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

**Date of decision: April 21, 2016
CWP No.7042 of 2016**

Bhag Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CWP No.7130 of 2016

Chanan Singh (deceased) through his LRs

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mr. Arvind Singh, Advocate
for the petitioners.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT, J. (Oral)

This order shall dispose of CWP No.7042 of 2016 and CWP No.7130 of 2016 as the point in issue in both the cases is similar in nature. The facts are extracted from CWP No.7042 of 2016.

The petitioner has laid challenge to the orders dated 16.11.2012, 06.05.2014 and 16.2.2015 passed by the Assistant Collector First Grade, Appellate Authority and the

Revisional Authority, respectively, under the Punjab Village Common Lands (Regulations) Act, 1961 (for short 'the Act'), as applicable to the State of Haryana. Vide these orders, the petitioner was permitted to raise the title dispute under Section 7(2) of the Act in the eviction petition filed by the Gram Panchayat and the said dispute has been answered against him, thereby declaring that the subject land vests in the Gram Panchayat for all intents and purposes by virtue of Section 2(g) of the Act read with the provisions contained in the East Punjab Holdings (Consolidation and Fragmentation) Act, 1948.

The petitioner's case was that the land in dispute measuring 10 kanal situated in the revenue estate of village Sahabpura, Tehsil and District Ambala is in his cultivating possession for the last more than 50 years, the subject land is recorded under ownership of *Makbuja Malkan* and in the column of possession, the name of the predecessor of petitioner was duly recorded as a co-sharer in the land.

On the other hand, the Gram Panchayat's case was that the subject land is a part of the common purposes land given by the proprietors on pro-rata basis and it vests in the Gram Panchayat by virtue of Act No.9 of 1992 vide which the definition of Section 2(g)(6) of the 1961 Act was amended. The mutation No.123 of the land was duly sanctioned in favour of the Gram Panchayat on 19.5.1992.

The core issue that arose for consideration of the authorities was whether the petitioner or his predecessor-in-interest were in the cultivating possession of the suit land as a co-sharer prior to 6th January, 1950 and if so, what was the legal effect?

The authorities have concurrently held that the subject land was reserved for common purposes though it was contributed by the proprietors. Such a land, the authorities have held, vests in Gram Panchayat by virtue of Section 2(g)(6), which reads as follows:-

“(g) “Shamilat Deh” includes-

(6) Lands reserved for the common purposes of a Village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid Act.

EXPLANATION-Lands entered in the column of ownership of record of rights as 'Jumla Malkan Va Digar Haqdarani Arazi Hassab Rasad', 'Jumla Malkan' or 'Mushtarka Malkan' shall be shamilat deh with the meaning of this section.”

The authorities have relied upon a Full Bench judgment of this Court in Jai Singh versus State of Haryana (CWP No.5877 of 1992), decided on 13.03.2003, the relevant part of which are as follows:-

“i) Sub-section (6) of Section 2(g) of the Punjab

Village Common Lands (Regulations) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;

ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g) (1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1959 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;

iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat and in the column of possession with the proprietors, shall not vest the Gram Panchayat or the State Government, as the case may be, on the dint of sub-Section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with

the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumal Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat etc.” (emphasis applied)

With a view to dislodge the petitioner's claim, the Assistant Collector First Grade has found as a matter of fact that the land reserved/earmarked for common purposes was leased out on annual basis by the Gram Panchayat through public auction in the year 2000-2001 and its plot No.3, was taken on annual lease by the petitioner's son, namely, Saminder Singh for a sum of Rs.15,500/-. The petitioner's family, like several other lessees, however refused to hand over the vacant possession of suit land to the Gram Panchayat after the expiry of lease period on the pretext that the Gram Panchayat had no concern with the suit land.

It would be equally apt to notice at this stage that the petitioner in his written statement (Annexure P-7) did not dispute the fact that the subject land was taken on lease by his son for the year 2000-01. Rather, while asserting his possession even prior to 1950, the petitioner has taken the plea of “adverse possession” as is evident from para 5 of his written statement, which reads as under:-

“That the petition is vague and misconceived as the land belongs to Mushtarka Malkana and the

respondent is proprietor of the village having all sort of right of ownership of his own land in the abadi deh, shamilat deh and Mushtarka properties. The respondent is in possession of the property in question much prior to 1950, so rights of the respondent have matured into ownership by way of adverse possession in all respects."

If the petitioner or his predecessor entered into possession of the suit land as a lessee, he cannot be permitted to dispute the title of the Gram Panchyat and/or claim adverse possession qua the said land.

Be that as it may, the authorities have concurrently held that the suit land falls within the ambit of Section 2(g)(6) of the Act read with provisions of the 1958 Act and thus, the petitioner has no right or title qua the same.

For the reasons afore-stated, the writ petitions are dismissed.

**[SURYA KANT]
JUDGE**

**[A.B. CHAUDHARI]
JUDGE**

April 21, 2016
mahavir