

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

**1) CWP No.12151 of 2014
Date of Decision: 26.05.2015**

Kirpal Singh and others

....Petitioners

Vs.

The Director, Land Records, Punjab and others

....Respondents

2) CWP No.13642 of 2014

Gram Panchayat

....Petitioner

Vs.

Director, Land Records, Punjab and others

....Respondents

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

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Jatinder Singla, Advocate
for the petitioners in CWP No.12151 of 2014.

Mr. G.S. Nahel, Advocate
for the petitioner in CWP No.13642 of 2014.

Ms. Munisha Gandhi, Addl. Advocate General, Punjab

Mr. S.D. Sharma, Senior Advocate with
Mr. Anupam Sharma, Advocate
for respondents No.3 to 5 in both the petitions.

Rajive Bhalla, J (Oral)

By way of this order, we shall dispose of Civil Writ Petitions No.12151 and 13642 of 2014. The facts are being taken from CWP No.12151 of 2014.

The petitioners before us, are primarily aggrieved by order dated 12.12.2012 passed by Sh. Dharam Dutt Tarnach, IAS, Director Land Records, Punjab, Jalandhar (since retired) and the consequential order dated 21.02.2014 passed by the District Revenue Officer-cum-Consolidation Officer, Sangrur.

Counsel for the petitioners submits that the controversy in the present petition came up for adjudication in CWP No.3984 of 1985, which was allowed by setting aside orders dated 15.03.1983 and 25.04.1985 passed by the Additional Director Consolidation and the Director Consolidation, Punjab, respectively, and remitting the matter to the then Director, Land Records, Punjab, with certain directions. The Director Land Records, Punjab, passed a fresh order dated 03.08.2011 by ignoring the directions. The order dated 03.08.2011 was challenged in CWP No.23676 of 2011 and was set aside and the matter was once again remitted after recording certain findings and issuing certain directions.

The Director, Land Records, Punjab, has once again decided the petition without considering the directions and findings and in an arbitrary exercise of power forwarded the matter to the District Revenue

Officer-cum-Consolidation Officer for decision, within one month. The District Revenue Officer-cum-Consolidation Officer, unmindful of earlier directions and findings, directed that shortfall in the land allotted to respondents No.3 to 5 be made good from the “Jumla Mushtarka Malkan” khewat, a course already adversely commented upon. The impugned orders are not only contrary to orders dated 30.07.2010 and 14.08.2012 passed by this Court but have been passed in blatant disregard of these orders.

Counsel for the State of Punjab as well as counsel for the private respondents submit that they are not in a position to support the orders passed by the Director Land Records, Punjab or the DRO-cum-Consolidation Officer and pray that the matter may be remitted to the Director Land Records, Punjab for a fresh decision in accordance with orders dated 30.07.2010 and 14.08.2012.

Mr. Tarnach, the then Director Land Records, Punjab, present in Court, states that as the order was passed inadvertently, he expresses regret and tenders an unqualified apology.

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

A perusal of order dated 30.07.2010, passed in CWP No.3984 of 1985, reveals that while remitting the matter, the following directions were issued:-

“...While deciding the matter afresh, the Director Land Records, Punjab, Jalandhar, shall amongst others take into

consideration:-

- a) the question of limitation;
- b) The question of 'kami Beshi' in the allotment of Mukand Singh
- c) The question whether 'Kami Beshi' can be made good from Jumla Mushtarka Malkan.
- d) Whether delay in approaching the Government under Section 42 of the Act deprives Mukand Singh of his due entitlement of land as calculated by the Consolidation Authority..."

The Director Land Records, noticed these directions but decided the matter without recording any opinion thereon. The petitioners were compelled to file CWP No.23676 of 2011, which was disposed of on 14.08.2012, by once again remitting the matter by recording the following observations/findings:-

"We have heard counsel for the parties, perused the impugned order and are of the firm opinion that the Director, Land Records, has not considered directions issued by this Court. The Director has proceeded to decide the matter on the basis of a report, prepared by the District Revenue Officer. The Director, Land Records was required, while determining, whether there is any deficiency in land allotted to the private respondents, to peruse the "Khatauni Ishtemal, Naqsha Haqdarwar, Register Karwai, Khatauni Pamaish and Missal Haqiat." The Director has not perused these crucial documents but has, instead, called for a report from District Revenue Officer. We would like to clarify that the land, in dispute, is "Jumla Mushtarka Malkan", i.e. land that belongs to proprietors but vests in the Gram Panchayat for management and control. "Kami-beshi" in land allotted to a private person cannot be made good from "Jumla

Mushtarka Malkan”, till such time as a finding is recorded that excess land was allotted to “Jumla Mushtarka Malkan”. A shortfall in allotment is to be made good from such of the landowners, as were allotted land in excess, of their entitlement, but as a matter of routine, Consolidation authorities appropriate “Shamlat Deh” or “Jumla Mushtarka Malkan” while making good deficiency in allotment of private landowners, without considering whether excess land has been allotted to “Jumla Mushtarka Malkan”.

In view of what has been stated hereinabove, we allow the writ petitioners, set aside the impugned order and remit the matter to the Director, Land Records, to decide the matter afresh and in accordance with law, after taking into consideration directions issued in CWP No.3984 of 1985 as well as findings recorded herein above.”

A perusal of the order passed by the Director, Land Records, after the second remand, reveals that not only have directions issued in CWP No.3984 of 1985 once again been disregarded but findings recorded in CWP No.23676 of 2011 have been ignored or should we say intentionally ignored.

We, therefore, have no option but to allow the writ petition, set aside orders dated 12.12.2012 and 15.03.1983, and remit the matter to the Director, Land Records, Punjab, Jalandhar, to decide the matter afresh, strictly in accordance with law, after considering directions issued in CWP No.3984 of 1985 and directions/findings recorded in CWP No.23676 of 2011, within three months from parties putting in appearance before him on 20.07.2015.

The parties may if deemed appropriate, file additional pleadings

and documents in support of their claim regarding delay and other matters.

Before parting with the order, it would be necessary to record with a degree of anguish, the tendency of officers, tasked with the duty of adjudicating quasi judicial disputes to disregard binding precedents/directions and orders passed by this Court. A number of orders, including the orders passed in this case, have come to our notice, where officers blatantly disregard or side step directions issued or orders passed, by this Court and more often than not decide cases on points that are neither pleaded nor are in issue. The present case is an apt example of this malady that has come to bedevil quasi judicial adjudication, particularly orders passed under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and the Punjab Village Common Lands (Regulation) Act, 1961. This apart, officers appear to have a rudimentary knowledge of revenue/land matters and pass orders that are contrary to statutory provisions and established law.

However, as Sh. Dharam Dutt Tarnach, IAS, Director Land Records, Punjab, (since retired), has tendered an unqualified apology, we do not proceed any further in the matter against him except for directing that a copy of this order be forwarded to the Financial Commissioner, Revenue, Punjab, to initiate appropriate remedial measures and to ensure that such matters are entrusted to officers with knowledge of revenue law particularly the provisions of the East Punjab Holdings (Consolidation and Prevention

of Fragmentation) Act, 1948, and the Punjab Village Common Lands
(Regulation) Act, 1961.

(Rajive Bhalla)
Judge

May 26, 2015
vcgarg

(Amol Rattan Singh)
Judge