
(2000) 01 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 868 of 1992

Gurjant Singh and Another

APPELLANT

Vs

Commissioner, Ferozepore Division and Another

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 23A

Citation : AIR 2000 P&H 161 : (2000) 125 PLR 347 : (2000) 2 RCR(Civil) 437

Hon'ble Judges : Arun B. Saharya, C.J.;V.K. Bali, J

Bench : Division Bench

Advocate : Ravinder Chopra, Shiv Kumar and Ravinder Gadok, for the Appellant; G.S. Dhillon, Addl. AG, for Respondent No. 1, J.P.S. Sandhu, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—In a bunch of 163 petitions which came to be disposed of by a common judgment, the learned single Judge upheld the vires of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 and besides some other, dismissed Civil Writ Petitions Nos. 18016, 18018 and 18049 of 1991 on merits as well. Petitioners in Civil Writ Petitions referred to above, being not satisfied have filed the present Letters Patent Appeals bearing Nos. 868, 884 and 869 of 1992 under Clause X of the Letters Patent Act and same as dealt with by the learned single Judge need be disposed of by a common order.

2. The common question that needs adjudication in all these appeals is as to whether Bachat land i.e. land found surplus after putting the land of the proprietors as contributed by them according to their share for the common purposes, vests with Gram Panchayat or continues to be owned by the proprietors of the village. Connected with the question aforesaid is also the question as to whether land which is shown in the revenue records as Bachat land, by making a simple mutation in favour of Gram Panchayat, there being no

basis established for such a change, is it mutation that shall prevail in holding as to with whom the land vests or that such a change has to be completely ignored?

3. Brief facts of the case reveal that Gram Panchayat, Jandoke, Tehsil Muktsar, Distt. Faridkot filed an application for eviction of the petitioners in each case by styling them as trespassers on the land owned by Gram Panchayat. Upon notice, petitioners filed written statements challenging the authority of Sarpanch to file the application and also pleaded that they were owners in possession of the land in question and the land was Bachat land, owners whereof were the proprietors of the village according to their shares. The Collector vide his order dated 20th of October, 1986 ordered eviction of the petitioners constraining them to file an appeal before the learned Commissioner who vide his order dated 18th November, 1987 remanded the case to the Collector to issue fresh notices under Sections 4 and 6 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred to as the Act). After complying with the directions contained in the remand order, the matter was once again determined against the petitioners vide order dated 15th of May, 1989. They were ordered to be evicted from the land in dispute and further ordered to pay compensation of Rs. 10,000/- which if not paid was to be recovered as arrears of land revenue. The order passed by the Collector dated 15th of May, 1989 was upheld by the learned Commissioner vide his order dated 6th of August, 1991. It is in these circumstances that the petitioners filed three writ petitions, referred to above, with the result already indicated in the opening part of the judgment. In view of the questions that have been framed for adjudication as referred to above, which emanate from the finding of the learned single Judge that "it has been found as a fact that initially the land had been entered in the name of "Jumla Malkan" but later on mutation was entered in favour of Gram Panchayat which was duly sanctioned" and further that, "any land which is left for common purposes of the village is also to be under the general superintendence and management of the Gram Panchayat", there is no need to give further details of the case,

4. Mr. Chopra, learned Counsel representing the appellants vehemently contends that the land found Bachat (surplus) after utilising it for common purposes, cannot possibly vest with the Gram Panchayat and this precise question is not res integra having been so held by a string of judicial precedents of Supreme Court and this Court.

5. Before we may, however, notice the judicial precedents cited during the course of arguments, it would be relevant to mention in brief as to what is Bachat or surplus land. It is common case of the parties that in a scheme that is framed under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred as the Act of 1948), every proprietor of the village depending upon the extent of his holding, has to contribute his land for common purposes. Common land which is naturally meant for the common use of the village is, thus, provided by none other than proprietors of the village. A pro rata cut applied to the holding of the proprietors, is what constitutes common

land in a village. The consolidation scheme further provides various purposes for which common land is to be used. The scheme also provides the extent of land ear-marked for such use of the land. If after utilising the land for all common purposes as mentioned in the consolidation scheme, some land is still left out, it is that land which is known as Bachat or surplus land. It is further not disputed during the course of arguments that such Bachat or surplus land is normally recorded in the revenue records as Jumla Mustarka Malkan Hasad Basad Khewat. The revenue records further describe the share of each proprietor which is to the extent of the land contributed by such land owners. The common land, thus, having been contributed by the proprietors of the village by a scheme framed under the Act of 1948, it shall be relevant to make a mention of Sections 18, 21, 23-A and 42 of the 1948 Act, before we might notice the judicial precedents that have been cited before us. Section 18 of the Act of 1948 deals with the land reserved for common purposes whereas Section 21 deals with repartition (sic) accordance with the scheme of consolidation of holdings. So far as Section 23-A of the Act of 1948 is concerned, it deals with the management and control of lands for common purposes. Sections 18, 21 and 23-A read thus :--

"18. Lands reserved for common purposes:-- Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct--

(a) that any land specifically assigned for any common purpose shall ceased to be so assigned and to assign any other land in its place;

(b) that any land under the bed of a stream or torrent flowing through or from the Shiwalik mountain range within the State shall be assigned for any common purpose;

(c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose."

XX XX XX "21. Repartition.-- (1) The Consolidation Officer shall, after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed u/s 20, and the boundaries of the holdings as demarcated shall be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objector pass such order as he considers proper confirming or modifying the repartition."

XX XX XX "23-A. Management and control of lands for common purposes to vest in Panchayats or State Government.--As soon as a scheme comes into force the management and control of all lands assigned or reserved for common purposes

of the village u/s 18,--

(a) in the case of common purposes specified in Sub-clause (iv) of Clause (bb) of Section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and

(b) in the case of any other common purpose, shall vest in the Panchayat of that village; and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly :

Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of consolidation."

Section 42 of the Act of 1948 vests the Government with the power to satisfy itself as to the legality and propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under the Act

6. Inasmuch as we are in agreement with the contention of the learned Counsel representing the appellants that the matter herein is not *res integra* and stands clinched in favour of the appellants by string of judicial precedents, we only hasten to comment that by virtue of Section 23-A which is a charging section i.e. section vesting control of land for common purposes for the Gram Panchayat refers only of the land assigned or reserved for common purposes and therefore, such control or management cannot be extended to lands which have been found surplus.

7. Time is now ripe to take notice of judicial precedents that have been cited before us in support of the contention of the learned Counsel as noted above.

8. Apex Court in *Bhagat Ram and Others Vs. State of Punjab and Others*, held that a scheme reserving land for income of Panchayat contravenes the provisions of Article 31-A(1) Second proviso of the Constitution of India and, therefore, must be modified so as to bring it within the scope of law. Insofar as reserving common land for the income of Gram Panchayat is concerned, the same is hit by Article 31-A(1) second proviso of the Constitution and we may mention that all that could be urged in support of the judgment rendered by the learned single Judge is that even though it is a surplus or *Bachat* land, the management and control of the land shall vest with panchayat to augment income of the Gram Panchayat.

9. A single Bench of this Court in *Des Raj v. Gram Sabha of village Lodhot* 1981 PLJ 300, held that when entries in the revenue records show land in the name of proprietors i.e. "Makbuza Malkan" and the same is not shown to be used according to revenue records for the benefits of village community or a part thereof or for common purposes of the village, the land shall not fall within the

definition of Shamilat Deh u/s 2(g)(3) of the Act.

10. A single Bench of this Court in Chajju Ram v. Joint Director, Panchayats 1986 PLJ 293, held that when land is kept apart as Mustarka Malkan and as per revenue record it vests in proprietary body and used for agricultural purposes by proprietors of the village and not for any common purpose of the village, it does not come in the ambit of Shamilat Deh and further that land carved out during consolidation after applying cut on landowners not reserved for common purposes of village but kept apart as Mustarka Malkan shall not be Shamilat Deh.

11. A single Bench of this Court in Gram Panchayat Dunia Majri v. Director, Consolidation of Holding 1991 PLJ 46, relying upon a Full Bench judgment of this Court in Gram Panchayat Sahara (Formerly Dhumma) etc. v. Baldev Singh. 1977 PLJ 276, and some other judicial precedents held that when land (Bachat) was deducted from the holdings of the proprietors pro rata (Hasab Rasad Khewat) the plea that entries in the revenue records like Hasab Rasad Khewat, Jumla Mustarka Malkan or Jumla Malkan Wa Digar Haqdarani Arazi Hasad Rasta Raqba, would not entitle right holders for common purposes was without any basis.

12. A single Bench of this Court in Baj Singh v. State of Punjab 1992 PLJ 186, held that Bachat land i.e. land remaining after utilization of land deducted from the holding of proprietors by applying; a pro rata cut on holdings required for common purposes vests in "Mustarka Malkan" from whom land had initially been taken for common purposes and it does not vest in Gram Panchayat. It was further held that mutations earlier entered in the name of Gram Panchayat would not change legal position that land never belonged to Gram Panchayat.

13. A Division Bench of this Court in Kala Singh v. Commissioner, Hissar Division 1984 PLJ 169, relying upon the judgment of the Supreme Court in Bhagat Ram v. State of Punjab case supra held that where the land admittedly was reserved for common purposes during consolidation proceedings, such land belongs to proprietary body and does not vest in the Gram Panchayat.

14. A Division Bench of this Court in Joginder Singh and Others Vs. Director, Consolidation of Holdings, Punjab, Chandigarh and Others, held that when land was described in the record-of-rights prior to consolidation as banjar and banjar qadim in individual cultivating possession of Khewatdars and in column of cultivation recorded as in possession of Malkan (owners) while in column pertaining to assessment recorded as Bila Lagan Bawajah Kabza Sab Ka Hisedari (without payment of rent) being in possession of co-sharers, it would not fall within the definition of Shamilat Deh.

15. A Division Bench of this Court in Bhagwan Singh v. Director, Consolidation of Holdings, Punjab 1997 (1) PLJ 458, held that land reserved for common purpose by applying a pro rata cut continues to be vested with the owners. Only management passed over to Gram Panchayat and such land cannot be reserved for income of Grain Panchayat by applying pro rata cut on the proprietors of land during consolidation proceedings. It has further been held that unutilised land,

after land utilised for common purpose, for which it is reserved is known as Bachat land and that the proprietors of the village are the co-owners of the Bachat land and can seek repartition. Another Division Bench of this Court in Gram Panchayat village Bhedpura v. The Additional Director, Consolidation 1997 (1) PLJ 535, and which Bench was presided over by the Hon"ble Judge who decided the present cases held that Bachat land should be redistributed to the proprietors from whom it was taken and if that was wrongly treated in the name of Gram Panchayat, the Gram Panchayat does not become entitled to it.

16. In view of the consistent view taken by the Hon"ble Supreme Court and this Court from time to time, it is not possible to hold in tune with the findings recorded by the learned single Judge and, therefore, it has to be held that the Bachat land i.e. land which remains unutilised after utilising the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat. Inasmuch, as there is no material brought on records of the case showing how a mutation came to be entered in favour of Gram Panchayat with regard to land which was consistently shown in the records-of-rights as belonging to proprietors, the mutation entry in favour of Gram Panchayat has to be completely ignored. It may be mentioned that this view was also taken by the same Hon"ble Judge in a D.B. who decided the writ petitions giving rise to the present Letters Patent Appeals. It is quite apparent that the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and the judgments that have been cited before us were not brought to the notice of the learned single Judge. The judgment is appeal recorded by the learned single Judge in Civil Writ Petitions Nos. 18016, 18018 and 18049 of 1991 cannot, thus, sustain.

17. Before we may part with this order, we would like to mention that several cases of this nature are being filed almost every day as is also informed to us by the learned Counsel representing the parties. It appears to us that Gram Panchayat even though conscious of the fact that such lands cannot possibly belong to it rakes up the issue primarily for the reason that some Individuals have occupied the Bachat land. The present case also provides such an example. It has been repeatedly held by this Court and reference whereof has already been made above that the unutilised land after utilising the land ear-marked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes. This exercise, it appears, has not been done throughout the States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh even though there is a specific provision for doing that. We have already reproduced the relevant sections of the Act which in turn do contain the provision of repartition. This non-exercise of statutory provision has led to wide spread litigation both in States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh. With a view to curb this unnecessary and avoidable litigation as also keeping in view the common good and benefit of proprietors who had contributed land belonging to them for common purposes,

we not only direct in this case that the concerned authorities under the Act should re-distribute the Bachat land amongst the proprietors according to their shares but this exercise must be done throughout the States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh. A copy of this order, thus, be sent to the Chief Secretaries of Punjab and Haryana, Civil Secretariat, Chandigarh and Adviser to the Administrator, Union Territory, Chandigarh with a direction that proper instructions be passed on to the concerned authorities under the Statute to redistribute/repartition Bachat land amongst the proprietors according to their shares. This exercise be done as expeditiously as possible and preferably within six months proceedings for repartition must commence. Liberty to apply in the event of non-compliance of directions, referred to above. Resultantly, the present appeals are allowed. Parties are, however, left to their own costs.