
(1996) 12 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 582 of 1986

Gram Panchayat	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 17-12-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (1997) 115 PLR 613 : (1997) 2 RCR(Civil) 689

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Malkiat Singh and A.K. Chopra and S.C. Chhabra, in C.M. No. 15223 of 1996, for the Appellant; Viney Mittal Arvind Bansal, Raman Walia, Navin Mahajan and G.S. Sandhawalia, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—By this judgment I dispose of two Civil Writ Petition Nos. 582 of 1986 (Gram Panchayat Muradpur v. State of Punjab and Ors.) and 686 of 1986 (Gram Panchayat Muradpur v. State of Punjab and Ors.) along with CM. No. 11540 of 1996 and CM. No. 15223 of 1996 under Order 1 Rule 10, Code of Civil Procedure, as common questions of law and fact are involved in both the writ petitions and both the Civil Misc. applications are common.

2. In C.W.P. No. 582 of 1986 challenge has been given to orders Annexures P-2 and P-6 passed by the Director, Consolidation of Holdings, while in C.W.P. No. 686 of 1986 challenge has been given to Annexure P-2 and P-7 passed by the said Director (respondent No. 2 in both the writ petitions).

3. It has been averred in C.W.P. No. 582 of 1986 that respondents Nos. 3 to 8 moved an application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act, 1948 (for short "the Consolidation Act"), before respondent No. 2 praying that they are in possession of the land mentioned in

Khewat No. 40 in Jamabandi Nos. 2001 and 2002 which was shamilat deh but the Consolidation Department in 1960 committed a mistake by showing the area in the ownership of Gram Panchayat whereas respondents Nos. 3 to 8 were in possession since long. It was prayed by respondents Nos. 3 to 8 that because of the mistake committed by the Consolidation Staff, the same be corrected by showing the land in the owner-ship of these respondents, i.e. Mustarka Malkan Hasb Rasi Khewat. The grouse of the petitioner is that in the year 1960 consolidation took place in the village and a scheme was prepared. In the scheme it was specifically mentioned as per clause that the Shamilat land will not be partitioned and the persons who are in possession of the Shamilat land will be given possession according to Jamabandi of the year 1956-57. After the consolidation, the land which was earlier mutated in the name of Nagar Sabha became Khewat No. 69 and Khatauni Nos. 106 to 109 and the Shamilat which was in the possession of the co-sharer was put in Khewat No. 70, according to Jamabandi for the year 1963-64. Now after the expiry of about 25 years respondents Nos. 3 to 8 have applied for the correction of the so called mistake committed by the Consolidation Staff showing that the Khewat No. 40 has been wrongly shown in possession of the Nagar Sabha whereas they were in possession of the same. Respondents Nos. 3 to 8 wanted to grab the Nagar Panchayat Shamilat land by way of mentioning Khewat No. 40. According to Section 42 of the Consolidation Act, the jurisdiction of respondent No. 2 was only to correct any scheme prepared or confirmed or repartition made by him, but the question of title could not be decided. This power only rests with the Civil Court. According to the petitioner, the land in dispute is a Shamilat Deh and to determine the title of a Shamilat Land, this power vests in the Collector under the Village Common Lands (Regulation) Act, 1961 (for short "the Common Lands Act"). Respondents Nos. 3 to 8 ought to have moved u/s 11 of the Common Lands Act but they have not adopted this procedure. Rather they filed a time-barred application u/s 42 of the Consolidation Act.

4. It is also the grouse of the petitioner that the order Annexure P-2 was passed at its back. It is also averred that in spite of the stay order granted by the High Court staying the proceedings before respondent No. 2, the latter chose to continue with the proceedings and as such the orders Annexure P-2 and P-6 are bad.

5. With the above main averments, the petitioner has prayed in this writ petition for the quashment of orders Annexures P-2 and P-6.

6. Written statement in this case has been filed by respondent No. 3 and it has been pleaded that the land in question was in the ownership and possession of the landowners/right holders of the village even in 1930s and in the column of "ownership" it has been shown as Shamilat Deh Hasab Rasad Khewat and as such this land could not vest in the Gram Panchayat. Moreover there was no Shamilat Land in the village before the consolidation. This land was taken pro-rata from the landowners of the village and in the consolidation it was

transferred in the name of the Gram Panchayat. The Consolidation Authorities had no right to take away the land of the villagers and transfer it to the Gram Panchayat. This power does not vest in the Gram Panchayat. Moreover, this would amount to acquisition without payment of compensation. The land in question always remained in the ownership of the proprietors of the village, who are small landowners. The transfer of the land of the Gram Panchayat through mutation does not confer any title upon it and it has been rightly ordered vide Annexure P-2 that the land be re-distributed amongst the rightful owners by the Consolidation Authorities. u/s 42 of the Consolidation Act, the Director Consolidation of Holdings has the power to rectify the mistake.

7. In C.W.P. No. 686 of 1986, it has been alleged by the Gram Panchayat that the order dated 11.12.1985 (Annexure P-7) which was passed on the basis of order (Annexure P-2) dated 19.4.1984 is bad because the order as contained in Annexure P-2 is itself bad and for this reason the Director, Consolidation of Holdings, could not pass any order for the division of the land amongst the alleged rightful holders.

8. In this writ petition the stand of the contesting respondent No. 3 is the same as that in C.W.P. No. 582 of 1986 and I need not repeat the material averments of respondent No. 3.

9. In the Civil Misc. Applications under Order 1 Rule 10 C.P.C. the prayer of the applicants is that they may be added as parties to the writ proceedings as they are cultivating the land under the rightful owners and thus they are interested and proper parties, being in possession of the land.

10. First of all I would dispose of the Civil Misc. applications under Order 1 Rule 10 C.P.C. filed by different applicants and in the opinion of this Court the said Civil Misc. applications are liable to be dismissed on the short ground that those applicants are neither necessary nor proper parties in the main writ petition. The main controversy involved in C.W.P. No. 582 of 1986 is whether the order Annexure P2 is within jurisdiction or without jurisdiction and whether the Consolidation Authorities had rightly come to the conclusion that the land in dispute belonged to Jumla Malkan Mushtarka. The applicants are deriving title through the persons who have been declared as rightful owners. Their prayer in the present applications is extraneous to the main controversy involved in the writ petitions. These applicants swim and sink along with those through whom they are deriving interest in the suit land. In this view of the matter Civil Misc. Nos. 15223 of 1996 and 11540 of 1996 filed under Order 1 Rule 10, C.P.C. and hereby dismissed. Now, I proceed to dispose of the main writ petitions.

11. The fate of C.W.P. No. 686 of 1986 would depend upon the fate of C.W.P. No. 582 of 1986 because, in fact, in this writ petition the main challenge is to Annexure P-7, which has been passed after the passing of the order as contained in Annexure P-2, which order is in challenge in C.W.P. No. 582 of 1986. Of course, order (Annexure P-6) dated 11.12.1985 has also been challenged, but

everything would depend upon the correctness/legality of order (Annexure P-2) dated 19.4.1984 which is common to both the writ petitions.

12. In the main writ petition Shri Malkiat Singh, Advocate, appeared on behalf of the petitioner and Shri Vinay Mittal, Senior Advocate, appeared on behalf of the private respondents.

13. Learned counsel for the petitioner Shri Malkiat Singh while attacking the orders Annexure P-2 and P-6 in C.W.P. No. 582 of 1986 submitted that the Director, Consolidation of Holdings, had proceeded to decide the question of title with respect to the land in dispute and he could not do so. This power of deciding the title vests in the Civil Court or the Collector under the Common Lands Act. Since the Director, Consolidation of Holdings, had no jurisdiction to determine the title u/s 42 of the Consolidation Act, therefore, the order Annexure P-2 is illegal. Mr. Malkiat Singh also submitted that the Director, Consolidation of Holdings, determined the nature of the land and also the rights of alleged Jumla Malkan Mushtarka. If the alleged Jumla Malkan Mushtarka claim any right, title or interest in the land in dispute they could approach u/s 11 of the Common Lands Act before the Collector for the determination of their rights. Mr. Malkiat Singh submitted that it is established conclusively from the record that the land in question was a Shamilat Deh and it vested in the Gram Panchayat u/s 2(g)(i) of the Village Common Lands Act and it was for respondents Nos. 3 to 8 to establish that they were in possession of the land in dispute prior to 26th January, 1950. Mr. Malkiat Singh also submitted that u/s 42 of the Consolidation Act, the Director (Consolidation) had the limited power only to rectify the mistake and he could not adjudicate the title with respect to the land belonging to the Gram Panchayat. Therefore, the order (Annexure P-2) dated 19.4.1981 and the order (Annexure P-6) dated 11.12.1985 are liable to be quashed.

14. I have considered the submission raised by the learned counsel for the petitioner, but I am not in a position to persuade myself to agree with the submissions of the learned counsel. As per Section 42 of the Consolidation Act the Government has the power to satisfy itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act and has also the power to call for and examine the record of any case pending and pass such order under reference thereto as it thinks proper. Only embargo in this section is that before doing so, notice has to go to the parties interested. A perusal of the order (Annexure P-2) dated 19.4.1984 would show that Sardara Singh and others moved an application u/s 42 of the Consolidation Act, saying that Khewat No. 40 was in their possession since long and during the course of consolidation this land had been wrongly shown under the ownership of the Gram Panchayat and that the land was not covered under the Common Land Act and the entries of the Consolidation record showing this land to be of Gram Panchayat were wrong and the same should be corrected. Notice of this application was given to the Gram Panchayat, whose categorical stand was that the land in dispute was shamilat deh within the meaning of

Section 2(g) of the Common Lands Act and it has been rightly mutated in the name of the Gram Panchayat. A perusal of the order (Annexure P-2) also shows that Smt. Joginder Kaur Sarpanch of the village had been attending the proceedings regularly, but she did not attend the proceedings on 19.4.1984. The District Development and Panchayat Officer, Kapurthala, made a request for his being impleaded as a party in the proceedings u/s 42 of the Consolidation Act as he was acting as Administrator for the Gram Panchayat Muradpur. Shri Prem Singh, Panchayat Officer, was associated in the proceedings and thereafter Shri Rattan Singh, Clerk of the office of the D.D.P.O. attended the proceedings. Both these officers tried to convince the Director Consolidation of Holdings, that the land in dispute vested in the Gram Panchayat being Shamilat Deh as per the provisions of Section 2(g) of the Common Lands Act and in these circumstances the Gram Panchayat was the rightful manager of the land. After considering the rival contentions of the parties and after examining the revenue record the Director, Consolidation of Holdings, came to the firm finding that private respondents were cultivating the land right from 1940-41 and even prior to that and their possession was continuing as undisturbed. They had been paying annual land revenue. They cultivated this land as owners and they could not be evicted. The plea of the Gram Panchayat as to whether the land in dispute becomes Shamilat Deh or not as defined u/s 2(g) of the Common Lands Act was also considered and was rejected. Finally, the Additional Director, Consolidation of Holdings vide order (Annexure P-2) dated 19.4.1984 held that the transfer of this land in favour of the Gram Panchayat by the Consolidation staff was clearly wrong and the petitioners before him (now private respondents) had simply filed the application u/s 42 of the Consolidation Act for rectification of the mistake which had been committed by the Consolidation staff. In this regard it would like to incorporate para No. 3 of the impugned order (Annexure P-2) as follows :-

"3. I have heard the parties in detail and have gone through the record produced on the file. I have also examined copies of the Jamabahdis attached with the file and find that most of these right-holders are cultivating the Shamlat land right from 1940-41 and even prior to that and their possession on these lands is continuing undisturbed to-date. These lands have been managed and cultivated by the right-holders of the village as co-sharer in possession. They have been paying the actual land revenue for this land as well. They cultivated as owners and they cannot be evicted from this land. In 1961 Village Common Lands Act was passed by which all the common lands were vested in respective Gram Panchayats as specified in Section 2-G of the said Act. The village Common Lands which were not possessed and used by any right-holders alone were covered by the Gram Panchayat Act, whereas the land used and possessed and utilised by the shareholders for cultivation, for tethering cattle or lands covered under the residential purpose or for other purposes sub-servant to agriculture were not covered by the village Common Lands Act. All the Common Lands lying in this village except those used for common purposes like the village schools, the village ponds, the paths, Graveyards, playgrounds etc. etc. have continued to

be in the cultivating possession or in the possession of the right-holders for the purposes subservient to agriculture of all the right-holders of the village from the time much prior to the passing of the Village Common Lands Act 1961. So the lands lying in the cultivating possession and lands individually used by them for purposes subservient to agriculture of the right-holders of the village are not covered under the Village Common Lands Act. The transfer of this land in favour of the Gram Panchayat by the consolidation staff is clearly wrong and the petitioners have filed this petition to correct this mistake committed by the consolidation staff. The request of the petitioners is very correct and genuine. The Gram Panchayat has got absolutely no right or any entitlement for this land. This land is rightly possessed and used by the co-sharers in their own individual rights. From all this, I arrived at a conclusion that only the lands used for common purposes like village schools, ponds, common paths, grave-yards, "Mattis", "Jathhre" and public wells etc. etc. will fall under the Gram Panchayat and the rest of the land possessed and cultivated by the co-sharers is not covered under the village Common Lands Act and this land will be entered in the ownership of Shamlat Deh" under the cultivation of the respective share-holders."

A perusal of the above would show that only a mistake was rectified by the Additional Director, Consolidation of Holdings and had never adjudicated the rights of the parties on title. The Gram Panchayat failed to establish that prior to consolidation, the land in dispute was a Shamlat Deh; rather in the column of "ownership" the revenue entry before the consolidation reads Shamlat Deh Hasab Rasad Khewat and in the column of "possession" it is written Makbuza Malkan, leaving no manner of doubt that prior to consolidation the land in question was being treated as the property of the rightful owners of the villages and had never vested in the Gram Panchayat. The Consolidation Authorities took an erroneous view of the words "Shamlat Deh" when reading the entry, which also speaks of Hasab Rasad Khewat. Once a mistake has been committed by the consolidation staff in preparing the scheme itself, such mistake can be rectified by the Additional Director, Consolidation of Holdings, exercising the powers of the State Government by stretch of time. The principles of natural justice had been complied with. The case of the Gram Panchayat was put by the officials of the D.D.P.O. Earlier Smt. Joginder Kaur was appearing on behalf of the Gram Panchayat. This Court is not in agreement with the submissions of Shri Malkiat Singh, Advocate, that the alleged rightful holders could move u/s 11 of the Common Lands Act for the adjudication of their rights. The basis of wrongful entry in the name of the Gram Panchayat was the mutation itself, made on the basis of mistake committed by the staff of the Consolidation Department. It could not be done so in view of the earlier entry in the Jamabandi and this mistake could be validly rectified by the Additional Director, Consolidation of Holdings. Once the order (Annexure P-2) is held to be good, the order (Annexure P-6) has to stand vide which an effort was made by Shri Mehar Singh, Panch of the Gram Panchayat, in setting aside the order dated 19.4.1981. Shri Mehar Singh wanted that the order dated 19.4.1984 (Annexure P-2) should be reviewed

and his prayer was declined rightly by the Director, Consolidation of Holdings, vide order dated 11.12.1985 (Annexure P6).

15. Shri Malkiat Singh has placed reliance on *Ajit Singh Vs. Smt. Subaghan and Others*, ; *Sat Pal v. The State of Punjab and Ors.*, 1982 P.L.J. 462; *Gram Panchayat Kathemajra Vs. Union of India (UOI) and Others*, ; and submitted that the question of title could not be adjudicated by the Additional Director Consolidation of Holdings, vide order (Annexure P2). There is no dispute about the proposition of law as contained in these authorities but in the present case title has not been considered by the Additional Director, Consolidation of Holdings, nor the mistake has been rectified, which was committed by the consolidation staff during the course of preparing the scheme under the Consolidation Act.. Section 42 of the said Act confers powers on the State Government to rectify this mistake and to pass such orders as it thinks proper with respect to the scheme. Learned counsel for the petitioners has not been able to show that prior to the preparation of the scheme under the Consolidation Act, the land in question had been shown as *Shamilat Deh* within the meaning of Section 2(g) of the Common Lands Act; rather the entry is *Shamilat Deh Jumla Malkan Mushtarka*.

16. Learned counsel for the respondents, on the contrary, has invited my attention to the judgment passed in L.P.A. No. 886 of 1993 (*Bhag Singh and Ors. v. The State of Punjab and Ors.*) in C.W.P. No. 517 of 1986 (*Bhag Singh and Ors. v. The State of Punjab*); wherein the Division Bench of this Court came to the conclusion that at the first instance it is for the Gram Panchayat to prove whether the land vests in it on account of the provisions of Section 2(g) of the Common Lands Act and thereafter the onus would shift to the opposite party to prepare its case under the exception. It was also held by the L.P.A. Bench that when in the revenue record the land has been described as *Shamilat Deh Hasab Rasad Raqba Khewat*, which is in cultivating possession of the proprietors or which has never been put to any common use, such land would not be covered under the definition of "*Shamilat Deh*" as given in Section 2(g) of the Common Lands Act. It was also the dictum of this Division Bench that a wrong old mutation of the land cannot confer any valid title per se. As I submitted earlier, in the present case, the petitioner Gram Panchayat has failed to establish that the land in question vested in it as *Shamilat Deh* or that it had been managing it by giving the land to different persons on lease/licence. There is no revenue record supporting the assertion of the Gram Panchayat. In this view of the matter, the order (Annexure P-2) is perfectly valid and legal and it cannot be said that it had been passed at the back of the petitioner or in violation of the stay order granted by the High Court. The petitioner-Gram Panchayat has not been able to show that the Additional Director, Consolidation of Holdings, while passing the order (Annexure P-2) had received the orders from the High Court staying the proceedings".

17. Resultantly, this Court has come to the firm conclusion that both the writ

petitions are devoid of any merit and are hereby dismissed. All the Civil Misc. Application Nos. 4213 of 1995, 5047 of 1995 and 11541 of 1996 stand disposed of. There shall, however, be no order as to costs.