

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

CWP-4789-2013

Decided on : 02.03.2015

Ashwani Kumar and others

..... Petitioners

VERSUS

**Director, Rural Development and
Panchayats, Punjab and others**

..... Respondents

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

Present: Mr.R.S.Chauhan, Advocate, for the petitioners.

Mr.Rajinder Goel, Addl.A.G., Punjab.

Mr.Nakul Sharma, Advocate, for respondent No.3.

RAJIVE BHALLA, J. (ORAL)

The petitioners impugn orders dated 09.12.2009 and 07.12.2012, passed by the District Development and Panchayat Officer-cum-Collector, Gurdaspur and the Director, Rural Development and Panchayat, ordering the petitioners' eviction under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the '1961 Act') and the dismissal of their appeal respectively.

Counsel for the petitioners submits that as admittedly the land, in dispute, is “*Jumla Mushtarka Malkan*” i.e. land created during consolidation after applying a pro-rata cut on the holdings of proprietors, the land is not *Shamilat Deh*. The 1961 Act applies to

land that is *Shamilat Deh*. The Gram Panchayat, therefore, had no right to file a petition under Section 7 of the 1961 Act and authorities under the 1961 Act had no jurisdiction to pass eviction orders.

Counsel for the Gram Panchayat asserts that even if the land, in dispute, is *Jumla Mushtarka Malkan* as it was reserved for a school and was shown in possession of another person namely Harbans Singh, the petition under Section 7 of the 1961 Act is maintainable.

The land, in dispute, is admittedly, *Jumla Mushtarka Malkan* i.e. land created during consolidation after applying a pro-rata cut on the holdings of proprietors. It would be appropriate to point out that ownership in *Jumla Mushtarka Malkan* continues to vest in proprietors whereas management vests in a Gram Panchayat. A perusal of Section 2(g) of the 1961 Act reveals that unlike in the State of Haryana such land is not included in *Shamilat Deh*. The State of Punjab, conscious of the status of such land, enacted the Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976 (hereinafter referred to as the '1976 Act'). The question whether such land is amenable to provisions of the 1961 Act, came up for consideration before a Division Bench of this Court in “Mithu Singh and another Vs. Director Rural Development and Panchayat Department, Punjab”, 2012 (4) RCR (Civil) 149.

After considering the matter in its entirety, it was held as follows: -

“7. We would, at this stage, like to clarify that the expression “Shamilat Deh” is not a generic definition of 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 Section 2(g) and 3 of 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 Mushtarka 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 Mushtarka 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.”

The land, in the present case, is *Jumla Mushtarka Malkan* and, therefore, neither *Shamilat Deh* nor subject to the jurisdiction of the 1961 Act. The Gram Panchayat, therefore, had no right to file a petition under Section 7 of the 1961 Act and authorities under the Act had no jurisdiction to entertain the petition. The Gram

Panchayat was required to approach the authorities under the the 1976 Act.

Consequently, as the impugned orders directing the petitioners' eviction by resort to Section 7 of the 1961 Act are without jurisdiction, the writ petition is allowed, impugned orders are set aside but with liberty to the Gram Panchayat to file a fresh petition under the 1976 Act.

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

[RAJIVE BHALLA]
JUDGE

02.03.2015
Shamsher S.Sabharwal

[AMOL RATTAN SINGH]
JUDGE