
(2015) 04 P&H CK 0411
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14966 of 2010

Dile Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14, 18, 2(g), 2(g)(1), 2(g)(6)

Citation : (2015) 4 RCR(Civil) 498

Hon'ble Judges : Jitendra Chauhan, J.

Bench : Single Bench

Advocate : Sanjiv Gupta, Advocate, for the Appellant; Saurav Mohunta, D.A.G.,
for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—The petitioners have filed this writ petition under Articles 226 /227 of the Constitution of India for the issuance of a Writ of Certiorari for quashing the impugned order dated 10.05.2010 (Annexure P-5) passed in Revision filed by Bhim Singh and others whereby application for partition of land filed by the present petitioners was dismissed by the Financial Commissioner, Haryana. The facts:--

The petitioners are residents and proprietors of Village Mehra, Sub Tehsil Ladwa. Tehsil Thanesar, District Kurukshetra. There is 1632 Kanals 12 Marlas of land situated in Village Mehra which is recorded as "Jumla Malkan Hasab Rasad Jar Khewat" in the column of ownership of latest Jamabandi in the revenue record.

Bhim Singh-respondent No. 5 and others filed an application for partition of the above said land on the ground that they are proprietors of the village Mehra and that they are the owners of the land and thus the above said land may be portioned amongst the proprietors of the village. The Assistant Collector, II-Grade, Ladwa rejected the application on 30.08.2006 (Annexure P-2) for

partition of land summarily on the ground that the names of the share holders are not recorded in the ownership column of the Jamabandi.

2. Aggrieved against the order dated 30.08.2006, Bhim Singh and others filed an appeal before the Collector, Thanesar. The Collector vide order dated 28.02.2007 (Annexure P-3) accepted the appeal, remanded the case back to the Assistant Collector II-Grade, Ladwa, with a direction to the Assistant Collector II Grade to carry out the partition of the land on the basis of list of owners attached with the application for partition of land. The Collector noticed that due to large number of owners the same have not been shown in the Jamabandi.

3. The present petitioner, Dile Ram and others aggrieved by the order dated 28.02.2007 (Annexure P-3) filed an executive appeal before the Commissioner, Ambala Division, Ambala, which was accepted on 19.12.2007 (Annexure P-4) holding that the parties have no clear title in the land so as to enable the Assistant Collector II Grade to partition the land and before carrying out this exercise it is necessary that the parties get their title adjudicated by the competent authority. The Commissioner vide order dated 19.12.2007 set aside the order dated 28.02.2007 passed by the Collector, Thanesar and restored the order dated 30.08.2006 passed by the AC II Grade, Ladwa, dismissing the application for partition of land.

4. Again, Bhim Singh and others, the original applicants in the partition applications filed ROR No. 372 of 2008 before the Financial Commissioner, Haryana at Chandigarh, which was accepted vide order dated 10.05.2010 (Annexure P-5) holding that there is enough confusion about the title of the parties and that instead of dismissing the partition application at the first go, Assistant Collector II-Grade, Ladwa should have gone a step further in affording the opportunity to the parties to prove their title. The Financial Commissioner also observed that this case, therefore, needs reconsideration with full inquiry of the facts. Accordingly, the order dated 19.12.2007 (Annexure P-4) of the Commissioner, Ambala Division, Ambala, was set aside and the case was remanded back to the AC II-Grade, Ladwa for further proceedings as per law.

5. Not satisfied with the order dated 10.05.2010 (Annexure P-5), Dile Ram and others filed this civil writ petition before this Court in which notice of motion was issued vide order dated 23.08.2010. This writ petition was admitted on 02.03.2015.

6. While issuing notice of motion on 23.08.2010, this Court observed as under:--

"..... I have heard counsel for the petitioners and a prima facie satisfied that the Financial Commissioner and the Collector had no jurisdiction to direct the Assistant Collector, II-Grade, to proceed with partition proceedings, as Jumla Mushtarka Malkan is the nomenclature assigned to land reserved for the Gram Panchayat and for the common purposes of the village, under Sections 18 and 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 read with Rule 16(ii) of the East Punjab Holdings

(Consolidation and Prevention of Fragmentation) Rules, 1949. Ownership of Jumla Mushtarka Malkan vests in the proprietors, whereas its management and control vests in a Gram Panchayat. Section 2(g)(6) of the Punjab Village Common Lands (Regulation) Act 1961 along with the explanation appended thereto reads as follows:--

"2(g)(6) lands reserved for the common purpose of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid Act.

Explanation-Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad". "Jumla Malkan" or "Mushtarka Malkan" shall be shamilat deh within the meaning of this section."

The vires of Section 2(g)(6) have been upheld by the Full Bench of this Court in Jai Singh and Others Vs. State of Haryana, . It is, therefore, apparent that apart from the fact that application for partition may not be maintainable, partition proceedings cannot proceed without decision of the question of title, if any.

Notice of motion for 08.11.2010.

Proceedings before the Assistant Collector, 2nd Grade, Ladwa shall remain stayed till further orders.

To be put up before the Registrar (Judicial-III) on the adjourned date for completion of service."

7. This Court has heard the rival contention of the parties and has carefully gone through the paper book with the able assistance of the learned counsel for the parties.

8. There is no dispute about the nature of the land. The land is recorded as "Jumla Malkan Hasab Rasad Jar Khewat". It means that all the proprietors of the village are share holders as per their shares in the holdings of the village. The authoritative pronouncement on the point is Jai Singh and Others Vs. State of Haryana, . It has been held in Para No. 62 in this Judgment as under:

"62. In view of the discussion made above, we hold that:--

i) Sub-Section (6) of Section 2(g) of the Punjab village Common Lands (Regulation) Act 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948;

ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g) (1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and

confirmed under Section 20 , which has been implemented under the provisions of Section 24 no other lands;

iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Julma Mustarka Malkan Wa Diagr Haqdaran hasab Rasad Arazi Khewat and in the column of possession with the proprietors, shall not vest the Gram panchayat or the State Government, as the case may be, on the dint of sub-section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even through in the column of ownership the entries may be Julma Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat etc."

It was further observed in Para No. 64 of this judgment that--

"64. Even though, therefore, land in the aforesaid case may have been shown in the column of ownership as in vesting with the proprietors, inasmuch as it was being used for common purposes, pursuant to a scheme prepared under the Act of 1948, it was held to be belonging to Gram Panchayat.

For the kind of land, as mentioned above, it is too apparent that there was no necessity at all to sanction mutation in favour of the Gram panchayat and change the entries recorded in the column of ownership from proprietors to that of Gram Panchayat. Further, as mentioned above, irrespective of provisions contained in Rule 6(ii) that such lands shall be shown to be vesting in the proprietors, the fact remains that the proprietors are divested of their ownership on the basis of Section 23-A as also Section 3 of the Act of 1961 as also in view of the Full Bench decision of this Court in Kishan Singh's case (Supra)."

9. After considering the facts and law, this Court is of the opinion that the Financial Commissioner, Haryana has legally and factually erred in holding that "instead of dismissing the partition application at the first go, Assistant Collector, II-Grade, Ladwa should have gone a step further in affording the opportunity to the parties to prove their title, and that this case, therefore, needs reconsideration with full inquiry of the facts." and these observations are set aside.

10. Keeping in view the above settled position of law, this writ petition is dismissed; the order dated 30.08.2006 (Annexure P-2) passed by the Assistant Collector, II-Grade, Ladwa is affirmed; order dated 10.05.2010 (Annexure P-5) is modified to the extent indicated above. However, the parties are at liberty to approach the competent authority to get their respective shares determined as

per their Jar Khewat and to proceed according to law.