

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

CWP-4117-2015

Decided on : 29.05.2015

Malkiat Singh

.... Petitioner

VERSUS

State of Punjab and others

..... Respondents

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

Present: **Mr.Kanwaljit Singh, Senior Advocate, with**
 Mr.Ajaivir Singh, Advocate, for the petitioner.

Mrs.Munisha Gandhi, Addl.A.G., Punjab,
for respondents No.1 to 3.

Dr.Surya Parkash, Advocate, and
Mr.V.K.Sandhir, Advocate, for respondent No.4.

RAJIVE BHALLA, J.

The petitioners prays for issuance of a writ of certiorari, setting aside order dated 24.09.2014 (Annexure P-9), passed by the Director, Rural Development and Panchayat Department, Punjab (exercising power under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the “1961 Act”).

Counsel for the petitioner submits that the petitioner and a large number of proprietors have filed separate petitions, under Section 11 of the 1961 Act, either personally or through general power of attorney holders or by successors-in-interests or by persons who have purchased the land from erstwhile proprietors or general power of attorney holders. The Director, Rural Development and Panchayat Department, Punjab, had no jurisdiction while considering

the petition for transfer of these petitions to set aside an order passed by the Collector, clubbing more than 400 cases and directing that each case be decided separately by framing separate issues, particularly when the transfer petition had already been rendered infructuous by transfer of the petitions to another officer.

Counsel for the State of Punjab submits that as a common issue arises for consideration, namely whether the land is included in the Shamilat Deh of the village, the petitions may be clubbed and decided by a common order.

Counsel for the Gram Panchayat (respondent No.4) submits that as separate petitions have been filed, claiming different rights in the land, in dispute, the petitions cannot be clubbed. The order passed by the Commissioner, directing that cases be decided by framing separate issues and recording separate evidence etc. is, therefore, legal and valid and may be affirmed.

Counsel for Jagdish Rai Jund, Sarpanch of Gram Panchayat Mullanpur Garib Dass, submits that by clubbing the petitions, the Collector had passed an illegal order compelling the Gram Panchayat to file a writ petition which was disposed of by directing the Director to decide the application for transfer expeditiously. The Director has rightly issued a direction to decide the cases separately by framing separate issues etc.

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

The land, in dispute, is situated in village Mullanpur Garib Dass, which abuts the city of Chandigarh. The land, in dispute, is, therefore, prime property that has been sold many times over by way of registered sale deeds, general power of attorneys and is also said to have vested in erstwhile proprietors of the Shamilat Deh, on the basis of orders passed by Tribunals and Courts. The petitioner and various other persons have filed petitions under Section 11 of the 1961 Act, claiming that the land, in dispute, is excluded from the Shamilat Deh of the village. The Gram Panchayat, on the other hand, has asserted, that the land, in dispute, is the Shamilat Deh of the village. The Collector, exercising power under Section 11 of the 1961 Act, ordered that all the petitions be clubbed and decided together but by framing separate issues.

The Gram Panchayat filed a petition for transfer but during pendency of the transfer petition, the petitions were transferred to another officer thereby rendering the transfer petition infructuous. The Director, however, unmindful of the fact that the order passed by the Collector, clubbing the petitions was not under challenge before him, set aside the order passed by the Collector and directed that petitions filed under Section 11 of the Act, shall be decided separately. As the order passed by the Collector was not under challenge before the Director, his order directing that petitions under Section 11 of the 1961 Act, shall be decided by separate orders, is undoubtedly without jurisdiction. Section 11 of the 1961

Act, confers an independent right upon any person who alleges any right, title or interest in the Shamilat Deh of a village to seek adjudication of this right by filing a petition under Section 11 of the 1961 Act. The Collector is thereafter required to decide the petition by adopting a procedure akin to the procedure of a civil suit i.e. by framing issues, allowing parties to lead evidence and by passing a reasoned order dealing with each issue separately. The mere fact that the khewat and khasra numbers involved in the present petition, may be the same or that the petitioners allege that the land is not Shamilat Deh, cannot be a ground to club these petitions as rights claimed while asserting that the land is excluded from the Shamilat Deh of the village, are based upon different sale deeds, general power of attorneys, orders passed by various Tribunals, Courts and different causes, thereby requiring each party to independently prove its case that the land is excluded from the Shamilat Deh of the village, by reference to the Punjab Village Common Land Act, 1953 Act and/or any of the exclusion clauses enacted under the 1961 Act.

Before parting with the order, it would be necessary to record that during pendency of the petition and so as to ensure that relevant revenue record is not concealed or tampered with, the State of Punjab was directed to furnish the complete revenue record relating to the land, in dispute, from 1930 onwards. The State of Punjab has filed a complete set of jamabandis for 1917-18 onwards. A perusal of the record, starting from the year 1917-18 upto 2011-12,

reveals that the land was “Shamilat Deh Hasab Rasad Zare Khewat”, i.e. the common land of the village. Apart from an insignificant portion of the land, most of the land was banjar qadim, gair mumkin nadi, gair mumkin raasta (paths), gair mumkin toba (a pond), gair mumkin johar (a pond) etc.

We, however, desist from expressing any opinion as to the nature of the land or rights of the parties but in the exercise of power under Articles 226 and 227 of the Constitution, dispose of the writ petition by directing the Deputy Director Land Development, Punjab, exercising power under Section 11 of the 1961 Act, to examine each petition separately, frame separate issues, grant an opportunity to each party to lead evidence and pass a separate order in each case. If, however, a set of petitions disclose common issue of fact and law, these petitions may be clubbed and disposed of by a common order but only after affording an opportunity to each party to lead separate evidence, if so claimed. Where, however, issues in common do not arise, the petition(s) shall be decided independently by framing separate issues, granting opportunity to the parties to lead evidence and by passing separate orders. The proceedings shall be concluded, finalised and decided **within six months** of the receipt of a certified copy of this order.

[RAJIVE BHALLA]
JUDGE

29.05.2015

Shamsher S.Sabharwal

[AMOL RATTAN SINGH]
JUDGE