

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) Civil Writ Petition No.12392 of 2012

Jagat Singh and another

..... Petitioners

Vs.

Joint Development Commissioner, Punjab and others

..... Respondents

(2) Civil Writ Petition No.12395 of 2012

Sarwan Singh

..... Petitioner

Vs.

Joint Development Commissioner, Punjab and others

..... Respondents

Date of Decision: 27.03.2015

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. N.P.S.Mann, Advocate for the petitioner(s).

Mr. Yatinder Sharma, Addl. Advocate General, Punjab
for respondent Nos.1 and 2.

Mr. Amrik Singh, Advocate for respondent No.3/Gram Panchayat.

JASWANT SINGH, J. (ORAL)

This order shall dispose of aforesaid two writ petitions since common questions of law and facts are involved in the same. The facts are taken from CWP No.12392 of 2012.

The two petitioners are stated to be the proprietors of Village Gopalpur, Tehsil Anandpur Sahib, Block Nurpur Bedi, District Roop Nagar.

They have been established to have come in possession for the first time over 3 Kanals and 17 Marlas of agricultural land, as per *jamabandi* for the year 1985-86 (**Annexure P-11**), which is recorded as “*Jumla Mushtarka Malkan*”.

Since they had entered into unauthorized possession, the Gram Panchayat filed a petition on 27.10.2010 (**Annexure P-1**) under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short “1973 Act”) for their eviction from the said land before the prescribed Authority under the 1973 Act.

The petitioners filed their reply and claimed that their forefathers have been in possession of the said land to the extent of their shares and, therefore, as per the revenue entry, the land being belonging to the proprietors to the extent of their shares, the application was not maintainable.

The prescribed Authority under the 1973 Act, vide order dated 23.02.2011 (**Annexure P-4**) ordered the ejectment of the petitioner.

The appeal filed by the petitioners under Section 9 of the 1973 Act before the Commissioner was also dismissed, vide order dated 22.11.2011 (**Annexure P-6**) affirming the findings that the petitioners/appellants were in illegal possession of the land and the Gram Panchayat being responsible for the control and management of the “*Jumla Mushtarka Malkan*” land was entitled to retrieve the possession. Hence, the present writ petition challenging order dated 23.02.2011 (**P-4**) and order dated 22.11.2011 (**P-6**).

Learned Counsel for the petitioners has argued that the land in question at the time of consolidation was never reserved for any common purposes and, therefore, the possession of the petitioners, being to the extent of their shares, cannot be held to be unauthorized so as to entitle the Gram Panchayat to retrieve the possession.

On the other hand, learned Counsel for the Gram Panchayat submits that although the ownership of the land described as “*Jumla Mushtarka Malkan*” vests with the proprietors, however, by virtue of Section 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short “1948 Act”), the management and control of the land for common purposes concededly vests in the Gram Panchayat and, therefore, are entitled to seek its ejectment of unauthorized occupants. He further contends that even if the land was not earmarked and utilized for any common purpose, the proprietors would still to have seek a partition and a declaration of their title to the extent of their shares and till then, the Panchayat would have full competence to seek the eviction of even proprietors in unauthorized occupants.

After hearing learned Counsel for the parties, this Court finds that the present writ petitions are totally devoid of any merit.

It is well settled that even if the lands earmarked as “*Jumla Mushtarka Malkan*” and not utilized or earmarked for any common purposes by the Panchayat, the same still have to be partitioned by filing appropriate proceedings by the proprietors for restoration of the land to the extent of their shares and till the same is done, the ownership vests in the collective proprietary body with management and control of the same with the Gram Panchayat by virtue of Section 23-A of the 1948 Act.

Admittedly, till now, no such proceedings have ever been initiated by any of the proprietors, much less the present petitioners for restoration of such vacant lands of “*Jumla Mushtarka Malkan*” by filing any proceedings before the competent Authority. Thus although the ownership vests with the proprietary body but since, concededly the management vests with the Gram Panchayat and, therefore, by virtue of the Section 2(e) of 1973 Act, the land in question falls within the definition of “Public Premises” and as admittedly the petitioners have entered into unauthorized possession since the year 1985-86, when the management vested with the Panchayat, the proceedings under the 1973 Act were maintainable and the finding of facts recorded by the concerned Authorities are well founded and, therefore, not warranting interference by this Court in exercise of jurisdiction under Article 226 of the Constitution.

In view of the above, both the aforesaid writ petitions stand dismissed.

March 27, 2015
Gagan

(JASWANT SINGH)
JUDGE