

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.863 of 1997
Date of Decision: 7.5.2015

Gram Panchayat of village Ghabdan, Tehsil and District Sangrur

Petitioner

versus

Additional Director, Consolidation, Punjab, Mohali and others

..Respondents

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

Present: Mr. Jatinder Singla, Advocate, for the petitioner.

Mr. P.S.Bajwa, Addl.Advocate General,Punjab
for respondent no.1.

None for respondent no.2

Mr. Abhishek Goyal, Advocate for respondent no.3.

RAJIVE BHALLA, J. (ORAL)

The Gram Panchayat of village Ghabdan, Tehsil and District Sangrur is, before us, challenging order dated 20.8.1996 (Annexure P-4) passed by Additional Director, Consolidation, Punjab, Mohali, directing withdrawal of the land in dispute, from the Gram Panchayat, the Jumla Mushtarka Malkan, and allotting it to Bir Inder Kaur-respondent no.2.

Counsel for the Gram Panchayat submits that as held by the Supreme Court in Gram Panchayat of village Nurpur versus State of Punjab, 1997(1) PLJ 268 and Gram Panchayat village Sidh

v. Addl. Director Consolidation of Holdings, Punjab, 1997(3) RCR (Civil) 491 (SC) that consolidation authorities have no jurisdiction to decide whether a parcel of land is or is not shamilat deh but a perusal of the impugned order, dated 20.8.1996, reveals that Additional Director, Consolidation, has held that the land in dispute does not vest in the Gram Panchayat as it is the property of proprietors and thereafter ordered that the land be allotted to Bir Inder Kaur. A Full Bench of this Court in Ajit Singh versus Smt. Subhagan and others, AIR 1970 (Punjab & Haryana) 93, has held that the consolidation authorities are not empowered to decide a question of title. The impugned order holding that the land is not “shamilat deh” and allotting it to respondent no.2, is without jurisdiction and may be set aside.

Counsel for respondent no.3, submits that prior to consolidation, the land, in dispute, was “Shamilat Deh Hasab Rasad Raqwa Khewat” and “Shamilat Hasab Rasad Paimana Haqiat”. The land, was, therefore, owned by proprietors. The mutation sanctioned and attested by revenue authorities, in favour of the Gram Panchayat, does not divest proprietors of their proprietary rights. The consolidation authorities have, therefore, rightly allotted the land in dispute to respondent no.2. The impugned order passed by the Additional Director, Consolidation, merely rectifies an error in consolidation proceedings and, therefore, does not call for interference.

No one is present on behalf of respondent no.2.

We have heard counsel for the petitioner and respondent

no.3 and perused the impugned order.

Consolidation proceedings, admittedly, concluded in the year 1959-60, without any proprietor, claiming any right, title or interest in the “shamilat khewat” or in land reserved during consolidation as “Jumla Mushtarka Malkan”. After consolidation, the shamlat land was mutated in the name of Gram Panchayat, in accordance with the statutory vesting enacted by the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as “the 1954 Act”) and the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter referred to as “the 1961 Act”). A group of proprietors filed a petition, under Section 42 of the Consolidation Act, in the year 1982, for re-distribution of “shamilat deh”. The petition was dismissed by the Additional Director Consolidation of Holdings on 4.4.1984, by holding that as mutation no.1145 was entered and sanctioned after completion of consolidation proceedings, the petitioners may seek their remedy under the 1961 Act.

Bir Inder Kaur-respondent no.2, filed a petition under Section 42 of the Consolidation Act, before the Additional Director Consolidation of Holding, praying for partition and allotment of this very land on the ground that the land in dispute vests in the proprietors and, therefore, does not vest in the Gram Panchayat. The Gram Panchayat raised an objection that the Additional Director, Consolidation, has no jurisdiction to decide whether the land vests or does not vest in the Gram Panchayat, but this objection was brushed aside by holding that the land has been wrongly recorded as

the ownership of the Gram Panchayat as it vests in proprietors. The Additional Director, Consolidation, retrieved land from the “shamilat deh” and “Jumla Mushtarka Malkan” khewats, and allotted it to Bir Inder Kaur. A perusal of the impugned order reveals that the Additional Director Consolidation has held that the land in dispute does not vest in the Gram Panchayat.

The only point that calls for an answer is whether the Additional Director Consolidation, while exercising power under Section 42 of the Consolidation Act, can decide whether a parcel of land is or is not “shamilat deh” and, therefore, vests or does not vest in a Gram Panchayat?

The question posed, is no longer res integra as it was answered in Ajit Singh's case (supra) by holding that consolidation authorities are not empowered to decide a question of title. The other limb of the question, namely, whether consolidation authorities are empowered to determine whether a parcel of land is or is not “shamilat Deh”, has already been answered by the Supreme Court, in Gram Panchayat of village Nurpur's case (supra) by holding that consolidation authorities are not empowered to determine whether a parcel of land is or is not “shamilat deh” as the only authority empowered to decide such a question, is the Collector, exercising power under Section 11 of the 1961 Act. However, while accepting, that authorities, exercising power under Section 42 of the Consolidation Act, have the power to rectify errors in consolidation proceedings, they cannot, under the garb of correcting errors, determine whether a parcel of land vests or does not vest in a Gram

Panchayat, The Additional Director, therefore, had no jurisdiction to opine, under the garb of correcting an error, that the land in dispute does not vest in the Gram Panchayat.

At this stage, it would be appropriate to once again point out that another group of proprietors had approached the Additional Director Consolidation with a similar prayer. The petition filed by these proprietors was dismissed but with liberty to file a petition under Section 11 of the 1961 Act. The proprietors filed a petition under Section 11 of the 1961 Act, which was dismissed. The appeal has also been dismissed. The Additional Director, while passing the impugned order, ignored this order and in an arbitrary exercise of power, usurped the jurisdiction of the Collector, conferred with power under Section 11 of the 1961 Act and after holding that the land in dispute does not vest in the Gram Panchayat, allotted it to respondent no.2. The impugned order, in our considered opinion, is entirely without jurisdiction and must, therefore, be set aside.

In view of what has been recorded hereinabove, the writ petition is allowed, the impugned order is set aside, but with liberty to respondent no.2, to seek adjudication of any right, title or interest, she may assert in the shamilat deh of a village, by resort to her remedy under the 1961 Act.

(RAJIVE BHALLA)
JUDGE

7.5.2015
VK

(AMOL RATTAN SINGH)
JUDGE