
(2013) 03 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18183 of 1997

Subhash Chand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-03-2013

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 18, 23A
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2(g)(6)

Citation : (2013) 170 PLR 251

Hon'ble Judges : Rekha Mittal, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : Adarsh Jain, for the Appellant; Lavanya Poul, A.A.G, Haryana for Respondents No. 1 to 3 and Mr. Aditya Jain for Mr. Sudhir Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—The petitioner prays for issuance of a writ of certiorari, quashing orders dated 29.07.1988, 11.06.1992, passed by the Collector, Ferozepur Jhirka, Gurgaon and the Commissioner, Gurgaon Division, Gurgaon, respectively, and Mutation No. 2077 dated 07.08.1992. Counsel for the petitioner fairly concedes that in view of judgment in Jai Singh and Others Vs. State of Haryana, the question of Jumla Mushtarka Malkan, land vesting in a Gram Panchayat for management and control having been settled, he does not press the petition with respect to impugned orders for ejectment but prays that the petitioner may be allowed to approach an appropriate forum for adjudication of his plea that as the Wazib-UI-Arz clearly records that sarkandas are grown on the land, in dispute, the land vests in proprietors for all purposes.

2. Counsel for respondent No. 4-Gram Panchayat submits that as the land, in dispute, is Jumla Mushtarka Malkan, there is no question of the land vesting in the petitioner, whether as proprietor or otherwise. It is further submitted that by

virtue of Section 2(g)(6) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as the "1961 Act"), land created under Sections 18 and 23-A of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "1948 Act"), read with Rule 16(ii) of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as the "1949 Rules"), vests in a Gram Panchayat for management and control. The petitioner is in unauthorised occupation and, therefore, has rightly been ejected.

3. We have heard counsel for the parties, perused the impugned orders and find no reason to entertain the petition, as the land, in dispute, is admittedly recorded as Jumla Mushtarka Malkan. A parcel of land recorded, as Jumla Mushtarka Malkan, in the revenue record raises an inference that it was created during consolidation, for common purposes of the village and the Panchayat, after applying a pro-rata cut on the holdings of proprietors in accordance with Sections 18 and 23-A of the 1948 Act and Rule 16(ii) of the 1949 Rules. The presumption, so raised, was to be rebutted by the petitioner but in the absence of any such evidence, we find no reason to interfere with findings recorded by the Collector and the Commissioner in summary proceedings, ordering the eviction of the petitioner, affirm the impugned orders and dismiss the writ petition. The petitioner may, however, seek his remedy in accordance with law, with respect to the alleged question of title. In case, such a petition is filed, the petitioner would be at liberty to pray before the concerned authority that his possession may be protected.

Rekha Mittal, J.