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

**Date of decision: May 09, 2016
CWP No.9026 of 2016**

Jitender and others

.....Petitioners

Versus

Gram Panchayat Kalyaka and others

.....Respondents

CWP No.9050 of 2016

Tej Pal

.....Petitioner

Versus

Gram Panchayat Kalyaka and others

.....Respondents

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

**Present: Mr. Adarsh Jain, 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?

A.B. CHAUDHARI , J

By this common order, CWP No.9026 of 2016 and
CWP No.9050 of 2016 are being disposed of.

In these two writ petitions filed under Article 226
and 227 of the Constitution of India, the petitioners have laid
challenge to the common order dated 16.09.2015 (Annexure
P-16) passed by the Financial Commissioner, Haryana who by
dismissing the revision petitions filed by the petitioners
confirmed the orders (Annexure P-13 and P-14) passed by its
subordinate authorities who held that the land in dispute is

Shamlat Deh and reserved for common purpose.

In support of the writ petitions, the learned counsel for the petitioners submitted that (i) the initial burden to prove that the land was reserved for common purpose or for benefit of Gram Panchayat, was on the Gram Panchayat and it had failed to discharge the same by satisfactory evidence and consequently, the mutation entry No.484 to that effect, in favour of Gram Panchayat, was clearly illegal, (ii) the petitioners have been in possession of the suit land as per the *jamabandi* for the year 1973-1974 showing the land to be *Jumla Mustarka Malkan* and in possession of the petitioners which fact has been ignored by the authorities, (iii) the authorities below committed an error in law in holding that the initial burden to prove that the suit land was for 'common purposes' was not on the Gram Panchayat and that it was on the petitioners, (iv) As a matter of fact, it was the Gram Panchayat who was obliged to prove accordingly and the petitioners could not be expected to prove a negative fact, (v) The Gram Panchayat did not produce any evidence that the land was reserved for 'common purposes' either during consolidation or that the same was 'earmarked' for such common purposes or for augmenting income of the Gram Panchayat, particularly when the Panchayat never cultivated the land nor leased out the same to anybody.

It was then argued that the authorities below ignored the decisions of this Court in the case of Jai Singh

versus State of Haryana 2003 Volume II, R.C.R. (Civil) 578 as well as Vir Singh and others versus State of Haryana in RA-CWP No.350 of 1999 in CWP No.7077 of 1991, decided on 08.11.2013 in which it has been specifically held that *Jumla Mustarka Malkan* land reserved for 'common purposes' during consolidation, could alone vest in the Panchayat and not otherwise. Thus, according to the learned counsel for the petitioners there is a perversity on the part of the authorities in not accepting the claim of the petitioners and hence, prayed for allowing these writ petitions.

We have heard learned counsel for the petitioners. We have perused the entire record including the reasons given by the authorities below while making the impugned orders.

At the outset we find that the authorities below have recorded concurrent findings of the facts and therefore, in the present case, it may not be possible to enter into the arena of facts. Nevertheless, we have gone through the factual aspects as discussed by the authorities below to find out whether there is any perversity. It is not in dispute that the petitioners had filed the proceedings before District Collect under Section 13A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'Act') praying for declaration that they were co-sharers of the suit land. The petitioners were in actual possession of the land in question from 1973-1974 as is clear from *Jamabandies* for the year

1978-1979, 1983-1984, 1988-1989, 1993-1994 and 2003-2004. It is claimed that the name of Gram Panchayat was recorded vide mutation No.484 dated 31.01.1985 on the basis of letter dated 04.11.1982 issued by the State Government and the petitioners were ordered to be evicted from the land in question. It is pertinent to note that the land in question were recorded in *Jamabandies* for the year 1960-1961, 1963-1964 and 1968-1969 as *Jumla Malkan Wa Digar Hakdaran Arazi Hasab Rasad Kabja* and the Gram Panchaath was recorded in possession thereof. In so far as the petitioners are concerned, they have been shown in possession in the *Jamabandies* for the year 1973-1974 and subsequent *Jamabandies* as lessees. It was for the petitioners to prove how they came in possession. Not only that, in the column of rent, entry of *chakota saal tamam* ₹900/- is also found which clearly indicates that the claim made by the petitioners as co-sharers was fully inconsistent with the documentary proof or the entries as aforesaid. It is thus, clear that the petitioners who had initiated the proceedings under Section 13A of the Act before the Collector, were under an obligation to discharge the initial burden to prove about their nature of possession and claim for ownership but they miserably failed to prove the same by adducing satisfactory evidence. The full bench decision of this Court in the cases of **Jai Singh (supra)** and **Vir Singh (supra)** does not come to the help the petitioners as even in these judgments, it has been held that

the land reserved for common purpose whether utilized or not shall vest in the Gram Panchayat, even though in the column of ownership, the entries may be *Jumla Mustarka Malkan Wa Digar Hakdaran Hasab Rasad Arazi Kheat* etc. Thus, within the meaning of Section 2(g) of the Act of 1961, such a land is *shamlat deh* and vest in the Gram Panchayat. The petitioners were recorded as *Gair Marusi*. Whether or not the mutation was made as per letter dated 04.11.1982 in favour of the Gram Panchayat would be no consequence. Consequently, we find that the petitioners failed to prove their case. As a sequel, these writ petitions must fail.

In the result, we make following order:

ORDER

CWP Nos.9026 and 9050 of 2016 are summarily dismissed.

**[SURYA KANT]
JUDGE**

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

May 09, 2016
mahavir