

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

**CWP No.4752 of 1997
Date of decision: 30.11.2016**

Dalip Singh

... Petitioner

Vs.

Joint Development Commissioner (IRD), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: None for the petitioner.

Mr. Yatinder Sharma, Addl. AG, Punjab.

Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate
for respondent No.3.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned appellate order dated 28.02.1997 (Annexure P-5) passed by Joint Development Commissioner, Punjab, exercising the powers of Commissioner, whereby appeal of the petitioner was dismissed and his ejection from the land in question ordered by District Development and Panchayat Officer, Amritsar, exercising the powers of Collector under the Punjab Public Premises (Eviction and Rent Recovery) Act, 1973 ('Act of 1973' for short) was upheld, petitioner has approached this Court, by way of present writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Notice of motion was issued by a Division Bench of this Court vide order dated 07.04.1997 and status quo, as it existed on that day, was ordered to be maintained. Respondent-Gram Panchayat filed its written statement and petitioner filed his replication thereto. Thereafter, the writ petition was admitted for regular hearing vide order dated 02.09.1998 passed by a Division Bench of this Court and operation of the impugned orders was stayed. That is how, this Court is seized of the matter.

Heard learned counsel for the State as well as learned counsel for respondent No.3.

A bare combined reading of the impugned ejectment order (Annexure P-2) and the impugned appellate order (Annexure P-5) would make it crystal clear that the learned Collector as well as learned Commissioner miserably failed to appreciate the true import of the nature of land, which was recorded in the revenue record as *Jumla Mushtarkha Malkan waa Deegar Haqdaran Hasab Rasad Raqba Khewat*. Petitioner was recorded in the column of cultivation as co-sharer. This type of land had never vested in the Gram Panchayat at any point of time, it being the absolute ownership of proprietary body of the village, right from day one. Since the respondent authorities have exceeded their jurisdiction, while passing the impugned orders, the same cannot be upheld.

It seems that the land in question was lying *Banjar Kadim* as recorded in Jamabandi for the year 1961-1962 (Annexure P-1) and in the column of ownership, it was *Jumla Mushtarkha Malkan waa Deegar Haqdaran Hasab Rasad Raqba Khewat*. Again, in the column of cultivation, it was *Makbooja Malkan*. It is specifically pleaded by the petitioner, as per averments

taken in para 2 of the writ petition that the land was earlier lying *Banjar Kadim*, which was made cultivable by the petitioner. He also installed a tubewell in the land in question.

In such a situation, neither the land which was recorded as *Jumla Mushtarkha Malkan*, would fall in the definition of public premises under the relevant provisions of the Act of 1973, nor the ejectment application on behalf of the respondent-Gram Panchayat would be maintainable. The entries recorded in the revenue record were never challenged by the respondent-Gram Panchayat. Similar entries continued in later Jamabandis for the year 1983-1984 (Annexure P-6), Khasra Girdawari for the year 1988 (Annexure P-7), Khasra Girdawari for the year 1989 (Annexure P-8), Khasra Girdawari for the year 1990 (Annexure P-9) and also the Jamabandi for the year 1988-1989 (Annexure P-10). In all these revenue documents, land was recorded as *Jumla Mushtarkha Malkan* and petitioner was recorded in cultivating possession as co-sharer.

In view of the abovesaid undisputed fact situation obtaining on the record of the case, this Court feels no hesitation to conclude that since the respondent authorities committed serious error of law, while passing their respective impugned orders (Annexures P-2 and P-5), the same cannot be upheld. In fact, the impugned orders have been found as the orders without jurisdiction.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the ejectment order (Annexure P-2) as well as the impugned appellate order (Annexure P-5) have been found suffering from patent illegality

and perversity, same cannot be upheld. Accordingly, the impugned orders (Annexures P-2 and P-5) are hereby set aside. The writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, present writ petition stands allowed, however, with no order as to costs.

30.11.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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