(1986) 02 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No 2192 of 1985

Chajju Ram APPELLANT

Vs

The Joint Director, Panchayats (Commissioner), Punjab and Others RESPONDENT

Date of Decision : 13-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 31A
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 18, 18(c), 23A
Punjab Gram Panchayat (Common Purposes Land, Eviction and Rent Recovery) Act, 1976 — Section 2(g), 3
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 5
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2(g), 7

Citation : (1986) 02 P&H CK 0073

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : Rup Chand, for the Appellant; Gurnam Singh, for the Respondent

Judgement

Gokal Chand Mital, J.—This order will dispose of Civil Writ Petition Nos. 2192 and 2298 to 2302 of 1985, as common question arises therein For facility of reference, the facts of C.W.P No. 2192 of 1985 are being noticed. The facts in all other cases are also similar.

2. Chhaju Ram Petitioner is a landlower within the revenue estate of village Khiala, Tehsil Pathankot District Gurdaspur, having a Gram Panchayat. In 1960-61 there was consolidation in which S73 Kanals were carved out as Mustarka Malkan after imposing cat on the landlowers. The revenue records show that the aforesaid land was carved out after imposing cut on 135 landowners and in the revenue records it was shown in the ownership of Mustarka Malkan and other right holders in proportion to the land owned by them and separate pieces were shown in the individual cultivation of the writ Petitioners. Reference may be made to the Jamabandi for the year 1979-80 Annexure P1.

3. The Gram Panchayat considered that since land was shown in the name of Mastarka Malkan although it was owned by the proprietors of the village yet its management vested with the Gram Panchayat, and, therefore, they could evict the landowners who were in occupation thereof so that after getting back possession, the agricultural land could be leased out for deriving income for the Gram Panchayat. In order to achieve this object, separate applications were filed u/s 5 of the Punjab Public Premises and Land (Eviction and Recovery) Act, 1973 (for short'' the 1973 Act''), read with Section 3 of the Punjab Gram Panchayat (Common Purposes Land, Eviction and Rent Recovery) Act, 1976 (for short ''the 1976 Act''), before the District Development and Panchayat Officer. The landowners of the village and occupants of the land, who are the Petitioners before me, pleaded that the land did not belong to the Gram Panchayat nor it was Shamilat Deh and they were in possession as co-sharers and none of the above two Acts were applicable, therefore, the application should be dismissed. Respondent No. 2 by order dated 11-11-1983 Annexure P2 held that Mustarka Malkan land was kept for common purposes of the village, and, therefore, its management vested with the Gram Panchayat and ordered eviction. The appeal of the aggrieved persons was dismissed as time barred by the Joint Director, Panchayats. See Annexure P.3. These are the writ petitions by the aggrieved persons under Articles 226/227 of the Constitution of India

4. After hearing the learned Counsel for the parties and on perusal of the record I am of the view that these writ petitions deserve to succeed. In para 4 of the writ petition, it was clearly averred that daring consolidation proceedings, S73 Kanals Mustarka land was taken out from the landowners of the village, who were 135 in number and they were in possession of the Mustarka Malkan land falling to their share according to the ratio of the land held by them in the village This fact was admitted in the written statement. However, it was pleaded that it was left for Mustarka Malkan during consolidation for common purposes u/s 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short'' the consolidation Act''), and under Rule 16(ii) of the rules framed under the aforesaid Act, the management and control of the such land vests in the Gram Panchayat. On this basis, the order of ejectment was supported

5. A reading of Section 18 of the Consolidation Act shows that during consolidation, land can be reserved for common purposes if in the concerned area no land is reserved for that purpose The management and control of that reserved land would vest in the Panchayat in view of Section 23-A of the Consolidation Act. Rule 16(ii)of the Rules framed under the Consolidation Act provides that the land which is reserved for common purposes of the village u/s 18(c) of the Consolidation Act the proprietary rights in respect of the land so reserved, shall vest in the proprietary body of the State and it shall be entered in the column of ownership of records of rights as Jumla Malkan and other right holders according to the land owned by them and the management of such land shall be done by the Panchayat on behalf of the village proprietory body and the Panchayat shall have the right to utilize the income derived from the land so

reserved for the common needs and benefits of the estate On the basis of the aforesaid rule the Gram Panchayat wants to take possession of the agricultural land which is entered as Jumla-Malkan from the proprietors for deriving income for the Panchayat, which in turn, they wanted to utilize for the benefit of the residents of the estate The question arises whether the land in dispute can be said to vest in the Oram Panchayat either as owner or for the purposes of management.

6. The reservation made during consolidation u/s 18 of the Consolidation Act, came up for consideration before the highest Court of the land in Bhagat Ram and Others Vs. State of Punjab and Others, and it was ruled that no reservation of land can be made under that provision for the income of the Panchayat and such a reservation was quashed as being violative of Article 31A of the Constitution of India However, it was held that for common purposes of the village, reservation could be made. It has to be seen whether in the present case reservation was made for common purposes of the village or agricultural land was kept apart for deriving income of the Panchayat From the material on record we find that no land was reserved for common purposes of the village, though the land in dispute was kept apart as Mustarka Malkan and as per revenue records it vested in the proprietary body. The land in dispute is being used for agricultural purposes by the proprietors of the village and not for any common purposes of the village This matter directly came up for consideration before a Division Bench of this Court in Kala Singh v. Commissioner Hissar Division 1984 P.L.J. 169, and it was held that the land did not vest in the Gram Panchayat nor it was Shamilat Deh as defined in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 There, eviction of the landowners was sought u/s 7 of the Punjab Village Common lands (Regulation) Act. For eviction of the occupants, either proceedings could be taken u/s 7 of the aforesaid Act or under the Public Premises Act, by virtue of Section 3 of the Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976. The result is the same and the aforesaid decision is fully applicable to the facts of the present case

7. A reading of the definition of Shamilat Deh contained in Section 2(g) of the Act, referred to above, clearly shows that the land in dispute does not come within the ambit of Shamilat Deh because it is not being used for any common purpose. Rule 16(ii) of the Rules framed under the Consolidation Act and Sections 18 and 23-A of the Consolidation Act would only apply to the land reserved for common purposes end not for the land other than that. Hence Respondents Nos 1 and 2 bad no jurisdiction to entertain the proceedings and the Gram Panchayat had no locus standi to initiate the proceedings for eviction.

8. For the reasons recorded above, all the writ petitions are allowed, orders Annexures P-2 and P-3 are hereby quashed with no order as to costs.