

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

CWP No. 15332 of 2014

Date of decision : 17.03.2015

Lakhbir Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAJIVE BHALLA

HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. S.S.Chakkal, Advocate
for Mr. G.S.Chahal, Advocate
for the petitioners.

Mr. Rajinder Goyal, Addl.AG, Punjab

Mr. Mohit Sadana, Advocate
for Mr. Nakul Sharma, Advocate
the respondent no.2.

RAJIVE BHALLA, J.

Reply filed on behalf of respondent no.2, in Court today is taken on record.

The petitioners challenge orders dated 22.06.2012 and 29.11.2013, passed by the Collector-cum-District Development and Panchayat Officer, Hoshiarpur and the Director Rural Development and Panchayat, Punjab, respectively.

Counsel for the petitioners submits that even as per findings recorded by the Collector-cum-District Development and Panchayat Officer, Hoshiarpur and Director Rural

Development and Panchayat, Punjab, the land in dispute, is “*Jumla Mushtarka Malkan Va Deegar Haqdarar Hasab Rasad Khewat*” i.e. the land created during consolidation after applying a pro-rata cut on the holdings of the proprietors. The ownership of such land continues to vest in the proprietors, but management and control vests in Gram Panchayat. A Division Bench of this Court has held in **Mithu Singh and another Vs. Director Rural Development and Panchayat Department, Punjab, 2012(4) R.C.R (Civil) 149,** that as in the State of Punjab, *Jumla Mushtarka Malkan* land is not *Shamlat Deh* it is not amenable to provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'). The Gram Panchayat, thus, had no right and the Collector-cum-District Development and Panchayat Officer and the Director Rural Development no jurisdiction to entertain the petition filed under Section 7 of the 1961 Act for eviction or pass eviction orders.

Counsel for the Gram Panchayat submits that as the petitioners are un-authorised occupants, even if the land is “*Jumla Mustarka Malkaan*”, the eviction orders may be confirmed.

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

The controversy, in the present petition, is covered in favour of the petitioners and against the Gram Panchayat, by the judgment in **Mithu Singh's case (supra)**, wherein while

considering the nature of land described as "*Jumla Mushtarka Malkaan*", it was held as follows:-

7. We would, at this stage, like to clarify that the expression "Shamilat Deh" is not a generic definition, all types of land belonging to or entrusted to the Gram Panchayat but only defines land that has come to vest in a Gram Panchayat under the "Shamilat Law" and Sections 2(g) and 3 the 1961 Act. A Gram Panchayat may own, possess and manage different types of land. A Gram Panchayat may own "Shamilat Deh" by virtue of the "Shamilat Law" and Section 2(g) and Section 3 of the 1961 Act and other land that it may acquire in accordance with law but does not include as its property, land created during consolidation after applying a pro-rata cut on the holdings of proprietors i.e. Jumla Mustharka Malkan. We would like to make a passing reference to the fact that the State of Haryana has amended the definition of "Shamilat Deh" to include land created during consolidation, after applying a pro-rata cut on the holdings of proprietors within the definition of "Shamilat Deh" but the State of Punjab has not introduced such an amendment.

8. xxx xxx xxx

9. xxx xxx xxx

10. Admittedly, the land, in dispute, answers to the description of "Jumla Mushtarkan Malkan" i.e. land created during consolidation, for the village panchayat and for other common purposes, after applying a pro-rata cut on the holdings of proprietors. Section 7 of the 1961 Act applies to "Shamilat Deh" alone. The Gram Panchayat, therefore, had no right to file a petition under Section 7 of the 1961 Act, seeking ejectment of the petitioners. As a necessary corollary, the Collector had no jurisdiction to entertain the

petition for ejectment. The Gram Panchayat was required to file a petition by following the procedure prescribed, under the Punjab Gram Panchayat (Common Purposes Land)Eviction and Rent Recovery Act, 1976 or under the Public Premises and Land (Eviction and Rent Recovery) Act, 1973.

Admittedly, the land in dispute is “*Jumla Mushtarka Malkaan*”. Thus, the Collector and the Director Rural Development had no jurisdiction to entertain the petition for eviction filed by the Gram Panchayat or pass eviction orders, under the 1961 Act. The Gram Panchayat was required to file a petition under the Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976.

Consequently, as the impugned orders passed under Section 7 of the 1961 Act are without jurisdiction, the writ petition is allowed, the impugned orders are set aside but with liberty to the Gram Panchayat to file a fresh petition under the Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976.

In case, such a petition is filed, it shall be considered and decided, within three months of its filing.

(RAJIVE BHALLA)
JUDGE

(DARSHAN SINGH)
JUDGE

March 17, 2015
s.khan