

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 203

Civil Writ Petition No.6958 of 2004 (O & M)

Date of Decision: *August 13, 2015*

Rishi Pal & others

..... PETITIONER(S)

VERSUS

State of Haryana & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
 HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of 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?

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PRESENT: - Mr. Vikram Singh, Advocate, for the petitioners.

Ms. Kirti Singh, Deputy Advocate General, Haryana.

Mr. H.S. Hooda, Senior Advocate, with Mr. Suneel Ranga, Advocate, for respondent Nos.3, 5 and 6.

Mr. Vishnu Bhagwan Aggarwal, Advocate, for respondent No.7.

Respondent No.11 – Balbir Singh, in person.

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Surya Kant, J (Oral)

1. Petitioners are residents of village Kalsora, Tehsil Indri, District Karnal. They are non-proprietors of the village. The instant writ petition has been filed by them challenging the order dated 28.5.2001

passed by the Director, Consolidation, Haryana, in purported exercise of powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, '1948 Act').

2. The impugned order appears to have been passed on an application moved by Gram Panchayat of the village, *inter-alia*, claiming that the land recorded as *Jumla Mushtarka Malkan* and *Digar Haqdarani* be included in *shamlat deh* as it falls within the ambit of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 1961 Act') and its management and control vests in the Gram Panchayat. The Director, Consolidation, on consideration of rival submissions, formulated certain issues and decided the matter with the following directions:-

“In view of all the facts mentioned above, and keeping in view the public interest and all communities, this case is remanded back to the Consolidation Officer, Karnal with the direction that the land of the same measurement may be reserved as per consolidation scheme of the year 1963-64 for Gau Charand, Panchayat Farm and Kumhardana as also for other common purposes. The share-holders who have been allotted the Reserved land as per new Consolidation Scheme, 1998, they may be again allotted the land as after making provision in the consolidation scheme. For the purpose of reservation of area for common purposes in case of necessity of change in area, the same should be done. The consolidation scheme is amended to this extent. Both the parties may be intimated regarding this decision.”

3. It may be seen that the Director, Consolidation modified the Consolidation Scheme and directed that the land of 'Gau Charand', 'Panchayat Farm' and 'Kumhardana' as well as for other common purposes be reserved in the same manner as was earmarked in the Consolidation Scheme prepared in the year 1963-64. The Director further held that “the share holders who have been allotted reserved land

as per consolidation scheme of 1998, they may be again allotted the land as after making provision in the consolidation scheme”.

4. Since the case was remanded to the Consolidation Officer, Karnal to decide it afresh in the light of directions reproduced above, the Consolidation Officer, Karnal, vide order dated 5.8.2002 (R-1) allocated 267 kanal 4 marla land for Gau Charand, 217 kanal 6 marla as *shamlat deh* (Panchayat Farm) and 7 kanal land for Kumhardana, besides other small parcels of land for a few common purposes.

5. The major chunk of land measuring 1262 kanal 12 marla was shown to be “Burd Baramdgi” i.e. ‘river action’ or *Jumla Mushtarka Malkan* which has been ordered to be distributed proportionately amongst the proprietors.

6. In deference to the order passed by this Court to submit a report regarding reservation of land under different heads, Chandi Ram Chaudhary, Consolidation Officer, Indri, District Karnal has filed an affidavit dated 25.5.2015 acknowledging the allocation of land in the manner as briefly noticed above.

7. The petitioners’ grievance is against distribution of land of ‘river action’ and *Jumla Mushtarka Malkan* amongst the proprietors. According to them, such land vests in the Gram Panchayat and could not have been distributed/allocated to the proprietors. They have further alleged that under the Consolidation Scheme of 1963-64, the land reserved for Gau Charand was 385 kanal 10 marla but contrary to the

directions issued by the Director Consolidation, the area of such land has been reduced to 267 kanal 4 marla. Similarly, the area of Panchayat Farm has been reduced from 246 kanal 17 marla to 217 kanal 6 marla. The land of Kumhardana has also been reduced.

8. It may, thus, be seen that the grievances put-forth by the petitioners are for and on behalf of the Gram Panchayat of their village. Strangely, the Gram Panchayat has not come forward to challenge either the order passed by Director Consolidation or subsequent proceedings carried out by the Consolidation Officer in purported compliance thereto.

9. It gives some credence to the petitioners' allegations that the office bearers of the Gram Panchayat are also the beneficiaries of the distribution of land being proprietors of the village.

10. The question whether or not land recorded as 'river action' or *Jumla Mushtarka Malkan* vests in Gram Panchayat is a mixed question of law and facts. Such a question can be effectively adjudicated by the Forum, exclusively established under the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to State of Haryana. Unfortunately, the Gram Panchayat has not made any grievance and has not come forward to raise such a claim. Nevertheless, if such land or part thereof indeed vest in the Gram Panchayat, the village community cannot be deprived of the community assets. The lands which vest in Gram Panchayat or are reserved for 'common

purposes' are not meant for present generation only. The posterity too has a stake in such lands.

11. Keeping in view the petitioners' allegations re: collusion of the Gram Panchayat, we direct the Deputy Commissioner, Karnal, to hold a fact finding enquiry through an officer not below the rank of District Development & Panchayat Officer as to whether or not in the instant case, land which ought to have vested in Gram Panchayat has landed into the hands of proprietors? If the answer comes in affirmative, the Deputy Commissioner shall issue necessary directions to the Gram Panchayat to initiate action under the 1961 Act, namely, to file a suit for declaration under Section 13-A of 1961 Act. In the event of any reluctance shown by the Gram Panchayat, the Deputy Commissioner knows what action is required to be taken against such erring Panchayat.

12. If the Gram Panchayat and/or any authorized officer of the Department of Rural Development & Panchayats will initiate proceedings under the 1961 Act, the competent authority/forum under the Act shall decide those proceedings expeditiously and uninfluenced of order dated 28.5.2001 passed by the Director Consolidation and/or the subsequent proceedings taken pursuant thereto. In other words, order dated 28.5.2001 or the subsequent orders will cause no legal impediment against deciding the question of title.

13. Till such enquiry is held, the proprietors shall not alienate the subject land in any manner.

14. Copy of this order be given to the State counsel for information and necessary compliance.

(Surya Kant)
Judge

August 13, 2015
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(Jaspal Singh)
Judge