparation or confirmation of a scheme and the repartition carried out would fall within the scope of "order" as used in Rule 18 of the Rules. It is further held that the Rule, as it stands, does not come into play when a Petitioner challenges either the scheme of consolidation including its preparation or confirmation or the repartition made in pursuance thereof. In the present case, as already observed above, the Petitioners have filed a petition before the Additional Director, Consolidation of Holdings to the effect that they should be provided path in accordance with the scheme. Therefore, the petition could not be dismissed by him on the ground of limitation. Thus, the impugned order is liable to set aside.

4. For the aforesaid reasons I accept the writ petition, quash the impugned order and direct the Additional Director, Respondent No. 2, to decide the matter on merits. The parties are directed to appear before him on September, 22, 1981. No order as to costs.