

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.7935 of 1989

Date of Decision: 29.06.2015

Bhag Singh through LRs

....Petitioners

Vs.

The Additional Director, Consolidation of Holdings, Punjab, & another

....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH.**

Present: Mr. A.P. Kaushal, Advocate
for the petitioners.

Mr. P.S. Bajwa, Addl. Advocate General, Punjab

Mr. Amarjit Markan, Advocate
for respondent No.2.

Rajive Bhalla, J (Oral)

The petitioners pray for issuance of a writ of certiorari, quashing, orders dated 15.03.1983 and 15.03.1989 (Annexures P-1 and P-6), respectively.

Counsel for the petitioners submits that not only were the petitioners not served but the impugned order reveals that it has been recorded in some other case, i.e. Sukhdev Kaur of Village Sidhuwal. Even otherwise, as shortfall cannot be made good from 'Jumla Mushtarka Malkan', the impugned order is a nullity for failure of the Additional

Director, Consolidation of Holdings, to identify the person who has been allotted excess land.

Counsel for contesting respondent No.2 submits that he has no objection if the writ petition is allowed and the impugned orders are set aside but with liberty to respondent No.2 to approach consolidation authorities to make good shortfall in his entitlement to land.

We have heard counsel for the parties and perused the impugned orders.

The Additional Director, Consolidation of Holdings, has, after holding that there was a shortfall in the land allotted to respondent No.2, directed that the shortfall be made good from the 'Jumla Mushtarka Malkan' khewat and from the land possessed by Guru Teg Bahadur College, Bawanigarh, which was also a part of the 'Jumla Mushtarka Malkan' land. The Additional Director, Consolidation, could have retrieved land from 'Jumla Mushtarka Malkan' and allotted it to make good shortfall in the allotment of respondent No.2, only if excess land has been allotted to the 'Jumla Mushtarka Malkan'. The absence of any such finding renders the impugned order illegal. At this stage, it would be necessary to clarify that land described as "Jumla Mushtarka Malkan" is created during consolidation after applying a

pro-rata cut on the holdings of proprietors and though it remains the ownership of proprietors, the management and control of such land vests in a Gram Panchayat. After recording his opinion, that there was a shortfall in the land allotted to the petitioner, the Additional Director, Consolidation was required to identify the land owner who had been allotted excess land and retrieve excess land from such land owner, but has mechanically ordered that land be retrieved from the 'Jumla Mushtarka Malkan' khewat. Counsel for respondent No.2 has fairly conceded that the impugned order is illegal.

Consequently, the writ petition is allowed and disposed of in the following terms:-

- a) The impugned orders dated 15.03.1983 and 15.03.1989 (Annexures P-1 and P-6), are set aside;
- b) The matter is remitted to the Director Land Records, Jalandhar, who has in the meanwhile been conferred with powers, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.
- c) The Director Land Records, Jalandhar, shall examine all relevant documents prepared during consolidation and after identifying the land owner who has been allotted excess land, issue notice to such land owner and after providing him an

opportunity of hearing, pass an order in accordance with law.

Parties are directed to appear before the Director Land
Records, Punjab, for further proceedings on 03.08.2015.

(Rajive Bhalla)
Judge

June 29, 2015
vcgarg

(Amol Rattan Singh)
Judge