

(2001) 11 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3924 of 2000 (O and M)

Teja Singh and Others

APPELLANT

Vs

Commissioner (J.D.C.), R.D. and Panchayats, Punjab and Others

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

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

Citation : (2002) 1 RCR(Civil) 758

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : R.K. Battas and Munish Jolly, for the Appellant; Sushant Maini and Hardeep Singh, for the Respondent

Final Decision : Allowed

Judgement

Amar Dutt, J.—The petitioners land-owners of village Salempur have filed this writ petition for issuance of a writ of certiorari quashing the order Annexure P.3 an order passed by the Collector, Fatehgarh Sahib rejecting their application for declaring them to be owners of the land in dispute and a mandamus directing the respondent No. 2 to transfer back the possession of the land as Mushtaraku Malkan to the land owners of the village.

2. According to the petitioners in the proceedings for consolidation of holdings in village Salempur out of the entire land put into the hotch-potch after repartition same was shown as "Bachai" land which according to the Scheme of partition was reserved by the owners for the common purposes of the village. The petitioners claim that this land could not be treated as "Shamlal deb" and had to be repartitioned amongst the proprietors according to their shares. They further submitted that the application for partition of the land had wrongly been dismissed.

3. The short point which arises in this case for consideration is whether the

ownership of the land shown as "Mushtaraka Malkan" and under the management and control of the Gram Panchayat in view of Section 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1961 (hereinafter referred to as the Act) vests in the same and if not whether the right-holders would be entitled to have it repartitioned and the possession handed over to them.

4. The matter in dispute has been conclusively settled by this Court in *Gurjant Singh and Anr. v. Commissioner, Ferozepore Division, Ferozepore* and Anr. 2000 2 P.L.R. 347 wherein it was 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.

5. This view has not been upset by the Hon'ble Supreme Court in Civil Appeal Nos. 5709-5714 of 2001 *State of Punjab v. Gurjant Singh and Ors.* 2001 .A. 5709 .

6. In view of this the impugned orders are set aside and a direction is issued to Respondent No. 2 to take necessary steps for repartitioning of the land to the right-holders and handing over the possession thereof to them.