
(1995) 12 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4068 of 1981

Smt. Amarjit Kaur and Another	Vs	APPELLANT
The Additional Director, Consolidation of Holdings and Others		RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

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

Citation : (1996) 114 PLR 217

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Atma Singh Cheema and Ranjit Kaur, for the Appellant; Amarjit Markan, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—The petitioners, filed this writ petition for issuing a writ of "certiorari" to quash the order of the "Additional Director, Consolidation of Holdings, dated 5th March, 1981, (Annexure P.6).

2. According to the petitioners, their father and uncle were owner of the plot Nos. 108/1 and 108 respectively. Plot No. 108/1 abutted on the path leading from its southern side whereas plot No. 108 was connected by a path on its northern side. Their uncle Mohinder Singh who was the owner of the plot No. 108 sold a portion of the land to one Shri Sher Singh who further sold it to Manjit Kaur and the remaining area i.e. 1-19 was sold by the widow of Mohinder Singh to Budha Singh who is the 3rd Respondent. Petitioners are the daughters of Joginder Singh who inherited plot No. 108/1 after the death of their father Joginder Singh. The consolidation proceedings were completed by way of re-partition on 31st August, 1971. Subsequently, the Consolidation Officer made a proposal suggesting a path/way be provided out of the petitioner's Abadi Plot No. 108/1. The said proposal was sent to the Settlement Officer, Consolidation of Holdings, Jalandhar who further sent the proposal to the Additional Director,

Consolidation of Holdings, who is the 1st respondent. The 1st respondent without affording any opportunity of hearing to the petitioners or respondents 4 and 5, accorded approval by his order dated 31st August, 1976 (Annexure P.3). Thereafter, the petitioners and respondents 4 and 5 filed a writ petition in this Court in Civil Writ Petition No. 899 of 1977. The said writ petition was allowed and the order of the 1st respondent was quashed. But even before the decision of the said writ petition, the 3rd respondent filed a petition u/s 42 of the Act for setting aside the order dated 5th November, 1975 (Annexure P.1), passed by the 1st respondent to provide a path through the petitioner's Abadi plot and the said application was rejected on 23rd June, 1978. Thereafter, he filed another application u/s 42 of the Act for the same relief and by an order dated 5th March, 1981 (Annexure P.6) the said application of the 3rd respondent was allowed. The petitioners are seeking to quash the said order dated 5th March, 1981 (Annexure P.6).

3. The point for consideration is whether the 3rd respondent is entitled, to a passage through the petitioners' Abadi plot. A plan has been filed alongwith the written statement which is marked R.2. The said plan is "not disputed. It shows that there is a road on the southern side and Joginder Singh's plot in 108/1. It is on the southern side. To the north side of the land of Joginder Singh is the land of Budha Singh, 3rd respondent (108/3). To the north of the land of Budha Singh there is a land of Sher Singh bearing No. 108/2. Thus it is clear that the respondents land is in between the land of Joginder Singh, predecessor-in-interest of respondents 4 and 5 and Sher Singh who purchased Plot No. 100 from the uncle of the petitioners namely Mohinder Singh. Thus the plan clearly shows that Budha Singh was not left with a passage at all. The land purchased by him is in between the land of Sher Singh and Joginder Singh. Admittedly, the entire land of plot No. 108 belongs to the brothers namely Joginder Singh and Mohinder Singh. When there was partition between the brothers, it is necessary to provide a passage to the portion which fell to the respective shareholders and Budha Singh, the 3rd respondent was left with no passage. He made an application u/s 42 of the Consolidation Act for providing a passage to his plot bearing No. 108/3, Plot No. 108/2 was connected with the path on its north side likewise plot No. 108/1 was also connected with the path on the south side. Plot No. 108/3 was left with no passage therefore, the 3rd respondent Budha Singh filed an application u/s 42 of the Act. The High Court in Civil Writ Petition No. 885 of 1977, set aside the orders of the Additional Director, Consolidation of Holdings dated 31st August, 1976 and remanded the matter to the Additional Director, Consolidation of Holdings with a direction that the case may be decided afresh after affording opportunity of hearing to all the concerned parties. The Additional Director by his order dated 23rd June, 1978, rejected the application filed by Budha Singh on the ground that he purchased a part of plot No. 108/2 on 21st March, 1973 while the repartition u/s 21(1) was published on 31st August, 1971, i.e. he purchased the area long after the completion of consolidation proceedings in the village and therefore the Department has no concern to provide a path to

those lands which were purchased after the completion of consolidation proceedings. Thereafter, the 3rd respondent Budha Singh filed an application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 for providing a passage to him. That application was allowed vide impugned order dated 5th March, 1981 (annexure P.6), by the Additional Director, Consolidation of Holdings, Punjab.

4. According to the learned counsel for the petitioners the impugned order amounts to review of an earlier order. The review application does not lie and therefore, the order dated 5th March, 1981; (Annexure P.6) is liable to be set aside. But the facts clearly shows that Budha Singh, 3rd respondent who purchased the land in possession of Sher Singh had been left with no passage. There cannot be any denial of the fact that when there was partition between the brothers and a passage has to be provided to each shareholder. Budha Singh namely the 3rd respondent purchased a part of the plot belonging to Mohinder Singh, who is the maternal uncle of the petitioners. Before passing the impugned order, the Additional Director Consolidation of Holdings called for a report from the Consolidation Officer. The Consolidation Officer after making a spot inspection, submitted a detailed report dated 16th February, 1981. From that report it is clear that Harcharan Singh namely the 4th respondent who is the son of Joginder Singh constructed a well on the eastern side leaving some space in Plot No. 108/1 to be used as passage. The space left is 2 Karams wide and the same was being used as path/way. When the said strip of land is being used as path/way by the 3rd respondent Budha Singh there is nothing wrong in the order of the Additional Director to treat it as path/way for the 3rd respondent, giving a new khasra number and then he has also given the dimensions of the same as 2 karams wide portion along with plot No. 108/1.

5. In this view of the matter, I find no grounds warranting interference by this Court with the impugned order Annexure P.6.

6. The writ petition fails and is accordingly dismissed.