

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.6843 of 1993
Date of Decision: 07.07.2015

Gurmeet Singh and others

..Petitioners

versus

The Gram Panchayat of village Kapial, Tehsil and District Sangrur
through its Sarpanch and another.

..Respondents

Present: Mr. Amarjit Markan, Advocate,
for the petitioners.

Mr. Abhishek Singla, Advocate,
for the respondents

RAJIVE BHALLA, J. (ORAL)

The petitioners are before us, challenging mutation
no.3487 dated 15.6.1990, changing the entry from “Mushtarka
Malkan Hasab Hissa Raqba Khewatdar” to “Nagar Panchayat”.

Counsel for the petitioners submits that a revenue entry,
including a mutation can only be altered after issuing prior notice to
the party likely to be affected. The land in dispute, was recorded, as
the ownership “Mushtarka Malkan Hasab Hissa Raqba Khewatdar”,
for three decades but vide mutation no.3487 dated 15.6.1990, was
suddenly, changed to “Nagar Panchayat”, without any notice to the
petitioners or reference to the title of the Gram Panchayat. The writ
petition may, therefore, be allowed and the original entry of
“Mushtarka Malkan Hasab Hissa Raqba Khewatdar”, may be ordered
to be restored.

Counsel for the Gram Panchayat submits that the words “Mushtarka Malkan Hasab Hissa Raqba Khewatdar”, denote the common land of the village, created during consolidation, after applying a pro rata cut on the holding of proprietors, under Sections 18, 23-A of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as “the 1949 Rules”) read along with rules 16 (ii) of the 1949 Rules. The land so created vests in the Panchayat for management and control. Counsel for the Gram Panchayat further submits that if the petitioners are aggrieved by the mutation, their remedy is to file an appeal, under the Punjab Land Revenue Act, 1887 (hereinafter referred to as “the 1887 Act”) and if they allege that the land does not vest in the Gram Panchayat, to file a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”) or avail such other remedy, but can not file a writ petition to challenge a mutation, sanctioned and attested by the Assistant Collector II Grade, Sangur.

We have heard counsel for the parties. The petitioners have filed a writ petition to challenge mutation no.3487, dated 15.6.1990, recording the Gram Panchayat as owner. The land appears to have been created during consolidation and “may” vest in the Gram Panchayat for management and control. A person aggrieved by an entry in the record of rights, is required to seek his remedy by filing a suit under Section 45 of the 1887 Act and if he asserts that the land does not vest in a Gram Panchayat by filing a petition under Section 11 of the Act and if such an application is not

maintainable, then by filing a civil suit. The petitioners have, however, filed a writ petition without exhausting their remedies. We, therefore, find no reason to set aside the mutation and while dismissing the writ petition, relegate the petitioners, to availing their alternative remedy, in accordance with law.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

7.7.2015
VK