

(2002) 11 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15009 of 2000

Gurmeet Singh and Another	Vs	APPELLANT
Consolidation Officer and Others		RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Citation : (2003) 1 ILR (P&H) 537 : (2003) 133 PLR 444 : (2003) 1 RCR(Civil) 678

Hon'ble Judges : Satish Kumar Mittal, J; S.S. Nijjer, J

Bench : Division Bench

Advocate : S.S. Salar, for the Appellant; K.S. Chahal, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Petitioners, Gurmeet Singh and Harbans Singh, have filed the present petition under Articles 226/227 of the Constitution of India for issuance of a -writ in the nature of Certiorari for quashing the mutation Nos. 1743 (Annexure P-3) and 1744 (Annexure P-4) vide which the land recorded in the ownership of Shamlat Patti Rajputan Hasab Pamana Hakiat and Shamlat Patti Awana Hasab Pamana Hakiat, were changed by the Assistant Consolidation Officer on the asking of the Deputy Commissioner, and entered the same in the name of individual shareholders/proprietors .

2. The brief facts of the case are that the consolidation proceedings in the village Bhamian Khurd took place about 20 years ago. In those proceedings, the land in question was recorded in the name of Shamlat Patti Rajputan Hasab Pamana Hakiat and Shamlat Patti Awana Hasab Pamana Hakiat. On 5.5.2000, an application was filed by respondents 2 to 9 before the Deputy Commissioner, Ludhiana with a prayer to direct the Assistant Consolidation Officer, Ludhiana to mutate the land in question in the name of the applicants in accordance with the partitions effected by them between themselves. The said application was to the following effect:-

"To

The Deputy Commissioner, Ludhiana.

Sub: Regarding Mutation.

Sir,

It is requested that we, the residents of village Bhamian Khurd, Tehsil and District Ludhiana have partitioned our land recorded as Mustarka Malkans in accordance with judgment of Punjab and Haryana High Court dated 18.1.2000 passed in writ petition No. 868 of 92. The Khasra numbers of the land are 157/19/6-7, 157/22(8-0), 23/1(1-4), 10//7(2-0), 8(6-0), 15/18/2(1-4), 21(6-14), 227/5(3-8), 23//1(8-0), 23//2(8-0), 47/25 min (0-8), 10//9/2(6-9), 207/14/1/2, 8/2(2-2).

Therefore requested that the Assistant Consolidation Officer, Ludhiana may be directed to enter the mutation in accordance with partition. Yours faithfully,
Gurmail Singh and Ors.."

3. The aforesaid application was forwarded by the Deputy Commissioner to the Consolidation Officer, Ludhiana for necessary action vide his letter dated 19.5.2000, which is reproduced below:-

"From

The Deputy Commissioner, Ludhiana.

To

Consolidation Officer,

Ludhiana.

No. 2163/SK/NS/K dated 19.5.2000

Sub: Regarding mutation.

An application has been received from the residents of village Bhamian Khurd. This application is to be dealt by your office. Therefore, the original application alongwith a photo-copy of the judgment dated 18.1.2000 passed in LPA No. 868 of 92 passed by the Punjab and Haryana High Court is sent to you. Sd/- for Deputy Commissioner, Ludhiana."

4. The aforesaid letter was dealt with by the Assistant Consolidation Officer on 29.5.2000, on which the following order was passed:-

"Halqa Palwari to enter mutation after enquiry and put up. Sd/- ACO 29-5-2000."

5. Thereupon, the Halqa Patwari entered the impugned mutations Annexures P-3 and P-4 in the name of the proprietors of the village on the same day by changing the ownership of the same from the name of Shamlat Patti Rajputan and Shamlat Patti Awana.

6. The petitioners have challenged the aforesaid mutations on the ground that neither the Deputy Commissioner nor the Assistant Consolidation Officer was having any jurisdiction to change the mutation from the name of Shamilat Patti Rajputan and Shamlat Patti Awana in the name of individual proprietors. He submitted that after completion of the consolidation in the village, the consolidation authorities became functus-officio and the same have no jurisdiction to change the mutations. It is for the Assistant Collector 1st Grade under the Punjab Land Revenue Act to partition the land among the co-sharers if the land is a Bachat land belonging to the proprietors. In the present case, the Assistant Consolidation Officer was having no jurisdiction at all. He had changed the mutation in the name of the proprietors, even without holding an enquiry, just on the asking of the Deputy Commissioner. Neither any notice was issued to any person who might be affected by the change of mutation nor any enquiry was held about the nature of the land, whether it was a Bachat land or a Shamilat deh used for the common purposes of the village. He further submitted that the mutations cannot be changed at the asking of the Deputy Commissioner, on the basis of the judgment passed in L.P.A. No. 868 of 1992, titled as Gurjant Singh and Another Vs. Commissioner, Ferozepore Division and Another, .

7. Pursuant to notice issued by this Court on November 6, 2000, respondents No. 2 to 9 have filed the written statement. However, no written statement has been filed on behalf of respondent No. 1.

8. The learned counsel for respondents No. 2 to 9 submitted that the land in question is the Bachat land which remained unutilised after utilising the land for common purposes so provided under the consolidation scheme. Such land vests with the proprietors and has to be re-distributed among them in view of the Division Bench decision of this Court in Gurjant Singh's case (supra). Therefore, the Deputy Commissioner was right in forwarding the application filed by the shareholders to the consolidation department for changing the mutation of the land in question in favour of the individual proprietors and for re-distributing the same according to their shares in the Bachat land. He has also submitted that an alternative remedy of appeal was available to the petitioners to challenge the impugned mutations, therefore, the present writ petition is not maintainable.

9. We have considered the submissions made by the learned counsel for the parties. We are of the opinion that the Assistant Consolidation Officer was having no jurisdiction to change the mutations from the name of Shamilat Patti Rajputan and Shamilat Patti Awana to the name of individual proprietors and to re-partition the land. In this regard, reference can be made to a decision of this Court in Gram Panchayat Vs. The Director, Consolidation of Holdings and Another, . further, whether the land in question is a Bachat land or Shamlat deh which vests in the Gram Panchayat, being the land belonging to Shamlat Patti, in view of Section 2(g) of the Punjab Village Common lands (Regulation) Act (hereinafter referred to as the Act), is to be decided before changing the mutation in the name of the individual proprietors. Such question can only be

decided by the authorities under the Act and the consolidation authority has no jurisdiction to decide such question as so held by the Hon^{ble} Supreme Court in Gram Panchayat, Nurpur Vs. State of Punjab and Others, .

10. The learned counsel for respondents No. 2 to 9 contended that the Deputy Commissioner had directed the Consolidation Officer to change the mutation of the land in question in favour of the individual proprietors, in view of the general directions given by a Division Bench of this Court in Gurjant Singh's case (supra). This contention of the learned counsel for respondents No. 2 to 9 is also not acceptable. The Hon^{ble} Supreme Court in SLP No. 16173-16178 of 2000 (State of Punjab v. Gurjant Singh and Ors.), decided on 27.4.2001, has set aside the general directions issued by the Division Bench of this Court for directing the authorities to re-partition the land. Therefore, the impugned action of the Assistant Consolidation Officer as well as of the Deputy Commissioner is wholly without jurisdiction and without any authority of law. The partition of the Bachat land can only be sought by the proprietors by filing an appropriate application before the revenue authorities under the Punjab Land Revenue Act. The question whether the land in question is Bachat land or Shamlat Dch vests in Gram Panchayat, is to be decided by the appropriate authority under the Act.

11. In the present case, the Assistant Consolidation Officer, who is having no jurisdiction at all, has changed the mutation of the land belonging to Shamlat Patti Rajputan and Shamlat Patti Awana in the name of individual proprietors, even without holding an enquiry and without issuing any notice or providing an opportunity of hearing to the affected persons including the Gram Panchayat. Thus, the impugned orders, Annexures P-3 and P-4, vide which the mutations have been changed and sanctioned in favour of the individual proprietors, are wholly without jurisdiction and without any authority of law and thus are null and void being violative of the principles of natural justice. We are also not inclined to accept the contention of the learned counsel for respondents No. 2 to 9 regarding the alternative remedy available to the petitioner. We have found that the impugned orders are wholly without jurisdiction and without any authority of law, therefore, we are inclined to quash these orders under the inherent powers of this Court under Articles 226/227 of the Constitution of India, even though an alternative remedy may be available to the petitioners. However, we observe that respondents no. 2 to 9, if so advised, can file an appropriate application before the appropriate authority for deciding the question regarding the nature of the land as well as for re-partitioning the same among the shareholders if the land in question can be partitioned under the law.

12. With the aforesaid observations, we allow the writ petition and quash the impugned orders dated 6.6.2000, Annexures P-3 and P-4, with no order as to costs.