(2011) 11 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4536 of 1988 and C.W.P. No. 7906 of 2007

Surti alias Surat Singh APPELLANT

Vs

Joint Director, Panchayats (Commissioner), Punjab and others RESPONDENT

Date of Decision : 14-11-2011

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 : (2012) 2 RCR(Civil) 621

Hon'ble Judges : K.Kannan, J

Advocate : Mr. Raj Kumar Garg, Advocate.For the Respondent Nos. I to 2, Mr. S.S.Sahu, A.A.G., Punjab, None., Advocates for appearing Parties

Judgement

K. Kannan, J.—Both the writ petitions challenge the order of eviction passed on the applications filed by the Gram Panchayat, Khiala against the respective petitioners in the above writ petitions. The respective contentions in the writ petitions were that the relevant entries in the revenue records against the column of ownership in the jamabandi, it was shown as Mustarka Malkan v. Digar Hakdaran Hasab Rasab Khewat. The contention was that a property, which had been shown as Mustarka Malkan Land must be taken as a property reserved for common purpose vesting in the Panchayat. The defendants respective possession of the property was under authorized and they will liable to be evicted.

2. Learned counsel appearing on behalf of the petitioners contend that the entries only meant that the property was in the hands of proprietors as per the shares and did not make an inference that the property vested with the Panchayat. The Panchayat''s basis for the claim is that in terms of Section 2(g)(6) of the Panchayat Village Common Lands (Regulation) Act, 1961 with the explanation appended that the property must be understood only as reserved for common purpose vesting in Panchayat. The relevant subsection with explanation reads as under:

"2(g)(6) Lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act, 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23A of the aforesaid Act.

Explanation: Lands entered in the column of ownership of record of rights as ''Jumla Malkan Wa Digar Hagdaran Ararzi Hassab Rasad'', shall be shamlat deh within the meaning of this section".

3. The constitutional validity of the Section was the subject of consideration by Full Bench of this Court in Jai Singh v. State of Haryana, (20032)134 P.L.R. 658 and the decision is a complete answer to the contentions raised in the writ petition.

4. The Full Bench had dealt with the provisions under the East Punjab (Consolidation of Prevention and Fragmentation) Act, 1948 with their respective Rules. The Full Bench particularly made a reference to the effect of final scheme made under the 1948 Act and what the amendment provisions with explanation could mean. The Court summed up its judgment in para 62 as follows:

"62. In view of the discussion made above, we hold that:

i) Subsection (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;

ii) The unamended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and other lands;

iii) The lands which have been contributed by the proprietors on the basis prorata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Hagdaran Rasad Arazi Khervat and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of subsection (6) of Section 2(g) and the explanation appended thereto or any other provisions of Act of 1961 or the Act of 1948;

iv) All such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar

Hagdaran Hasab Rasad Aral Khewat etc."

5. The most crucial thing through Full Bench ruling is that explanation given to section 2(g)(6) ought not to be understood as an admission of the fact that the property vested with the Panchayat. It merely records the existing state of affairs that the proprietors had originally suffered a cut in the respective holding to bring it to a common pool for the purpose of consolidation, such of those properties, which are reserved for a common purpose, whether actually utilized or not would vest in the Panchayat. However, such of those properties which are not reserved for common purpose will not vest in the Panchayat. Neither the issue that the mutation stood in the name of the Panchayat nor the fact that the mutation was entered in the name of the Panchayat could be, therefore, conclusive. What would be conclusive is whether a property had been set apart for a common purpose. If not, then the entry that the property is Jumla Mustaraka Malkan must only be understood as the property retained by the proprietors to the extent of their shares. It cannot, therefore, be a ground for the Panchayat to seek for dispossession. Nothing has been brought on record by the Panchayat to show that under the consolidation scheme, the property had been set apart for any common purpose and notified as such. This view finds affirmation through subsequent decisions of this Court, marking reliance on the judgment of the Full Bench in Rant Ratti v. State of Haryana, (2010)2 R.C.R. 576. This Court had held that lands which were recorded in the record of rights as Jumla, Mustarka Malkan Wa Digar Hagdaran Hasab Rasad, which have not been shown to be reserved for common purpose in the consolidation proceedings, would not vest in the Gram Panchayat. In Gram Panchayat Village Dhingara v. State of Haryana, (20094)156P.L.R. 480, a Division Bench of this Court had held that the land recorded as Jumla Mustarka Mulkan during consolidation and not reserved or utilized for any common purposes does not vest in Panchayat and is owned by private persons, who are the proprietors.

6. The orders of eviction passed by the parties are set aside and the writ petitions are allowed.

