

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

**Civil Writ Petition No.13248 of 2015
Date of Order: 31.07.2015**

Daler Singh and others

..Petitioners

Versus

**Joint Development Commissioner (IRD), Punjab
and others.**

..Respondents

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

**Present: Mr. Jatinder Singla, Advocate,
for the petitioners.**

RAJIVE BHALLA, J (Oral)

The petitioners pray for issuance of a writ in the nature of certiorari, quashing orders dated 27.09.2012 (Annexure P-5) and 24.12.2014 (Annexure P-7), passed by the Divisional Deputy Director, Rural Development and Panchayat (exercising the powers of Collector), Sangrur and the Joint Development Commissioner (IRD), Punjab, (exercising the powers of Commissioner), respectively, holding that the land, in dispute, is "Shamilat Deh" and vests in the Gram Panchayat.

Counsel for the petitioners submits that the Additional Director Consolidation, vide order dated 11.10.1985, allowed a petition filed by Daler Singh (the petitioners are the successors of Daler Singh), to make up deficiency in the land allotted to Daler Singh, during consolidation, by allotting 2 kanals 15 marlas out of khasra no.75min. A mutation in this regard was sanctioned in favour of Daler Singh, on 19.12.1985. The Gram Panchayat has no rights,

title or interest in the land, in dispute, but still filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'), claiming ownership on the premise that the land is the "Shamilat Deh" of the village. The Divisional Deputy Director, Rural Development and Panchayat has (exercising the powers of Collector, under Section 11 of the 1961 Act), without framing any issues or granting adequate opportunity, allowed the petition and held that the land, in dispute, vests in the Gram Panchayat. The appeal filed by the petitioners has been dismissed, without assigning any clear and cogent reasons and by ignoring the order passed by the Additional Director, Consolidation.

Counsel for the petitioners further submits that the onus to prove that the land was "Shamilat Deh" lay upon the Gram Panchayat but the Gram Panchayat has not produced any evidence to prove that the land is "Shamilat Deh". This apart, the Gram Panchayat has not produced any evidence that the land was reserved or used for any common purpose. The Collector and the Appellate Authority have, on the other hand, ignored order dated 19.12.1985, but relied upon jamabandies for the years 1975-76, 1980-81 and 2005-06, without referring to entries in jamabandies, on the date of coming into force of the 1961 Act. The authorities have also held that as there is an entry of "Chakota" (rent), it proves that the land was leased out by the Gram Panchayat but in the absence of any lease deed/patanama, the entry is meaningless.

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

The Gram Panchayat, filed a petition under Section 11, of the 1961 Act, claiming ownership of land, in dispute, measuring 2 kanals 15 marlas by alleging that the land is "Shamilat Deh". The Gram Panchayat pleaded that the Additional Director Consolidation, Punjab, had no jurisdiction to retrieve land belong to the Gram Panchayat and allott it to the petitioners. The petitioners filed a written statement controverting averments in the petition and pleaded that the land, in dispute, was allotted to Daler Singh by the Additional Director Consolidation, on 11.10.1985, the petition filed by the Gram Panchayat is barred by time and as the Gram Panchayat has not challenged, order dated 11.10.1985, before any Court, the Gram Panchayat cannot by a petition, under Section 11 of the 1961 Act, seek a declaration of its ownership.

The Collector, admittedly, did not frame issues but called upon the Gram Panchayat as well as the petitioners to adduce evidence, on their respective pleas of ownership. The Gram Panchayat recorded the statement of Jaswant Kaur, Sarpanch, produced resolution dated 27.04.2011, Ex.P1, order dated 11.10.1985, Ex.P2, petition filed under Section 42 , Ex.P3, copies of jamabandies for the years 1975-76, 2005-06, and 1980-81, Ex.P4, Ex.P5 and Ex.P6 and closed its evidence.

The petitioner, Daler Singh son of Bahadur Singh, recorded his oral statement, produced copy of mutation No.1221, dated 19.12.1985, Ex.R1, copies of jamabandies for the years 1990-91, Ex.R2, 1995-96, Ex.R-3, 2000-01, Ex.R4, 2005-06, Ex.R-5, case No.1707 of 23.08.1990, Ex.P6, Decree sheet, Ex.R-7 and closed his

evidence.

After examining the evidence on record, the Collector held that the Additional Director Consolidation, Punjab, Chandigarh, had no jurisdiction to divest the Gram Panchyat of "Shamilat" land and after examining relevant jamabandies, held that as Ex.P5, jamabandi for the year 1975-76, records the ownership of the Nagar Panchayat and one Buta Singh son of Bana Singh is recorded as Gair Marusi, on payment of Chakota and jamabandi for the year 1980-81, Ex.P7 records Piara Singh son of Kesar Singh as Gair Marusi, on payment of Chakota, the land, in dispute vests in the Gram Panchayat.

Aggrieved by this order, the petitioners filed an appeal. The Appellate Authority, dismissed the appeal, and affirmed the findings recorded by the Collector.

As his first argument, counsel for the petitioners urges that the Gram Panchayat has not proved its ownership. The argument, in our considered opinion, is misconceived. A perusal of the order, passed by the Additional Director Consolidation, relied by the petitioners to assert their ownership, reveals that it is recorded that land belonging to the Gram Panchayat is being allotted to the petitioners, thereby proving that the land, in dispute, belongs to the Gram Panchayat. Apart from the order, passed by the Additional Director Consolidation, the petitioners are unable to refer to any evidence or revenue entry to prove that they have any rights, title or interest in the land, in dispute. All relevant jamabandies record that the land belongs to the Gram Panchayat. The Additional Director

Consolidation, Punjab, Chandigarh, as already recorded, has himself allotted land to the petitioners after holding that the land belongs to the Gram Panchayat, thereby proving with a degree of certainty that the land vested in the Gram Panchayat.

The second argument is that as the Additional Director Consolidation allotted the land, in dispute, to make good deficiency in land allotted to the petitioners, during consolidation, the Collector had no jurisdiction to interfere with this order. A perusal of order dated 11.10.1985, passed by the Additional Director Consolidation, reveals that the Gram Panchayat was proceeded against ex-parte. The Additional Director Consolidation retrieved 2 kanals 15 marlas land belonging to the Gram Panchayat and allotted it to Daler Singh without recording a finding that the Gram Panchayat was in possession of excess land. Even if we accept the correctness of order dated 11.10.1985, as the Gram Panchayat has not challenged this order, it would be appropriate to record that an order passed by an authority, exercising power under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is an order passed by a officer/Tribunal of limited jurisdiction, i.e., jurisdiction to consolidate land holdings. An order passed by an authority exercising power under the Consolidation Act is final as to valuation and allotment of land but cannot be said to final as to a question of title. A person aggrieved by an order passed by consolidation authorities divesting him of his rights in a parcel of land may always approach the appropriate forum, in this case the Collector, exercising power under Section 11 of the 1961 Act, for a

declaration of its title. A reference in this regard may be made to a Full Bench judgment of this Court in **Parkash Singh and others v. Joint Development Commissioner, Punjab and others, 2014(2) R.C.R.(Civil), 721.** The order passed by the Additional Director Consolidation, therefore, cannot be construed to be an order conferring an indefeasible proprietary right upon the petitioners. The Collector, exercising power under Section 11 of the 1961 Act, to decide rights, title or interest in the “Shamilat Deh” of a village was empowered to examine whether the land, in dispute, vests in the Gram Panchayat or not.

Counsel for the petitioner as his next argument asserts that failure on the part of the Collector to frame issues renders the impugned orders null and void and for the said argument places reliance upon a large number of precedents of this Court in ***Nant Singh versus Joint Director, Panchayats, Punjab & others reported in 1993-PLJ-502 (DB), Bachna Versus Gram Panchayat of village Mehmoodpur Jattan, Tehsil and District Patiala and others reported in 2005(3)-PLR-577, Amar Singh (dead) through his LRs Smt. Surjit Kaur and others Versus The Joint Director, Panchayats, Punjab and others reported in 2013 (4)-RCR (Civil)-255 (DB), CWP No.7136 of 1996, decided on 12.09.2013 titled as Lajja Ram Versus Additional Director and Civil Writ Petition No.7372 of 2007, decided on 15.05.2009 titled as Gram Panchayat Umarpura Versus Director, Rural Development.***

Rule 21-A(2) of the Punjab Village Common Lands (Regulation) Rules, 1964, prescribes the procedure for deciding a

petition under Section 11 of the Act and requires the Collector to afford “a reasonable opportunity” to the parties to substantiate their respective claims and may if the situation so requires and as held in judgments, referred to in the preceding paragraph frame issues. But at the same time we cannot loose sight of a principle of law that, if parties are alive to the issue in hand, are afforded adequate opportunity to prove their claim and lead evidence on the point in issue, the failure to frame issues is a mere irregularity particularly, if parties do not allege or prove any prejudice. A perusal of the order passed by the Collector reveals that though issues were not framed, both parties were alive to be issue in hand, were granted “reasonable opportunity” to lead evidence and have lead evidence. The petitioners have not pleaded or proved any prejudice to their cause, or any evidence that they could not lead before the Collector. The failure to frame issues is thus a mere irregularity.

In view of what has been recorded hereinabove, we find no merit in the writ petition and dismiss the same accordingly but with liberty to the petitioners to approach the Director Land Records, Punjab, to make good deficiency in the land allotted to them during consolidation.

(RAJI VE BHALLA)
JUDGE

July 31, 2015
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(AMOL RATTAN SINGH)
JUDGE