

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

1. CWP-9323-2014
Decided on : 21.05.2015

Bhagat Singh and others Petitioners

VERSUS

Joint Development Commissioner
(IRD), Punjab and others Respondents

2. CWP-6195-2012

Major Singh and others Petitioners

VERSUS

Joint Development Commissioner
(IRD), Punjab and others Respondents

3. CWP-6815-2012

Kewal Singh and another Petitioners

VERSUS

Joint Development Commissioner
(IRD), Punjab and others Respondents

4. CWP-17118-2012

Tarlok 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.Balbir Singh, Advocate, for the petitioners
(in CWP-9323-2014);
Mr.G.S.Nagra, Advocate, for the petitioners
(in CWP-6195-2012 and CWP-17118-2012);
Mr.Rajinder Sharma, Advocate, for the petitioners
(in CWP-6815-2012).
Mr.P.S.Bajwa, Addl.A.G., Punjab.

**Mr.Nakul Sharma, Advocate, for respondent No.3
(in CWP-9323-2014).**

**Mr.G.S.Virk, Advocate, for respondent No.3
(in CWP-6815-2012).**

RAJIVE BHALLA, J. (ORAL)

By way of this order, we shall decide CWP-9323-2014, CWP-6195-2012, CWP-17118-2012 and CWP-6815-2012 as they raise common questions of fact and law. For the sake of convenience, facts are being taken from CWP-9323-2014.

The petitioners pray for issuance of a writ of certiorari, quashing orders dated 18.04.2011 (Annexure P-4) and 20.03.2012 (Annexure P-7), passed by the Collector-cum-District Development and Panchayat Officer, Amritsar and the Joint Development Commissioner, Punjab (exercising the power of the Commissioner under the Punjab Public Premises (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the “Public Premises Act”).

Counsel for the petitioners submit that the petitioners purchased the land, in dispute, vide separate sale deeds and are, owners in possession. The land is not public premises or amenable to the Public Premises Act. The Gram Panchayat, therefore, could not maintain a petition for the petitioners' eviction, under the Public Premises Act. It is further submitted that a perusal of the jamabandi for the year 2006-07 (Annexure P-3) reveals that the land, in dispute, is recorded as Jumla Mushtarka Malkan, in possession of proprietors and does not vest in the Gram Panchayat. The Collector and the

Commissioner have, however, held that the land vests in the Gram Panchayat and as a consequence, have ordered the petitioners' eviction. Counsel for the petitioners also submit that in a civil suit filed by some of the petitioners a decree was passed to restrain the Gram Panchayat from auctioning the land. The order has attained finality as the Gram Panchayat has not filed an appeal. The writ petitions may, therefore, be allowed and the impugned orders may be set aside.

Counsel for the Gram Panchayat submits that the land, in dispute, is admittedly recorded as Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba i.e. land created during consolidation after applying a pro-rata cut on the holdings of the proprietors, under Section 18 and 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "Consolidation Act") read alongwith Rule 16 (ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, (hereinafter referred to as the "Rules"). Sections 18 and 23-A of the Consolidation Act and Rule 16(ii) of the Rules postulate that the land, so created, shall vest in the Gram Panchayat for management and control. The land, in dispute, is managed by a public authority and is, therefore, public premises. The sale of the land to the petitioners does not affect the rights of the Gram Panchayat to manage and control the land. The petitioners have been rightly ordered to be evicted from the land, in dispute.

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

A perusal of the jamabandi for the year 2006-07 (Annexure P-3) reveals that the land, in dispute is Jumla Mushtarka Malkan i.e. land created and reserved during consolidation for the common purposes of the village by applying a pro-rata cut on the holdings of proprietors. Section 18(c) of the Consolidation Act empower a consolidation officer, where any land is to be reserved for any common purpose or if the land so reserved is inadequate to assign other land for common purposes. Section 23-A of the Consolidation Act provides that the management and control of land reserved, under Section 18 shall vest with the State Government or the Gram Panchayat depending upon the common purpose. Rule 16 (ii) of the Rules clarifies that land created under Sections 18 and 23-A of the Consolidation Act shall bear the nomenclature Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba (Jumla Mushtarka Malkan). The ownership of such land shall continue to vest in the proprietors but its management and control shall vest in a Gram Panchayat.

The land, in dispute, is admittedly, Jumla Mushtarka Malkan. The management and control of this land, therefore, vests in the Gram Panchayat. The Gram Panchayat is a local body vested with powers to manage and control its properties, thereby leaving no ambiguity that the land, in dispute, is “public premises”. The mere

fact that the petitioners may have purchased this land by registered sale deeds from persons alleged to be proprietors would not divest the Gram Panchayat of its statutory right, conferred by Sections 18 and 23-A of the Consolidation Act and Rule 16(ii) of the Rules, to manage and control this land which was reserved for common purposes during consolidation. The land being described as Jumla Mushtarka Malkan, a presumption arises in law that the land was reserved during consolidation for common purposes of the village.

Consequently, we find no reason whether in fact or in law to interfere with the impugned orders and while affirming the right of the Gram Panchayat to manage and control the land, in dispute, also affirm the impugned orders and dismiss the writ petitions but with liberty to the petitioners to seek redressal of their grievance regarding ownership, in accordance with law.

[RAJIVE BHALLA]
JUDGE

21.05.2015
Shamsher S.Sabharwal

[AMOL RATTAN SINGH]
JUDGE