

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

**Civil Writ Petition No.823 of 1997 (O&M)
Date of Order: 20.07.2015**

**Gram Panchayat, Machhiwara Kham, Tehsil Samrala, District
Ludhiana.**

..Petitioner

Versus

Additional Director Consolidation, Punjab and others

..Respondents

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

**Present: Mr. Ramesh Sharma, Advocate,
for the petitioner.**

Mr. P.S.Bajwa, Addl.A.G.,Punjab.

**Mr. Amit Jain, Advocate,
for the applicant-respondent no.3.**

RAJIVE BHALLA, J (Oral)

C.M.No.7340 of 2015

Prayer in this application, filed by respondent no.3, is for
an early actual date of hearing.

Counsel for the applicant-respondent no.3 and counsel
for the Gram Panchayat, Machhiwara Kham, state that they have no
objection, if the writ petition is taken on Board and is finally decided
along with the application.

Ordered accordingly.

Civil Writ Petition No.823 of 1997.

The Gram Panchayat of village Machhiwara Kham, Tehsil

Samrala, District Ludhiana, prays for issuance of a writ in the nature of certiorari, quashing order dated 05.08.1996 (Annexure P-2), passed by the Additional Director Consolidation, Punjab, Mohali, transferring the land, in dispute, to the private respondents, after recording a finding that the land, in dispute, does not vest in the Gram Panchayat.

Counsel for the petitioner submits that the land, in dispute, even as per the order passed by the Additional Director Consolidation, is “Shamilat Deh Hasab Hisas Paimana Hakiat”. The land, therefore, vested in the Gram Panchayat, under the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as 'the 1953 Act') and thereafter under Section 2(g)(1) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'). The Additional Director Consolidation of Holdings has, however, after holding that the land in dispute is not “Shamilat Deh”, allotted it to respondents no.2 to 16. The Additional Director Consolidation had no jurisdiction to hold as above as the jurisdiction to declare whether the land, in dispute, vested or did not vest in the Gram Panchayat rested with the Collector, exercising power under Section 11 of the 1961 Act, as held by the Supreme Court in **Gram Panchayat, Nurpur v. State of Punjab and others, 1997(3) RCR (Civil) 47 (SC); 1998 (8) SCC 672; Gram Panchayat Village Sidh v. Addl. Director Consolidation of Holdings.**

Counsel for the petitioner further submits that as averred by respondents no.2 to 16 in the petition, filed under Section 42, they

had filed a petition, under Section 11 of the 1961 Act, which was dismissed by the Collector by holding that the land in dispute vests in the Gram Panchayat. The Additional Director Consolidation, therefore, had no jurisdiction to pass the impugned order, allotting the land belonging to the Gram Panchayat to the private respondents.

Counsel for respondent no.3, submits that the Additional Director Consolidation has not decided a question of title but has merely rectified an error committed during consolidation. Section 42 of the East Punjab Holdings(Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Consolidation Act'), empowers the authority exercising power under Section 42 of the Act, to rectify errors committed during consolidation. The mere fact that the Additional Director Consolidation has, while rectifying an error, recorded an incidental finding that the land does not vest in the Gram Panchayat, does not render his order illegal or without jurisdiction.

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

A perusal of the order passed by the Additional Director Consolidation, reveals that the land, in dispute is recorded as "Shamilat Deh Hasab Hisas Paimana Hakiat", i.e., land that came to vest in a Gram Panchayat under the 1953 Act and after the repeal of the 1953 Act, vested in the Gram Panchayat, under the 1961 Act. The Additional Director Consolidation has, however, held that the land, in dispute, does not vest in the Gram Panchayat and after

holding as above, allotted it to the private respondents. The question whether the authority exercising power under Section 42 of the Consolidation Act, is empowered to decide whether a parcel of land vests or does not vest in a Gram Panchayat was answered by the Supreme Court in **Gram Panchayat, Nurpur v. State of Punjab and others, 1997(3) RCR (Civil) 47 (SC); 1998 (8) SCC 672; Gram Panchayat Village Sidh v. Addl. Director Consolidation of Holdings** by holding that as the power to determine such a dispute falls to the exclusive domain of the Collector, exercising power under Section 11 of the 1961 Act, the authority, exercising power under Section 42 of the Consolidation Act, is not empowered to determine whether a parcel of land vests or does not vest in a Gram Panchayat. The impugned order holding that the land, in dispute does not vest in the Gram Panchayat and then allotting it to respondent nos.2 to 16, is, thus, without jurisdiction but as the Additional Director Consolidation has while holding that the land does not belong to the Gram Panchayat relied upon **Jaswant Singh and others v. State of Punjab and others, 1966, P.L.R, 106, Gram Panchayat Sattakharar v. Director Consolidation, 1992(1) P.L.R., 183; and Nahar Singh v. Additional Director, Consolidation of Holdings, Punjab, 1992, P.L.J., 387** etc. it would be necessary to deal with these judgments.

The judgment in **Jaswant Singh and others v. State of Punjab and others (supra)**, merely defines the expression “Hasab Rasab Khewat” but does not even remotely hold that such land is not “Shamilat Deh” or that it does not vest in a Gram Panchayat. The

judgment in **Mohinder Singh v. Commissioner, Ferozepur Division, Ferozepur, (Single Bench)** holding that a mutation cannot be sanctioned on the basis of a letter, though correct, was recorded by ignoring that the “Shamilat Deh” of a village came to vest in a Gram Panchayat under the 1953 Act and thereafter under the 1961 Act. The revenue authorities have merely recorded the statutory declaration, made by the 1953 and 1961 Acts, declaring that the “Shamilat Deh” of a village shall vest in the Gram Panchayat. The mutation is, thus, based upon a statutorily declaration and not merely upon a letter, issued by an executive authority. The judgment in **Nahar Singh v. Additional Director, Consolidation of Holdings, Punjab (supra)**, pertains to the inclusion of a part of the “Sabha Area” within municipal limits and is, therefore, irrelevant for the present controversy.

Accepting that the Additional Director Consolidation has the power to correct errors in consolidation proceedings, the power so conferred does not extend to entertaining and deciding a question whether the land, in dispute, vests or does not vest in a Gram Panchayat or deciding a question of title. At this stage, it would also be appropriate to point out that in the petition filed under Section 42 of the Act, respondent no.2 to 16 have averred that they filed a petition under Section 11 of the 1961 Act, which has been dismissed by the DDPO-cum-Collector, exercising power under Section 11 of the 1961 Act. Counsel for respondents no.2 to 16 states that the private respondents are not aware of any such petition as the averment appears to be an error committed by the counsel who

drafted the petition.

As the impugned order passed by the Additional Director Consolidation holding that the land in dispute does not vest in the Gram Panchayat and allotting it to respondents no.2 to 16, is without jurisdiction, the writ petition is allowed, the impugned order, is set aside, but with liberty to respondents no.2 to 16 to file a petition under Section 11 of the 1961 Act, if not already filed and decided.

(RAJIVE BHALLA)
JUDGE

July 20, 2015
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(AMOL RATTAN SINGH)
JUDGE