

(2014) 03 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11853 of 2006

Gram Panchayat Village Jhammat

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 2(g), 42

Citation : (2014) 4 RCR(Civil) 474

Hon'ble Judges : Hemant Gupta, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Kanwaljit Singh, Senior Advocate and B.B.S. Randhawa, Advocate for the Appellant; Jashanjeet Singh, AAG, S.D. Sharma, Senior Advocate and S.P. Sharma, Advocate for the Respondent

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order dated 30.12.2004 passed by the Collector, Ludhiana in exercise of the powers conferred under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act") and the order dated 23.11.2005 passed by the Commissioner affirming the order of the Collector. Vide the aforesaid orders, it was held that the land in question does not vest in the panchayat. The aforesaid orders were passed on the basis of an order dated 22.11.1968 passed under Section 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act, 1948"). The said order reads as under:

"This petition u/s. 42 of the C/H Act is by Bhan Singh and other right holders of village Jhammat for the distribution of the area reserved for the Gram Panchayat out of common pool without compensation amongst the right holders.

No relief can be given unless the same is examined by the Settlement Officer, C/ H Sangrur. He is requested, therefore, to examine the case in the light of Supreme Court Judgment and to bring the scheme in line with the directions

given by the Supreme Court to take such further action in the way as may be necessary.

The petition is rejected."

2. It may be mentioned here that a writ petition was filed by the Gram Panchayat, wherein the Panchayat sought quashing of the order dated 22.11.1968, but the said writ petition was dismissed. Thereafter, the Panchayat initiated proceedings under Section 11 of the Act, which remain unsuccessful. The authorities have taken into consideration the order passed by Additional Director, in exercise of power conferred under section 11 of the Act, to decline the claim of the Gram Panchayat - the petitioner herein.

3. Recently, a Full Bench of this Court in Parkash Singh Vs. Joint Development Commissioner, decided on 08.11.2013 has held that the State Government in exercise of the powers conferred under Section 42 of the Act has no jurisdiction to partition the land carved out at the time of the consolidation. The relevant portion reads as under:

"We, therefore, hold that:- (a) Consolidation authorities, are tribunals of limited jurisdiction; (b) Consolidation authorities exercise powers of revenue officers, under the 1887 Act, a power to record and update fiscal entries and prepare record of rights; (c) but are not empowered to decide a question of title or vest/divest a party of its title; (d) the only authority empowered to determine a question, whether the land is "Shamilat Deh", between a Gram Panchayat and a private individual was the Civil Court but after enactment of Sections 11, 13 and 13-A of the 1961 Act, the Collector and; (e) if the land is "Jumla Mushtarka Malkan", an appropriate forum.

As a necessary consequence an order passed by the Director Consolidation, under Section 42 of the Consolidation Act holding that the land in dispute vests or does not vest in a Gram Panchayat is an order passed on an illegal assumption or appropriation of jurisdiction rendering the exercise of powers by the Director Consolidation null and void in its inception and in its operation and at best an order passed by a tribunal of limited jurisdiction that is not binding on the proprietary or possessory rights of the Gram Panchayat or a private individual before a Court or a Tribunal statutorily empowered to decide such a dispute."

4. In view of the said fact, the basis of the orders passed by the Collector and the Commissioner are not sustainable.

5. We may also observe that the order of this Court passed in a writ petition decided on 20.01.2004 will not merge with the order passed by the Additional Director (Consolidation Holding), Punjab, Chandigarh, as such order has not dealt with any question of vesting of the land in Panchayat in terms of Section 2(g) of the Act.

6. At this stage, learned counsel for the petitioners point out that in fact the land in question was not carved out during consolidation by applying pro-rata cut. The

land in question was owned by the Panchayat. It shall be open to the petitioners to raise such plea before the Collector to whom where the matter is being remitted for fresh decision. In view of the above, we allow the present writ petition. The order dated 30.12.2004 (Annexure P-1) passed by the Collector, Ludhiana and the order dated 23.11.2005 (Annexure P-2) passed by the Commissioner are set aside. The matter is remitted to the Collector, Ludhiana, who shall decide the same in accordance with law.