

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

L.P.A. No.185 of 2004 (O&M)  
Date of decision: 22.12.2009

**Jati Singh.**

-----Appellant

Vs.

**Additional Director, Consolidation of Holdings, Punjab &  
others.**

-----Respondents

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR. JUSTICE ALOK SINGH**

Present:- Mr. G.S. Punia, Advocate  
for the appellant.

Mr. Suvir Sehgal, Addl.A.G., Punjab  
for respondent No.1.

Mr. Harinder Kumar Aurora, Advocate  
for respondent No.3.

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**ORDER:**

1. This appeal has been preferred against order of learned Single Judge, dismissing the writ petition against order dated 18.8.1983, Annexure P-1, passed by the Director Consolidation of Holdings under the provision of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, "the Act")

2. Consolidation took place in the village in question in the year 1958 and in pursuance of Scheme of consolidation, new records of rights were prepared and the parties were put into possession. Though Killa No.18/1 of Rectangle No.108 was allotted to the contesting respondents and Killa No.8 of Rectangle No.115 was allotted to the appellant, possession of Killa No.18/1 of Rectangle No.108 was given to the appellant and possession of Killa No.8 of Rectangle No.115 was given to the contesting respondents. However, parties continued in possession of the area so allotted, contrary to the entry in the record for more than 12 years.

3. In 1971, the contesting respondents filed a suit, inter-alia, for possession of Killa No.18/1 of Rectangle No.108 and also other land which was in possession of the appellant, which was decreed for the other land but as regards Killa No.18 of Rectangle No.108, the suit was dismissed on 22.8.1972. The decree was affirmed in appeal on 21.11.1973. Thereafter, the respondents tried to forcibly dispossess the appellant, on which the appellant filed a suit, which was decreed in his favour on 25.2.1982, vide Annexure P-11.

4. In spite of the said two rounds of litigation before the Civil Court, the contesting respondents filed application dated 8.12.1981, Annexure P-12, claiming to be in possession of Killa No.18/1 of Rectangle No.108. The said application was allowed by the Director vide impugned order dated 18.8.1983 exercising

power of correcting clerical error. Aggrieved thereby, the appellant filed writ petition which has been dismissed by learned Single Judge. The Single Judge held that since only clerical error was corrected in record, there could be no objection even if finality had been reached with regard to right of possession between the parties which was disturbed by the impugned order.

5. We have heard learned counsel for the parties.

6. Learned counsel for the appellant submits that the matter did not involve mere correction of entry. It has the effect of unsettling and reversing rights of the parties to possession of particular areas ignoring *inter-partes* decree which had reached finality. Even if possession of Killa No.18/1 of Rectangle No.108 was wrongly given to the appellant, in lieu of possession of Killa No.8 of Rectangle No.115 which was given to the contesting respondents, the possession having so continued with the appellant right from 1958 and Civil Court having expressly dismissed the suit of the private respondents for possession of the said area, it was not open for the Director to invoke the power of correction of clerical error to disturb the rights of the parties.

7. The question for consideration is whether the power of correcting the clerical error could be exercised by the Director under the Act, after the very issue had been adjudicated upon by the Civil Court when exercise of such power affected settled rights of parties.

8. We are of the view that answer has to be in the negative. The question whether the contesting respondents were entitled to possession of Killa No.18/1 of Rectangle No.108, was the issue before the Civil Court. The Civil Court held that the contesting respondents were not entitled to possession, which order was upheld by the Appellate Court. The contesting respondents were held not to be owner of the said area.

9. No doubt a correction can be made at any time and power under Section 42 of the Act is very wide and it remained undisputed that there was mistake in recording Killa No.18/1 of Rectangle No.108 in the ownership of the appellant, even in such a situation after adjudication by Civil Court, exercise of power of correcting clerical error was not permissible so as to affect settled vital rights of parties. The present case is not simply of correcting a mistake but of affecting civil rights of parties after adjudication by civil Court. Possession was delivered to the appellant which continued undisturbed for long period. In lieu thereof, possession of almost equal area was given to the contesting respondents and the parties remained reconciled to the situation for more than 12 years. The contesting respondents took their judicial remedy of filing a suit, wherein a finding was recorded that they were not entitled to possession of Killa No.18/1 of Rectangle No.108. If the Director was to pass a different order, it will not be mere correction of a clerical error but disturbing the rights of the parties. Moreover, the Director can exercise power under Section

42 or 43-A of the Act within reasonable time. If such power is invoked after adjudication by the Civil Court wherein rights of the parties are crystallized and finality reached and after more than 20 years of the event, exercise of power would be beyond reasonable time.

10. Learned Single Judge held that the area being almost equal, no prejudice would be caused to either of the parties. This reason goes against the Director passing such an order, which could be justified only to remove prejudice, if any. Moreover, prejudice to the appellant is patent as it deprives him of his rights crystallised in civil litigation.

11. We are, thus, of the view that the Director exceeded his jurisdiction in passing the impugned order, which has the effect of disturbing possession of the parties after a long time and after the matter had reached finality in the Civil Court.

12. Accordingly, we allow this appeal and quash the impugned order, Annexure P-1. The writ petition will stand allowed.

**(ADARSH KUMAR GOEL)**  
**JUDGE**

**December 22, 2009**  
**ashwani**

**( ALOK SINGH )**  
**JUDGE**