

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

**CWP No.15907 of 1998
Date of decision: 07.12.2016**

Gajjan Singh and another

... Petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: None for the petitioners.

Mr. B.M. Vinayak, DAG, Punjab.

None for respondent No.5.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned communications dated 17.07.1997 (Annexures P-1) and 06.02.1998 (Annexures P-2), petitioners have approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the same.

Notice of motion was issued and in compliance thereof, written statement was filed on behalf of respondents No.1 to 4. Separate written statement was filed on behalf of respondent No.5. Thereafter, the writ petition was admitted for regular hearing and status quo regarding possession was ordered to be maintained between the parties. That is how, this Court is seized of the matter.

Heard learned counsel for the State.

Learned counsel for the State has rightly pointed out that in the peculiar facts and circumstances of the case, it shall be the District Collector, who will be the competent authority to sanction the mutation. So far as the ownership of the land in question is concerned, it was the land belonging to proprietary body of the village. It was recorded in the relevant record as Jumla Mushtarka Malkan. It is also specifically recorded in Annexures P-1 and P-2 that the land in question already stood partitioned amongst the co-sharers, who were members of the proprietary body. It was, as a matter of fact, bachat land which remained unutilized for the common purposes of the village during consolidation proceedings.

Such type of land would be contributed by the proprietors of the village to the extent of their share, with a view to create a common pool during the consolidation proceedings, so that the land out of such a common pool could be utilized for common purposes of the village, namely school, playground, hospital and cremation ground etc. However, whatever land would be left unutilized, it would be known as bachat land and would be recorded as Jumla Mushtarka Malkan Hasab Rasad Raqba Khewat. Such unutilized land must revert to the source from which it came to the common pool i.e. proprietary body.

Every co-sharer in the proprietary body would be entitled to get such land partitioned. So far as the present case is concerned, the land in question already stood partitioned amongst the co-sharers of the proprietary body. Said partition had already attained finality. The respondent-Gram Panchayat would have no concern with such kind of land, because it had never

been the ownership of the Gram Panchayat. It is also crystal clear from Annexure P-4, wherein the land was recorded as Jumla Musharka Malkan. As many as 178 co-sharers have been allotted their respective shares in the Jumla Mushtarka Malkan. The only proceedings, which are left to be carried out by the revenue authorities, are the mutation proceedings. Having said that, this Court feels no hesitation to conclude that District Collector, Sangrur-respondent No.2 should have carried out this exercise on the basis of communication dated 06.02.1998 (Annexure P-2), whereby the matter was forwarded to him by Sub Divisional Magistrate, Barnala.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present writ petition deserves to be accepted. Accordingly, District Collector, Sangrur-respondent No.2 is directed to look into the matter and if the mutation proceeding have not been carried out so far, let him do the needful without any further loss of time. He will sanction the mutation in favour of proprietors of the village, including the petitioners, as per their share specified in Annexure P-4, because the land in question already stood partitioned amongst the co-sharers of the proprietary body.

Should there be any confusion, it is clarified that the consolidation authorities would have no jurisdiction to sanction the mutation and learned District Collector shall refer to Annexure P-4, only for the limited purpose of his facility to sanction the mutation in favour of proprietors of the village, to the extent of their share. It is so said because neither there is any question of title involved nor there is any dispute about the share of co-sharers of the proprietary body.

Let the District Collector, Sangrur-respondent No.2 do the needful within a period of three months from the date of receipt of certified copy of this order by passing an appropriate order, strictly in accordance with law. Learned District Collector is also directed to grant an opportunity of being heard to all the co-sharers of the proprietary body before passing the appropriate order.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands disposed of, however, with no order as to costs.

07.12.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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