

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

-:-

1. Civil Writ Petition No.16222 of 1992

Shingara Singh Petitioner

Vs.

Additional Director of Panchayats, Punjab & Ors. Respondents

2. R.S.A No. 765 of 2000

Gram Panchayat, Bassi Daud Khan Petitioner

Vs.

Harbans Kaur & Ors. Respondents

Date of Decision: 08.08.2016

**CORAM: HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR. SHEKHER DHAWAN**

Present: - Mr. M.S.Kang, Advocate, for the petitioner.

Mr. Gaurav Garg Dhuriwala, DAG, Punjab.

None for the appellant.

MAHESH GROVER, J.(ORAL)

This order will dispose of Civil Writ Petition No. 16222 of 1992 and Regular Second Appeal No. 765 of 2000, as they pertain to the same land.

In the writ petition, orders Annexure P/4 and P/5 are impugned having been passed under Section 7 of the Punjab Village Common Land Act, upon such an application being filed by the Gram Panchayat alleging that the present petitioner along with one Gurdas Singh was in unauthorised

occupation of panchayat land. For the reference, relevant extract of the application highlighting the claim of the Gram Panchayat is extracted here as under:-

“ That the respondents Nos. 1 and 2 have taken forcible and illegal possession of the land detailed above in the head-note of the petition. They have never been inducted into the possession of this land by the petitioner Gram Panchayat/Gram Sabha of Village Bassi Daud Khan, Tehsil and District Hoshiarpur in any manner nor are they tenants or Chakotadurs of the petitioner Gram Panchayat/Gram Sabha of Village Daud Kahn Tehsil & District Hoshiarpur. The relevant copies of Khasra girdawari and jamabandi are attached herewith for ready reference.”

The petitioner contended that this land is Jumla Mushtarka Malkan to which the proceedings Under Section 7 of the Punjab Village Common Land Act could not be attracted.

This is precisely the argument, which has been raised before us as well.

However, the Collector, Hoshiarpur as also the Commissioner even though noticed that the land was Mushtarka Malkan, as per the record, went on to dismiss the claim of the present petitioner to record finding in favour of the ownership of Gram Panchayat.

The impugned order Annexure P/5 would also show that

petitioner was recorded Chakotadurs after having got the land in auction from the Gram Panchayat.

Section 7 of the Punjab Village Common Land Act is extracted here as under:-

7. Power to put panchayat in possession of *Shamilat deh*-

(1) The collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the state government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the *Shamilat deh* of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

Provided that if after receipt of the application and before the panchayat is put in possession of the land or other immovable property in the *shamilat deh*, a question of right, title or interest in such land or property is raised by any person and a *prima facie* case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under Section 11 and till the question is so determined, the application shall remain pending:

provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under Section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed

further to put the panchayat in possession of the land or other immovable property in the shamilat deh.

(2) An appeal against the order of the collector under sub-section(1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against.

A bare perusal of the aforesaid provision of law leaves us with no doubt that proceedings under Section 7 were not maintainable as the land concededly was not Shamilat deh. We find support regarding this from Division Bench judgments of this Court reported in *Mithu Singh & Anr. Vs. Director Rural Development and Panchayat Department, Punjab* 2012 (4) R.C.R (Civil) 149 and *Marthan Vs. Director Rural Development and Panchayat Department, Punjab*, 2015(1) PLR 538.

The land being Mushtarka Malkan could not have been subject of proceedings which pertain to power of the Gram Panchayat to move an appropriate authority to retrieve shamlat land from unauthorised occupants.

Consequently, we accept the writ petition and while setting aside impugned orders Annexures P/4 and P/5 grant the liberty to the Gram Panchayat to move an appropriate petition under The Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976 or to avail any other remedy available in accordance with law.

The regular second appeal arises from a civil suit filed by the Gram Panchayat seeking declaration that the land measuring 9 Kanal and 5 marlas (the very same which is the subject matter of writ petition) is reserved for play ground of the village in consolidation proceedings and the

entries with regard to it recording the land to be Barani with the name of

Shingara Singh (writ petitioner since deceased) in cultivating possession be declared as wrong and injunctive relief was also sought to restrain the defendant (writ petitioner) from interfering in the peaceful possession of the Gram Panchayat. Suit was dismissed and amongst other issues the issues of jurisdiction and maintainability were also decided against the Gram Panchayat. In appeal the findings were affirmed resulting in the regular second appeal.

The issue of delay was also held against the Gram Panchayat. There has been no representation on behalf of the appellant. We have already observed that the land was concededly not shamilat as revenue records produced by the Gram Panchayat, itself reflected it to be Jumla Mushtarka Malkana. Be that as it may, the civil Court has no jurisdiction to correct the revenue record for which appropriate remedy would be before the Revenue Authority.

No substantial question of law arises for determination in the regular second appeal, which is accordingly dismissed.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

August 08, 2016
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Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No