

CWP No. 21580 of 2008

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

CWP No. 21580 of 2008

Date of Decision: 09.07.2015

Ram Mehar @ Ram Mehar Singh and others

..... Petitioners

Versus

Financial Commissioner, Haryana, Chandigarh and others

..... Respondents

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

Present: Mr. Raj Kumar Gupta, Advocate
for the petitioners.

Mr. D. Khanna, Addl. A.G. Haryana.

Mr. Mahavir Sandhu and Mr. Naveen Gupta, Advocate
for respondents.

RAJIVE BHALLA, J (ORAL).

The petitioners pray for issuance of a writ of certiorari, quashing, order dated 21.10.2008, passed by the Financial Commissioner, Haryana, affirming the mutation recorded in favour of proprietors.

Counsel for the petitioners submits that the land in dispute was reserved as '*jumla mustarka malkan*', during consolidation. Section 2 (g) (6) of the Punjab Village Common Land (Regulations) Act, 1961, as applicable to the State of Haryana, (hereinafter to be referred as 'the 1961 Act'), declares that the land so reserved; vests in a Gram Panchayat, as '*shamilat deh*'. The Financial Commissioner, Haryana, has, therefore erred in affirming the mutation recording the ownership of proprietors in stead of the '*jumla mustarka malkan*' or the Gram Panchayat.

Counsel for the petitioners further submits that the petitioners and a large number of other harijans were allotted 3 marlas plots, from the land in dispute, in the year 1966. The allottees including the petitioners have raised construction. The private respondents, under the garb of this mutation, want to demolish the houses. The impugned order, recording a mutation in the name of proprietors may be set aside and the petitioners may be declared owners of the land in khasra no. 101/7.

Counsel for the private respondents submits that though the land in dispute was reserved during consolidation for common purposes of the village, the reservation so made was challenged on the ground that land cannot be reserved for the income of the Panchayat. The proprietors, eventually, filed a CWP No. 3545 of 1968, which was allowed on 27.08.1980, by holding that land cannot be reserved for the income of the Gram Panchayat and directing that land be returned, to proprietors. The question of title having already been determined even if the petitioners or any other persons were allotted 3 marlas plots, the allotments are illegal, as the land no longer vests in the Gram Panchayat. The mutation sanctioned by the Assistant Collector of the 1st Grade, affirmed by the Collector and the Financial Commissioner is legal and valid.

Counsel for the Gram Panchayat submits that the land in dispute is '*jumla mustarka malkan*' and vests in the Gram Panchayat, under Section 2 (g) (6) of the 1961 Act. The Gram Panchayat allotted 300 plots to harijans out of the land in dispute in 1966. The Gram Panchayat was not impleaded as a party in CWP No. 3545 of 1968 and, is not bound by order dated 27.06.1980. The mutation sanctioned without considering that the Gram Panchayat was not a party to order dated 27.01.1980 is illegal and

void.

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

The petitioners, challenge a mutation sanctioned by the Assistant Collector of the 1st Grade, recording the private respondents as owners. The mutation is based upon order dated 27.08.1980, passed in CWP No. 3545 of 1968, holding that as consolidation authorities had no jurisdiction to reserve any land for the income of the Gram Panchayat, the land continues to vest in proprietors. A perusal of order dated 27.08.1980 reveals that the Gram Panchayat was not a party to the writ petition. The mere fact that some of the petitioners or other private persons were arrayed as respondents in the writ petition may not bind the Gram Panchayat. The question whether the land in dispute, which was admittedly reserved as '*jumla mustarka malkan*', during consolidation vests or does not vest in the Gram Panchayat should have been answered in the presence of the Gram Panchayat. The power to answer such a question, now rests with the Collector, exercising power under Section 13-A of the 1961 Act, (as applicable in the State of Haryana). At this stage, it would be appropriate to point out that during pendency of the writ petition a report was sought from the Tehsildar, Sonapat, whether the petitioners have raised constructions. The report records that the petitioners have raised construction in khasra no. 101/7.

However as the mutation has been sanctioned on the basis of order dated 27.08.1980 passed in CWP No. 3545 of 1968, we dispose of the writ petition granting liberty to the Gram Panchayat as well as the petitioners to file a petition under Section 13-A of the 1961 Act, before the Collector, Sonapat, for adjudication of the question whether the land vests or does not vest in the Gram Panchayat. In case the petitioners or the Gram Panchayat file a petition under Section 13-A of the 1961 Act, within a fortnight of the receipt of a certified copy of this order, parties shall maintain status quo with respect to the houses/construction raised in khasra no. 101/7, and are restrained from creating any third party interest in the land in dispute, during pendency of the petition be filed under Section 13-A of the 1961 Act.

No orders as to costs.

(RAJIVE BHALLA)
JUDGE

09.07.2015
amit rana

(AMOL RATTAN SINGH)
JUDGE