

(2005) 01 P&H CK 0131
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17754 of 1998

Gram Panchayat	Vs	APPELLANT
Additional Director, Consolidation and Others		RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 2, 42
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11

Citation : (2005) 140 PLR 273 : (2005) 2 RCR(Civil) 246

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : S.D. Sharma and Neeraj Sharma, for the Appellant; A.K. Chopra and Harminder Singh, for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Monunta, J.—The Gram Panchayat petitioner has filed this petition under Article 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari quashing the order dated 26.8.1996 passed by the Additional Director, Consolidation of Holdings, Punjab, whereby the land under the control of the Panchayat has been ordered to be distributed amongst the proprietors of the village.

2. It is the case of the Gram Panchayat that consolidation proceedings in the village took place in the year 1958-59 and the land in dispute was recorded as Shamlat Deh Hasab Rasad Rakba Khewat in the column of ownership and in the column of cultivation it was recorded as "Makbooja Malkaan". The Gram Panchayat had been managing the land ever since the year 1958. It is the case of the petitioner that the land measuring 25 Kanats 13 Marias bearing Khasra No. 114, Khewat No. 90 and Khatauni No. 172 was kept as Gair Mumkin School Ground. Surjit Singh Grewal (respondent No. 3), one of the proprietors of the village, filed a petition u/s 42 of the East Punjab Holdings (Consolidation and

Prevention of Fragmentation) Act, 1948 (for short the "Act") in the year 1993 before the Additional Director (Consolidation), Punjab, for distribution of the said land among the proprietors of the village. After hearing the counsel for the parties, the Additional Director, (Consolidation) Punjab, held that the Gram Panchayat has no right to management of the land vide the impugned order dated 26.8.1996 (Annexure P-3) ordered distribution of the land amongst the proprietors of the village on pro-rata cut basis, It is this order which has been challenged by the Gram Panchayat in the present writ petition.

3. The writ petition has been contested by respondent Nos. 3 and 38, who filed their joint written statement. It has been contended on behalf of these respondents that the Gram Panchayat had wrongly been recorded as the owner of the land in dispute. Rather ownership thereof lies with the proprietors of the village. The counsel has contended that during consolidation in the year 1958-59 the ownership of the Gram Panchayat had mistakenly been recorded. However, therefore, the mistake was corrected by the Additional Director (Consolidation) vide his order dated 4.8.1961 and, accordingly, mutation was sanctioned and the land in dispute has been shown in the ownership of Jumla Malkan Hisa Hasab Rasad. It has vehemently been contended on behalf of respondent Nos. 3 and 38 that the Mustarka Malkan land cannot be used for income by the Gram Panchaya. Mr. Chopra contends that the Bachat land is required to be redistributed among the right-holders on pro rata basis. Lastly, it has been contended by Mr. A.K. Chopra, learned counsel for respondent Nos. 3 and 38, that the provisions of 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (for short the Rules) are not applicable to the proceedings initiated u/s 42 of the Act. In support of his contentions Mr. A.K. Chopra has placed reliance on *Gram Panchayat Guhla Majri v. Director, Consolidation of Holdings and Ors.* 1991 P.L.J. 46, *Gurjant Singh and Anr. v. Commissioner, Ferozpur Division, Ferozepur and Anr.* (2002)131 P.L.R. 347, *Pannu Ram and Another Vs. The Additional Director, Consolidation of Holdings and Others*, , *Jai Singh and Others Vs. State of Haryana*, and *Gram Panchayat Village Kanonda v. Director, Consolidation of Holdings, Punjab and Ors.* 1990 P.L.J. 213.

4. The short contention of Mr. S.D. Sharma, learned Senior Advocate, is that the land in dispute had been earmarked as Gair Mumkin School Ground in the consolidation held in the village in the year 1958-59, which is covered under the definition of "common purpose" under Clause (bb) (iv) of Section 2 of the Act. The said land is being used by the school children as a play-ground and they will suffer an irreparable loss in case the land is allowed to be allotted to the proprietors of the village. It has further been contended by Mr. Sharma that in the Jamabandi for the year 1958-59 (Annexure P2), the Gram Panchayat has been described as the owner thereof through under the column of "Name of Cultivator and Details" the words "Makbooja Malkan" have been entered. The Gram Panchayat has been in possession and is auctioning the said land since the year 1958. Even the respondents auction by paying lease-money. Mr, Sharma further contends that for the first time respondent No. 3 Surjit Singh

Grewal filed application before the Additional Director, Consolidation, Punjab, in the year 1993, i.e., after the lapse of 35 years. Lastly, it has been contended by the learned counsel for the petitioner that the Additional Director, Consolidation, is not the competent authority to determine the ownership of the land. Thus, he contends that the impugned order dated 26.8.1996 passed by the Additional Director (Annexure P3) is illegal and arbitrary.

5. I have heard the learned counsel for the parties and gone through the case law on the point.

6. It is the case of respondent Nos. 3 and 38 that the "ownership" of the land in dispute in the name of Gram Panchayat had wrongly been mentioned at the time consolidation in the year 1958. It has been contended that the mistake with regard to ownership in the revenue record was recorded by the Additional Director of Consolidation on 4.8.1961 and the "Jumla Malkan Hisa Hasad" has been described as the owner thereof in the Registrar of Mutation (Annexure R/2). I do not find merit in the contention raised by Mr. A.K. Chopra, learned Senior Advocate, appearing on behalf of respondent Nos. 3 and 38. First of all, no order dated 4.8.1961 passed by the Additional Director, Consolidation, has been adduced on record. Even if such an order has been passed by the Additional Director, the said order cannot be held to have been legally passed. The authority to determine whether a land is Shamlat Deh or not is vested in the Collector u/s 11 of the Punjab Village Common Lands Regulations Act, 1961 (for short "the Village Common Lands (Regulation) Act"), Section 11 of the Village Common Lands Act is reproduced hereunder for ready reference:-

"Decisions of claims of right, title or interest in Shamlat Deh. - (1) Any person or a Panchayat claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat under this Act, or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed."

7. The question whether a land was Shamlat Deh or not had arisen before a Division Bench of this Court in Gram Panchayat of Village Chandu Khurd Vs. Director, Consolidation of Holdings, . It was held by their Lordships that only authorities under the Village Common Lands Act were competent to determine this question and this question cannot be gone into by the Director Consolidation. A similar question had also arisen before their Lordships of the Supreme Court in the Gram Panchayat, Nurpur Vs. State of Punjab and Others, . It was held by their Lordships that the Additional Director, Consolidation had no authority to go into the question whether the land in dispute is Shamlat Deh or not. It was further held that such a question can only be decided by the Authorities under the Punjab Village Common Lands (Regulation) Act, 1961. As already mentioned above, such a question u/s 11 of the Village Common Lands Act can only be decided by the Collector. Still Further in the case reported as Gram Panchayat

Village Sidh v. Additional Director, Consolidation of Holdings, Punjab and Ors. 1997(1) P.L.J. 313, the Additional Director, Consolidation had ordered change of mutation entries in revenue record and ordered distribution of land amongst right-holders. In the Jamabandi the land was recorded as Shamlat Deh Hasab Rasad Rakba Khewat prior to consolidation proceedings as also after consolidation. It was held by their Lordships of the Hon"ble the Supreme Court that the question of ownership can only be decided by the Collector u/s 11 of the Punjab Village Common Lands Act. The plea raised on behalf of the right-holders that the area in dispute was Bachat area was rejected and it was held that the said plea could only be decided by the Collector. Consequently, the order passed by the Additional Director, Consolidation was set aside. The ratio of this authority is applicable to the facts appearing in the present case on all fours. In this view of the matter even if the mutation entry had been changed on the order dated 4.8.1961 passed by the Additional Director, Consolidation as argued on behalf of respondent Nos. 3 and 38, the same is void ab initio. There is no dispute that under the Consolidation Scheme, the land in dispute had been entered under the ownership of the Gram Panchayat. The application made after inordinate delay ought not to be entertained. It has further been made clear that the Full Bench decision in Jagtar Singh's case cannot be understood as enabling party aggrieved by scheme or repartition to make application u/s 42 after unreasonably long lapse of time. Further it was held that where no period of limitation has been prescribed, the party aggrieved is required to move the appropriate authority within reasonable time. As already said above, in the present case Surjit Singh Grewal (respondent No. 3) filed application before the Additional Director, Consolidation in the year 1993, i.e. after 35 years of consolidation proceedings in the village. Thus, he neither approached the appropriate authority nor he moved the application within reasonable period" of time.

8. Consequently, I allow the writ petition and set aside the order dated 26.8.1996 (Annexure P-3) passes by the Additional Director, Consolidation, Punjab. There shall, be however, no order as to costs.