

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 2143 of 1995 (O&M)

Date of Decision: 17.11.2016

The Gram Panchayat of Village Jawaharke, Tehsil and District Mansa

... Petitioner(s)

Versus

The Additional Director, Consolidation, Punjab at Jalandhar and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Mahesh Grover.
Hon'ble Mr. Justice Shekher Dhawan.**

Present: Mr. Salil Sagar, Senior Advocate
with Mr. Sankalp Sagar and Mr. Sunil Kumar,
Advocates for the petitioner(s).

Mr. Gaurav Garg Dhuriwala, DAG Punjab
for respondents No.1 to 3.

Mr. J.S.Brar, Advocate
for respondents No.4 and 5.

Mahesh Grover, J.

This writ petition is directed against the order dated 26.5.1993, passed by respondent No.1-the Additional Director of Consolidation, Punjab at Jalandhar, order dated 11.1.1994, passed by respondent No.3-the Consolidation Officer, Jalandhar and order dated 13.12.1994, passed by respondent No.2-the Additional Director of Consolidation, Punjab at Mohali.

Before we comment on the merits of the case, we would have to adjudicate upon the application i.e. CM-4257-LPA-2009 filed by applicant-Municipal Committee, Mansa with a prayer to substitute it as a petitioner in

place of Gram Panchayat of village Jawaharke.

By virtue of notification dated 18.12.1994, the area of Village Jawaharke was included in the Municipal Committee, Mansa.

The Panchayat had filed the instant writ petition with a plea that the order of the Additional Consolidation Officer dated 11.1.1994 and the order dated 13.12.1994 in the resultant appeal are erroneous and liable to be set aside as no land belonging to the Gram Panchayat could be given to the private respondents to make up a deficiency of their holding on account of a mistake that occurred during consolidation proceedings.

Even though the Gram Panchayat agitated this issue by filing writ petition but for some strange reasons, it withdrew it on account of which an application for recalling the order disposing of the writ petition as withdrawn was filed by the Municipal Council and this Court vide order dated 30.10.2015, noticed that since the land of the Gram Panchayat of village Jwaharke had been included in the Municipal Council, the Panchayat was deprived of any right to take any steps to withdraw the writ petition.

The writ petition was then restored to its original number but the Court left the issue of substituting the applicant in place of Gram Panchayat open.

We are of the opinion that once the Court concluded that the Gram Panchayat was left with no right to withdraw the writ petition after the land stood included in the Municipal Council, the application for substitution would necessarily have to be allowed on the same logic I.e. to fend for the interest of the land of Gram Panchayat would flow to the successor body i.e. Municipal Council. Consequently. The application is allowed.

Reverting back to the merits of the petition, we would briefly notice the facts. The private respondents filed an application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act”) alleging that the land, allotted to the predecessor-in-interest of the said respondents at the time of consolidation, was deficient to the extent of 3 kanals & 7 marlas (2.19 standard acres). The Additional Director (Consolidation), vide his order dated 26.5.1993, accepted the plea of the private respondents and remanded the matter to the Consolidation Officer with the direction that he should peruse the consolidation record, visit the spot, get the demarcation done and after hearing the parties, rectify the mistake in accordance with law. For the purposes of reference, the relevant portion of the order is extracted hereunder:-

“Accordingly, the petition is accepted to the extent that case is remanded to Consolidation Officer with the directions that he should peruse the consolidation record thoroughly, visit the spot, get it demarcated properly, hear all the necessary parties and if the contentions of the petitioners are proved, he should rectify the mistake under the provisions of law. Petitioner is directed to appear before the Consolidation Officer, Mohali on 7.6.93.”

Pursuant to the above, the Consolidation Officer passed order dated 11.1.1994 accepting the mistake and made good the deficiency from the area of the Gram Panchayat.

It may be pertinent to mention here that no demarcation etc. had

been done as was the mandate of the order of the Additional Director, Consolidation dated 26.5.1993 for the reason that in his order dated 11.1.1994, the Consolidation Officer took the mistake to be apparent on record. We may extract the relevant portion of the order granting land to the private respondents from the area of Gram Panchayat:

“This mistake is apparent from the map and field book. Its measurement is not needed at the spot as the sarak side is written 12 karams in killa No. 40//18 from the establishment of small canal it is crystal clear that these karams cannot be increased. This mistake is done by the department, so it is also responsibility of the department to correct it. The deficiency of area 3-7 simple and 2-19 standard is caused to the objector due to this mistake which is made good from the area of Gram Panchayat comprised in killa No. 47//23-22 and 22 (sarak). This remand case is accepted with following modifications:-

Killa No.	Wrong Description Withdrawn			Now Corrected Given		
42//18	12-33	-	54-40	12-33	-	54-40
	3			2		
	12			10		
	48			48		
	Standard			Standard		
	40/(48)+42=100, 14, 8-15			40/(48+12)=6.13, 14, 5-16		
	2			2		

S. No.	Name of Owner	Withdrawn		Given	
		Kharaj	Std.	Samal	Std.
1.	Gurnam Kaur	42//18 10-0	8-15	42//18 6-13	5-16
	Widow, 1/3			47//23 8-0	2-0
	Narinder Singh,			24 3-0	0-15
	Harinder Singh,			Sarak 22 0-16	0-4
	ss/o Sampuran				
	Singh share 6/7			Khite 4 18-9	8-15

2.	Gram Panchayat	47//23	8-0	2-0
		24	3-0	0-15
	Sarak	<u>22</u>	<u>0-16</u>	<u>0-4</u>
	Khite-3		11-16	2-19

We may also notice here that the Gram Panchayat, though served, did not put in appearance, leading to an *ex parte* order. However, an appeal was filed, which was dismissed on 13.12.1994, leading to the filing of the instant writ petition by the Gram Panchayat whereby both these orders dated 11.1.1994 and 13.12.1994 were impugned.

As noticed above, the writ petition was surreptitiously withdrawn by the Gram Panchayat after the land stood vested in the Municipal Council by virtue of the notification dated 18.12.1994. It is, then the Municipal Council stepped in to plead and contend that it, being the successor body to the Gram Panchayat of Village Jawaharke, had the right to protect the land which flowed to it by virtue of the notification. It was contended that even if the deficiency was noticed correctly, there would be no occasion to make it good from the land belonging to the Gram Panchayat and the only option with the Consolidation Officer was to make good this deficiency from the bachat land.

Even though a specific assertion has been made by the petitioner in this regard that bachat land was made available, the reply is in denial with no particulars emanating from the assertion and the counter assertion.

We are, thus, confronted with the situation where we have to determine this issue of justification of the Gram Panchayat land being given to the private individuals.

fact that such a course was totally unwarranted, the fact remains that the Gram Panchayat was never heard effectively. It has further been contended that the consolidation of the village took place in the year 1957-58 and the application to make good the deficiency was preferred in the year 1993 at a much belated stage, which fact singularly was sufficient to discard the application in view of the settled proposition of law propounded in several judgments of this Court, noteworthy amongst which is ***Gram Panchayat Keharoo v. Additional Director, Consolidation of Holdings, Punjab and Another*** 2004 LAR 293.

It has next been contended that the entire conduct of the Gram Panchayat does not seem to be above board considering that they did not appear in the first instance and then chose to withdraw the writ petition resulting in an undue advantage to the private respondents.

The prayer is opposed by learned counsel for the respondents, who contends that the Gram Panchayat was served and did not chose to appear for which the petitioner cannot be blamed. In any eventuality, the deficiency was admitted and it had to be made good and thus, the arrangement which come into existence by virtue of impugned orders conferring the land in their favour cannot be disturbed at this stage. It has next been contended by learned counsel for the respondents that infact the delay had been caused by the petitioner themselves as this issue has been raised belatedly.

After hearing learned counsel for the parties, we are of the opinion that the Consolidation Officer committed a gross illegality in granting land belonging to the Gram Panchayat to the private respondents in

a cavalier fashion. He completely ignored the caution in the order dated 26.5.1993 by which the matter was remanded to him for consideration. It was incumbent upon him to get the demarcation done by looking at the consolidation record, visiting the spot and hearing the parties. Rather, he chose to rely on the face value of the record which ordinarily would have been sufficient to establish the deficiency but insofar as subsequent exercise for making good the deficiency is concerned, it was incumbent upon him to look into other aspects such as availability & utilization of land by taking a holistic view of the existing situation, particularly when he was embarking upon this exercise after a significant lapse of time after the consolidation proceedings in the year 1957-58. The availability of the bachat land etc. should have been a prior consideration rather than arbitrarily taking away the land belonging to the Gram Panchayat.

We also feel that mischief was done by the Gram Panchayat itself at that point of time, as they chose not to appear and contest the matter leaving the field open for the respondents to take away the land of the Gram Panchayat. The withdrawal of the writ petition, in the manner noticed above, would also inferentially reflect such a collusion.

We are, thus, of the opinion that the land of the Gram Panchayat could not have been alienated in favour of the private respondents in such a casual manner and the applicant (now the writ petitioner) as a Municipal Council and a successor body would have the right to agitate this issue to claim restitution of the land.

We do not want to comment on the issue of delay in raising such a plea by the private respondents in the year 1994, after the

consolidation took place in the year 1957-58 for the simple reason that undisputedly there was a deficiency in the land and thus, to negate the claim of the respondents by making it hostage to the issue of delay would be extremely harsh, particularly when they are in possession of this land ever since the grant in their favour. We, therefore, set aside the impugned orders and remit the matter back to the respondents No. 3 to reconsider the issue raised by the respondents in their application and take an appropriate decision thereafter, after hearing both the parties.

The instant writ petition stands disposed of.

(Mahesh Grover)
Judge

(Shekher Dhawan)
Judge

November 17, 2016
“DK”

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No