

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 7832 of 2013 (O&M)
Date of Decision : 16.03.2015

Gurdeep Singh and anotherPetitioners

Versus

Gurmeet Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. M.L. Saggar, Senior Advocate with
Mr. Gaurav Grover, Advocate
for the petitioners.

Mr. J.S. Bhandohal, Advocate
for the respondents.

Mr. Sukhmeet Singh, Advocate
for applicant-Gram Panchayat.

R.P. Nagrath, J.

The petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside order Annexure P-1 passed by the trial Court and order Annexure P-2 of the Appellate Court whereby prayer of the petitioners for grant of *ad interim* injunction under Order XXIX Rules 1 and 2 of the Code of Civil Procedure (CPC) has been declined.

2. The petitioners have filed suit for permanent injunction, in respect of 109 kanals 6 marlas of the land situated within the revenue limits of village Kahanpura claiming to have purchased

from different persons vide different sale deeds. Annexure P-14 is the copy of plaint. After purchase of the land, a tube-well connection has also been installed in the name of petitioner no. 1.

3. According to the respondents, the suit land is *Jumla Mushtarka Malkan* under the management and control of the *Gram Panchayat* which is giving the land on lease from year to year basis to the highest bidders. Respondents no. 1 to 3 are stated to be the lessees of *Gram Panchayat* alongwith Kashmir Gir son of Bant Gir. The petitioners are stated to be influential persons and in connivance with the Revenue Authorities got sanctioned the mutation of the land in the name of Nathu Singh and others illegally and unlawfully and that mutation No. 941 dated 17.05.2005, is under challenge before Divisional Commissioner, Patiala and Director Consolidation, Jalandhar. The Divisional Commissioner, Patiala has already stayed the proceedings of aforesaid illegal mutation.

4. It was further stated that the petitioners in fact filed two writ petitions in this Court for staying auction of the land and both these petitions were dismissed on 05.05.2009 and 14.12.2010, respectively. These material facts were suppressed by the petitioners in the suit filed by them and therefore, they are not entitled to discretionary relief of injunction. *Gram Panchayat* of village in fact is exclusive owner in possession of the suit property since the year 1938. The Deputy Commissioner, Fatehgarh Sahib vide his report dated 07.08.2006 conducted an enquiry regarding

the suit property and it was found that Jatinder Singh, Tehsildar wrongly and illegally sanctioned the mutation regarding the suit property in favour of Nathu Singh and others. The report was sent to Financial Commissioner (Revenue), Punjab. It was further stated that income derived from auctioning the land in dispute is being used by *Gram Panchayat* for development work of the village. This land is a public property and it is entered in the name of *Jumla Mushtarka Malkan* in the *jamabandi* for the year 1997-98. Therefore, the suit was also stated to be bad for non-joinder of *Gram Panchayat* as necessary party. The detail of the specific land given by *Gram Panchayat* on lease in public auction from the years 2012 to 2014 to the respondents, is mentioned in the written statement (Annexure P-15).

5. An elaborate replication was filed by the petitioners. It was stated that petitioners had earlier filed the writ petition only with regard to auction of the land but the period of auction having expired, as such the writ petitions were dismissed. It was further stated that there is no order nor any document in support of ownership of the suit land with the *Gram Panchayat*. It was further highlighted that the residents/right holders of the village filed a petition before Director Consolidation of Holdings, Punjab for partition which was allowed on 10.09.1996 and it was directed to redistribute the land amongst the right holders. *Gram Panchayat* filed CWP No. 4151 of 1997 before this Court which was dismissed on 21.03.1997 by a Division Bench holding that order passed by the

Director Consolidation of Holdings was well reasoned. That writ petition was dismissed in limine. The order of this Court has attained finality because the same was not challenged further by the *Gram Panchayat* in the Hon'ble Supreme Court.

6. In terms of the order passed by the Director Consolidation of Holdings, the land was distributed amongst the right holders and the mutation to this effect was also entered and sanctioned. *Gram Panchayat* also filed a petition No. 25 of 23.08.2005 before the Collector, under Section 11 of the Punjab Village Common Lands Regulation Act, 1961 (for short 'the Act of 1961') for declaring the *Gram Panchayat* as owner, and the same was dismissed on 16.10.2007. *Gram Panchayat* also filed Civil Suit No. 280 of 14.09.2005 titled "*Gram Panchayat vs. Jumla Malkaan*" for declaration, challenging the order sanctioning mutation but that suit was dismissed on 23.08.2006. It was further stated that *Gram Panchayat* filed an appeal against the sanction of mutation in the Court of Collector and that appeal was also dismissed on 09.07.2007.

7. Some of the right holders, namely; Hakam Singh and others filed a petition under Section 10-A of the Act of 1961 before the Collector/DDPO, Fatehgarh Sahib challenging the action of *Gram Panchayat* in auctioning the land. That petition is titled "*Nazar Singh and others vs. Gram Panchayat and others*" which was disposed of on 20.03.2006 holding that *Gram Panchayat* shall not auction the land in suit. *Gram Panchayat* preferred appeal

before Joint Development Commissioner, Punjab, which was dismissed on 06.07.2007. It is, therefore, stated that the order passed by the Collector/DDPO, Fatehgarh Sahib has become final. It is stated that the petitioners purchased the property from some of the right holders through different sale deeds. One of the vendor of the petitioners is Nazar Singh aforesaid and his brothers and sisters. Nazar Singh executed the sale deed in favour of the petitioners on 18.04.2006. The electric connection was granted by the department of Electricity to the petitioners on the basis of an order passed by the Consumer Forum in a complaint No. 253 dated 13.10.2008. The petitioners had sown wheat crop over the suit land in *Hari* 2012. While petitioners were to harvest the crop, *Gram Panchayat* of the village moved a false application against the petitioners at Police Station Mandi Gobindgarh but on enquiry the application was found to be false and police submitted the report dated 21.04.2012 in favour of the petitioners. It was further stated that the appeal filed against the order of Collector dated 09.07.2007 is barred by limitation and not maintainable. Any such appeal does not have any bearing on the rights of the petitioners and other right holders and till the filing of replication the mutation in question had not been set aside.

8. It was also stated that an enquiry was conducted into the allegations against Jatinder Singh, Tehsildar by SDM Munak. The enquiry officer, after recording statements of the parties held that the allegations against Tehsildar were not proved as the

Tehsildar acted in accordance with law. Since *Gram Panchayat* was not in possession of the land it has no competence to lease out the same to the respondents.

9. I have heard learned counsel for the parties, perused the impugned orders and the paper-book.

10. It would be quite important to refer to sub-rule (ii) of Rule 16 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter to be referred to as "the Rules"). It says that in an estate or estates where during consolidation proceedings there is no *shamlat deh* land or such land is considered inadequate, land shall be reserved for the village Panchayat and for other common purposes, under section 18(c) of the Act, out of the common pool of the village [at the scale given in the schedule to these rules]. Proprietary rights in respect of land so reserved (except the area reserved for the extension of *abadi* of proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned and it shall be entered in the column of ownership of record of rights as (*Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad Raqba*). The management of such land shall be done by the *Panchayat* of the estate or estates concerned on behalf of the village proprietary body and the *Panchayat* shall have the right to utilize the income derived from the land so reserved for the common needs and the benefits of the estate or estates concerned].

11. In a suit for injunction, the plaintiffs have to make out a

prima facie case to substantiate the allegations that they are in possession of the suit property. The whole of the petitioners' case rests on the sale deeds obtained by them from different residents of village Kahanpura stated to be the proprietors of the village. This right of the proprietors purportedly emanated from an order dated 10.09.1996 passed by the Director, Consolidation of Holdings under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act of 1948").

12. *Gram Panchayat* of village Kahanpura challenged the order of repartition of the land belonging to *Mushtarka Malkan* and described as *Haqdarani Hassab Rasad Raqba Khewatdar* by filing CWP No. 4151 of 1997 and that petition was dismissed by this Court in limine on 21.03.1997. It was held as under:-

*"The disputed land is recorded in the revenue record to be belonging to Mushtarka Malkan waa Haqdarani Hassab Rasad Raqba Khewatdar and, therefore, the same vests in the right holders of the village. In view thereof, the Director Consolidation has rightly ordered the repartition. No interference is called for particularly when the Director while remanding the case has clearly observed that the **Consolidation Officer would redistribute only remaining land amongst the right holders after keeping the land which is required for common purposes of the***

village as per schedule attached with the Consolidation Rules. The order is well reasoned.

Dismissed in limine. (Emphasis supplied)

13. Learned senior counsel for the petitioners, vehemently, contended that the order of repartition thus attained finality and therefore, subsequent challenge to mutation no. 941 dated 17.05.2005 sanctioned on the basis of order of repartition would be of no consequence.

14. The entire law relating to the orders passed by the Consolidation authorities has been dealt with by a Full Bench of this Court in **Parkash Singh and others vs. Joint Development Commissioner, Punjab and others, 2014 (2) RCR (Civil) 721**. It was held that consolidation authorities are not empowered to decide a disputed question of title. It was held that an order passed by the Director Consolidation under Section 42 of 1948 Act, holding that the land in dispute vests or does not vest in a *Gram Panchayat* is an order passed on an illegal assumption or appropriation of jurisdiction rendering the exercise of powers by the Director Consolidation, and thus is null and void in its inception and at best an order passed by a tribunal of limited jurisdiction that is not binding on the proprietary or possessory rights of the *Gram Panchayat* or a private individual before a Court or a Tribunal statutorily empowered to decide such a dispute.

15. It was also held by this Court in ***Parkash Singh's case (supra)*** as under:-

“52. We, therefore, hold that:- (a) Consolidation authorities, are tribunals of limited jurisdiction; (b) Consolidation authorities exercise powers of revenue officers, under the 1887 Act, a power to record and update fiscal entries and prepare record of rights; (c) but are not empowered to decide a question of title or vest/divest a party of its title; (d) the only authority empowered to determine a question, whether the land is "Shamilat Deh", between a Gram Panchayat and a private individual was the Civil Court but after enactment of Sections 11, 13 and 13-A of the 1961 Act, the Collector and; (e) if the land is "Jumla Mushtarka Malkan", an appropriate forum.”

16. In respect of the land described as *Jumla Mushtarka Malkan*, it was observed that an appraisal of provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (for short “1961 Act”) makes it absolutely clear that “*Jumla Mushtarka Malkan*” land is not included in the *Shamlat Deh* and therefore, provisions of 1961 Act including Section 11 thereof do not apply if the land is “*Jumla Mushtarka Malkan*”. It was further held that the only forum available to a person who raises a dispute regarding title in “*Jumla Mushtarka Malkan*” is the principle court of civil jurisdiction having jurisdiction in the matter as provided under

Section 9 of the Code of Civil Procedure.

17. It was further held by Hon'ble Full Bench in **Parkash Singh's case (supra)** as under:-

“76. Now reverting to the dispute in hand. A perusal of the order passed under Section 42 of the Consolidation Act reveals that the Additional Director Consolidation, while ordering correction, in orders passed during consolidation, has held that as the land belongs to proprietors it shall be redistributed amongst proprietors. It would be appropriate to reiterate that authorities, exercising power under Section 42 of the Consolidation Act, may have the power to order correction of errors in the scheme or orders passed during consolidation but are not empowered or competent to decide a question of title, much less that land vests or does not vest in a Gram Panchayat. The order passed by a Director or Additional Director of Consolidation, in the exercise of power under Section 42 of the Consolidation Act, is simpliciter an order, passed, to correct errors in, Consolidation proceedings and nothing more. Consolidation officers and other authorities are tribunals of limited jurisdiction, conferred with power to order

corrections but are not conferred with power to decide disputed questions of title. The affirmation of their orders by dismissal of writ petitions or special leave petitions is an affirmation of their power to order corrections and not an affirmation of a power to decide a question of title or a binding adjudication on a question of title. Even otherwise, an order passed by a tribunal of limited jurisdiction, particularly on a question of title, cannot operate as resjudicata.

78. *The principle of resjudicata, applies where the former order, in this case, an order passed by Consolidation authorities was passed by a Court of competent jurisdiction, i.e., a Court competent to decide a question of title. The adjudication by Consolidation authorities would at best be an adjudication by a revenue officer, who is not competent to decide a question of title and is, therefore, neither binding nor final as to a question of title. The order, even if it has recorded a finding on title would not be construed to be a final and binding adjudication on the question of title as the question of title would necessarily have to be left to the jurisdictional forum i.e., the Collector, if the land is "Shamilat*

Deh” and the Civil Courts if the land is “Jumla Mushtarka Malkan”.

86. *The doctrine of merger postulates that an order passed by a Court or a Tribunal shall merge into the order passed by a superior forum whatever be the nature of the order, passed by the superior forum. The doctrine of merger is not universal in its application and admits to certain significant exceptions particularly in cases where the writ petitions or the special leave petitions were dismissed without assigning any reason or on the ground of laches or alternative remedy etc. The doctrine of merger would apply only where the High Court or the Supreme Court have examined the matter on merits and while so doing have held that the impugned order is within jurisdiction but where no such adjudication is discernible, an order passed by a lower court or Tribunal, which is without jurisdiction cannot be said to have merged in an order passed by the High Court or the Hon'ble Supreme Court, so as to prohibit the jurisdictional forum entertaining a dispute on a question of title. The doctrine of merger, cannot cure a nullity or a lack of jurisdiction, nor can, in our considered opinion,*

the law of precedence in the hierarchy of courts, cure an order that is void in its inception and nonest in its operation.”

18. From the order dated 21.03.1997 passed by this Court in CWP No. 4151 of 1997, it is further apparent that the Director Consolidation had remanded the case to the Consolidation Officer to redistribute only remaining land amongst the right holders after keeping the land which is required for common purposes of the village as per schedule attached with the Consolidation Rules.

19. No record is forthcoming as to how much area of *Jumla Mushtarka Malkan* land was kept for common purposes and how much was the *bachat* land required to be redistributed. Whether Consolidation Officer in fact sent back the report to the Director Consolidation that a particular land is the *bachat* land after keeping an area of land reserved for common purposes, is not borne out from record. Therefore, simply sanctioning the mutation of *Jumla Mushtarka Malkan* land in the name of village proprietors cannot be held as compliance to the orders of the Director Consideration so as to divest the village *panchayat* from having management and control over the *Jumla Mushtarka Malkan* land. As per *jamabandi* of the land for the year 2007-08 (Annexure P-18) placed on record, the petitioners are recorded as owners on the basis of mutation but it was not even the case of petitioners that they purchased the specific *khasra* numbers of land from specific proprietors.

20. To seek *ad interim* injunction it was incumbent upon the

petitioners to bring on record the *prima facie* evidence how and when the *Gram Panchayat* of the village which had been giving the land on lease in the open auction in the past many years was divested of the possession. Mere entry of the mutation in favour of petitioners on the basis of the sale deeds, would be of no consequence.

21. It is worth noticing that the petitioners filed CWP's No. 7490 of 2006, 13163 of 2006 and 9161 of 2007 in this Court to challenge the order passed by the Commissioner and also for quashing the auction of part of the land conducted by *Gram Panchayat*. The claim was based on the sale deeds of January, 2006 executed in favour of the petitioners by the right holders alleging that the land was repartitioned in the year 1996 being *bachat* land. Those writ petitions were dismissed on 05.05.2009 and it was observed as under:-

“....Even otherwise, it is not understood as to how the writ petition to challenge the auction of a land by Gram Panchayat can be made a subject matter of challenge. The petitioners have sought the writ of prohibition for restraining the respondents from putting the land to auction. Writ of prohibition is a judicial writ issued by a superior court to an inferior court preventing the inferior court from usurping the jurisdiction with which it is not legally vested. In other words, this is a writ to compel the court to keep within the limits of their jurisdiction.

How action of the Panchayat would fall within the purview of writ of prohibition cannot be easily understood. Alternative remedy available and exercised by some of the similarly situated persons would be another reason which will bar the issuance of a writ of this nature on this ground as well. The counsel for the respondent-Panchayat, during the course of arguments, pointed out that mutation in favour of the petitioners has already been changed, which fact has not been disclosed in the writ petitions. Accordingly, no case for interference in exercise of writ jurisdiction is made out. The petitioners can not take advantage of the observation made by the Collector that the Panchayat cannot put the land to auction as order Annexure P-10 has no concern with the land which may be a subject matter of dispute in the present writ petitions.”

22. The order dated 05.05.2009 passed in CWP No. 7490 of 2006 is Annexure P-17. The facts of that CWP would suggest that the *Gram Panchayat* had earlier auctioned the land for one year which expired in April, 2006. The petitioners, however, purchased the land vide sale deeds, some of which are of the year 2006 itself. It was not the petitioners' version that they obtained possession of the land from *Gram Panchayat*.

23. The petitioners even filed CWP No. 7747 of 2010 in this

Court seeking quashing of the auction notice dated 04.04.2010 published in daily Punjabi newspaper "*Ajit Jalandhar*" qua the land situated in village Kahanpura statedly belonging to the petitioners and for restraining the *Gram Panchayat* from putting the land to auction. That petition was disposed of by this Court on 05.08.2011 as infructuous on the statement made on behalf of the petitioners that the auction period expired during pendency of the writ petition.

24. All these facts with regard to the writ petitions and disposal thereof were supposed to have been disclosed in the suit instituted by the petitioners for permanent injunction. The plaint (Annexure P-14) only refers to the sale deeds executed by different right holders in favour of the petitioners and claiming possession of the land. The attempt was, however, made to explain these facts in the replication whereas the material facts were supposed to have been disclosed in the plaint itself.

25. Now Section 42-A has been inserted by Punjab Act No. 6 of 2007 in the Act of 1948. It says that notwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgment, decree, order or decision of any Court, or any authority, or any officer, the land reserved for common purposes whether specified in the consolidation Scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized and continue to be utilized for common purposes. This amendment was challenged in ***CWP No. 15509 of 2007 (Mahatam Singh and others vs. State of Punjab and others)***

and other connected petitions before this Court decided on 20.05.2011. This Court held as under:-

*“.....What Section 42-A provides is that land reserved for common purposes whether specified in the consolidation Scheme or not, shall not be partitioned amongst the proprietors of the village and it shall be utilized and continue to be utilized for common purposes notwithstanding anything contained in the Consolidation Act, 1948 or in any other law for the time being in force or in any judgment, decree, order or decision of any Court, or any authority, or any officer. When tested in the light of the principles, as have been laid down by the Hon'ble Supreme Court in **Indian Aluminium Co. and others (supra)**¹ and **S.S.Bhola and others (supra)**², it cannot be said that in exercise of legislative powers, the legislature has over-ruled, revised or over-ridden a judicial decision which would be thus in violation of the legislative powers rather the Legislature had removed the basis on which the decision had been rendered, which is permissible within and as per the Constitutional Scheme of separation and balance of powers between the Sovereign Functionaries. The amendment, which has been brought about, is consistent with the provisions of*

1 Indian Aluminium Co. and others vs. State of Kerala and others, (1996) 7 Supreme Court Cases 637
2 S.S.Bhola and others vs. B.D.Sardana and others, (1997) 8 Supreme Court Cases 522

*the Constitution and the Legislature also has the competence to enact the same, which is not under challenge. It cannot be disputed that in exercising legislative powers, the Legislature can enact law with retrospective effect which may have the effect of making the decision of this Court in the case of **Gurjant Singh's case (supra)**³ ineffective but in the light of the affidavit dated 04.08.2010 filed by the State of Punjab during the course of hearing stating therein that all judgments, decrees, orders or decisions of any Court or any authority or any officer where **partition of Jumla Malkan lands** has been implemented/given effect to before the date of notification of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Ordinance 2007 i.e. 22.05.2007, the amendment would not be applicable. The stand of the State is very reasonable, just and equitable which cannot be faulted with.*

In view of the above, the vires of Section 42-A in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act, 2007 (Punjab Act No. 6 of 2007) (Annexure P-1) inserted after Section 42 and before Section 43 in the East Punjab Holdings (Consolidation and Prevention of

3 Gurjant Singh vs. Commissioner, Ferozepur Division, 2000 (2) PLR 347

Fragmentation) Act, 1948 are upheld and we hold that the Act is valid. However, its applicability will be as per the affidavit dated 04.08.2010 filed by the State of Punjab, as mentioned above.

26. Learned senior counsel, therefore vehemently, contended that this amendment will not be applicable to the orders that have been legally and lawfully passed before 22.05.2007 and in the instant case the Director Consolidation had ordered repartition in the year 1996 and mutation sanctioned on 17.05.2005. As already observed there is no revenue record for contending as to how much land was distributed to each of the village proprietor, except suggesting that there was a common entry of mutation on the basis of order of Consolidation authorities. Such an act cannot be possibly said to be redistribution or repartition. That procedure of sanctioning mutation of whole of the “*Jumla Mushtarka Malkan*” land cannot be *prima facie* sustained in the eyes of law. Advantage could be given to the petitioners only if specific *khasra* numbers of the land had been allotted to each of the village proprietor in the repartition and also possession delivered to them. In the light of above facts, mere entry/sanction of mutation and subsequent purchase by the petitioners cannot be *prima facie* acceptable.

27. The order of mutation has been challenged in revision before the Commissioner, Patiala, Division, Patiala in which some of the right holders in whose name the mutation was sanctioned

have been served and service of rest of them is yet to be effected. So the matter has still not attained finality. It was contended by learned counsel for the petitioners that filing of the revision in the year 2014 after 9 years of the order of mutation is of no significance/consequence. I would find that there was earlier an attempt by the *Gram Panchayat* to challenge the mutation but that petition was dismissed in default. Appeal against that order was also dismissed on the ground of delay.

28. Learned trial Court observed in the impugned order as under:-

“5. After considering the rival submissions, this Court is of the considered view that the plaintiff is seeking ad interim injunction on the suit property with the averments that they have purchased the same from different owner vide different sale deeds. But the plaintiff has no where mentioned in his entire plaint about the specific area purchased from specific owner by way of specific sale deed and thus the pleadings of the plaintiffs otherwise reveal the claim of the plaintiff being vague. Moreover, though the plaintiff is being shown owner in possession in the revenue record but the documents brought on record by the defendants clearly reveal that the said mutations are already under challenge and consideration before the higher revenue authorities including that of the Director Consolidation

and Divisional Commissioner, Patiala. Moreover, the present plaintiffs have earlier preferred two writ petitions before Hon'ble High Court challenging the auction made by Gram Panchayat regarding suit claiming themselves being the owner. But the said writ petition have met the fate of dismissal and the plaintiff has no where mentioned the same in his entire suit. It is the settled proposition of the civil law that a person seeking ad interim injunction has to prove the three essential ingredients i.e. prima facie case, balance of convenience and irreparable loss being suffered by him on the denial of the ad interim injunction alongwith the fact that he had approached the civil court with the clean hands but no prima facie case is made out in favour of the plaintiff for firstly the plaintiff has no where pleaded as to from whom they have derived the title and by which sale deeds, secondly, they have not pleaded all the facts especially qua the different litigations pending or decided by the Hon'ble Punjab and Haryana High Court and that of the other revenue authorities wherein the mutation of the suit property is under cloud. Thirdly the Gram Panchayat has not been made a party in this suit despite the fact that there is a cloud on the title of the plaintiff qua the suit land with that of the Gram Panchayat because of Gram

Panchayat being owner in possession of the suit property has given the property on lease to various allottees including that of the present defendant. Thus finding no merits in the legal and factual front and same stands declined. None of the observations made therein shall have bearing on the merits of the case.”

29. According to the petitioners, the proceedings qua sanction of the mutation have already been stayed by the Commissioner as observed by the Appellate Court. It was further observed that the Director Consolidation had only called for the record from the concerned Consolidation Officer but the Tehsildar has entered mutation in favour of proprietors of the village. The respondents have also filed copy of order passed by the Director Lands Records, Jalandhar with CM No. 25300-CII of 2014. That order is dated 15.10.2014. *Gram Panchayat* challenged the order dated 29.04.2005 (mutation), passed by the Tehsildar, Amloh i.e. Consolidation Officer. It was observed in the order (Annexure R-2) that the said order was passed without issuing any notice to *Gram Panchayat*. Therefore, the impugned order was set aside and the matter was remanded to the District Revenue Officer, Fatehgarh Sahib-cum-Consolidation Officer with a direction to decide the matter afresh.

30. It would be appropriate to note that the Appellate Court relied upon the following directions issued by a Division Bench of this Court in CRM No. 23125 of 2011 and the connected petitions

(which includes CWP No. 1973 of 2010):-

“(b) No dispute in respect of such lands as mentioned in para (a) shall be entertained by the statutory authorities under the Punjab Village Common Lands Regulation Act, 1961 and East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. No Civil Court shall entertain any civil suit nor grant any interim order even in pending cases till further orders of this Court.”

31. The above observation of the Appellate Court cannot be sustained as Hon'ble Supreme Court in SLP (C) No. 24518 of 2012 has stayed the directions contained in paragraph no. 16 of the judgment dated 29.05.2012 in CWP No. 1973 of 2010. That aspect would, however, have no bearing on the result of instant petition.

32. In view of the above discussion, I find no ground to interfere in the impugned orders passed by the courts below who have taken *prima facie* view on the disputed questions especially with regard to possession over the land.

33. The instant petition is without merit and the same is dismissed.

34. Before parting with this judgment, a brief reference to the application filed by *Gram Panchayat* under Order I Rule 10 CPC also needs to be made. CM No. 22589-CII of 2014 has been filed by *Gram Panchayat* through Buta Singh, *Sarpanch* of the

village for being impleaded as party.

35. The petitioners filed reply to this application. This application is disposed of with the observation that the *Gram Panchayat* may move appropriate application before learned trial Court for being impleaded as a party in terms of Order I Rule 10 CPC which the trial Court would dispose of in accordance with law.

March 16, 2015
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(R.P. NAGRATH)
JUDGE