

ITEM NO.18

COURT NO.7

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6142/2019

(Arising out of impugned final judgment and order dated 30-11-2018 in CWP No. 9124/1996 passed by the High Court Of Punjab & Haryana At Chandigarh)

KISHAN PAL

Petitioner(s)

VERSUS

ADDITIONAL DIRECTOR CONSOLIDATION OF HOLDINGS & ORS. Respondent(s)

(FOR ADMISSION and I.R.)

Date : 06-03-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s) Mr. J.D. Dadwal, Adv.
Mr. R.K. Rathore, Adv.
Mr. Sudarshan Singh Rawat, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel appearing on behalf of the petitioner.

The High Court while allowing the writ petition filed by the third respondent - Kewal Singh, has passed the following order:

"The Consolidation officer then passed order dated 09.03.1995, which was adverse to the respondents. But instead of filing the statutory appeal under Section 21(3) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, 'the Act') they choose to invoke the provisions of Section 42 of the Consolidation Act. Apart from that it has been argued by learned counsel for the petitioner, in all fairness that in case the respondents file an appeal even now they would not

raise objection on the issue of limitation.

After hearing learned counsel for the parties we are of the opinion that the respondents have not availed the statutory remedy of filing the appeal under Section 21(3) of the Act. They could not have invoked the provisions of Section 42 of the Consolidation Act at that belated stage. The justification offered that section 42 of the Consolidation Act, could be invoked by the respondents at any point of time, does not merit acceptance for the simple reason that the respondents could have done so even at an earlier stage without challenging the earlier orders of 1981 in an appeal etc.

We are, therefore, of the opinion that the remedy of Section 42 availed of by the respondents is misconceived one. Under Section 42 of the Consolidation Act such an order could not have been passed particularly when the order dated 09.03.1995 was in existence and the validity of which would necessarily have to be gone into before concluding the controversies.

This could have done only by following the statutory provisions."

Learned counsel appearing on behalf of the petitioner has submitted that there is limitation of thirty days for filing the appeal under Section 21(3) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 . Learned counsel for the petitioner further submitted that having entertained the matters by the authorities and also by the High Court, the petitioner cannot be rendered remediless by directing him to go before the appellate authority under Section 21(3) of the Act.

We are not inclined to go into the merits of the matter. Six weeks time from today is granted to the petitioner to file the

appeal before the concerned authority under Section 21(3) of the Act. On appeal being filed under Section 21(3) of the Act, the Appellate Authority shall consider the matter on its own merits without being influenced by any of the views expressed in the earlier proceedings.

The special leave petition is, accordingly, disposed of.

Pending application(s), if any, shall also stand disposed of.

(MADHU BALA)
COURT MASTER (SH)

(PARVEEN KUMARI PASRICHA)
BRANCH OFFICER