

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

1. CWP-13293-2015
Date of Decision: October 24, 2017

Gram Panchayat village Shahpur Dogra/KollianwalPetitioner

Versus

Director of Land Record Jalandhar and others
.....Respondents

2. CWP-25541-2015

Gurdeep Kaur and othersPetitioners

Versus

Director of Land Record Jalandhar and others
.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Naresh Prabhakar,Advocate for the petitioner.

Mr.Rajesh Bhardwaj, Sr.DAG,Punjab.
Mr.G.S.Nagra, Advocate
for respondent Nos.4 to 6, 81(i, iii, iv), 82(i to iii) and 89, 90.
Mr.R.S.Chauhan, Advocate for respondent Nos.12, 13, 18 to 20,
29, 38 to 40, 54, 55, 58, 60 to 62.
Mr.Vikas Singh, Advocate with
Ms.Sukhmani Patwalia, Advocate for
respondent Nos.30, 31, 34, 35, 59, 60, 63, 64, 72, 75, 78 to 80
Mr.Navjot Singh, Advocate for
Mr.Rakesh Kumar, Advocate for respondent No.73.

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SURYA KANT, J.

This order shall dispose of the above captioned writ petitions as

the point in issue involved in both the cases is common in nature. The facts

are being extracted from CWP-13293-2015.

[2] Gram, Panchayat of village Shahpur Dogra/Kollianwal, Block Kapurthala, District Kapurthala, has laid challenge to the order dated 21.01.2015/06.04.2015 (Annexure P4) passed by the Director Land Records, Jalandhar, in purported exercise of his powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948 (for brevity, 'the 1948 Act'). The said order has been passed in compliance to the directions issued by this Court on 15.07.2013 in CWP-18502-1995 (**Mukhtiar Singh vs Additional Director, Consolidation of Holdings, Punjab and others**) whereby the previous order dated 28.07.1995 was set aside being non-speaking and the Director Land Records was directed to pass a detailed and reasoned order with further liberty to remand the matter to the Consolidation Officer, Jalandhar, if so required.

[3] It would be useful to reproduce the relevant part of the impugned order which reads as follows:-

“The record and various decisions of the Hon'ble Courts as well orders of Consolidation authorities were examined. The arguments of the Ld.counsels for the parties were heard in detail. After so doing I find that the submission made by the petitioners deserves to be accepted. Earlier order dated 21.10.1986 and 15.03.1991 passed under Section 42 of CH Act, were upheld by the Hon'ble High Court and Supreme Court. In compliance of order dated 15.03.1991 passed under Section 42 of the CH Act, the re-partition of Shamlat land was also not set aside by the any Court. Partition of Shamlat land was affected on 09.02.1993 after the matter was decided by various Courts. The right holders other than the petitioners had given land out of Shamlat land

as per their shares and they are enjoying the fruits of the land since then. Even the petitioners also have portion of the land carved out of Shamlat land. The question here is settling the proportion or specific parcel to be given to the petitioners. In fact this case does not call for the partition of Shamlat land among the parties but adjustment of their shares or location of their parcels.”

[emphasis applied]

[4] We have heard learned counsel for the parties and gone through the record. It may be seen that the Director Land Records is largely influenced by the previous order dated 21.10.1986 and 15.03.1991 which were passed by his predecessor ordering re-partition of the *shamlat deh*. He has reiterated those very orders on the premise that the challenge by the Gram Panchayat to the above-stated orders was repelled by a learned Single Judge of this Court on 05.11.1990 and the said order was further upheld by the LPA Bench as well as by the Hon'ble Supreme Court on 15.04.1994.

[5] While taking the view, the Director Land Records has overlooked the Full Bench dictum in **Parkash Singh and others vs Joint Development Commissioner, Punjab and others**, 2014(2) RCR (Civil) 721, where this Court has illustratively explained as to what kind of orders, upheld by the judicial Forums, can be termed as binding in nature or can be ignored, for in the absence of any provision for appeal, the doctrine of merger cannot be applied, more so when the High Court or the Supreme Court did not pass reasoned orders while dismissing the Gram Panchayat challenge. The essence of the matter is, thus, that the Director Land Records is obligated to determine whether the subject land could be partitioned amongst the proprietors and if so, whether the previous orders partitioning

the subject land were valid and passed in accordance with law? If it is found that the land could not be ordered to be partitioned, the next issue which would arise for determination is whether those erroneous orders can be reopened at this stage or will have to be given a decent burial in view of the fact that the same were upheld by this Court as well as the Apex Court. The Director Land Records ought to have answered these questions following the Full Bench judgment in **Parkash Singh's** case (supra) or the subsequent case law which has a direct bearing on the subject. The impugned speaking order unfortunately does not even refer to the relevant case law except reiterating the previous orders dated 15.03.1991 and 21.10.1986. Still further, the question whether the subject land is *Shamlat deh* and it vests in Gram Panchayat is a jurisdictional issue for which the Director Land Records will have to determine whether such like title dispute can be adjudicated in purported exercise of power vested in him under Section 42 of the 1948 Act or such a question can be decided only by the Court of Collector under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961?

[6] The impugned order is nothing but narration of facts with sweeping conclusions drawn by the Director as reproduced in para 3 of this order. In the light of the above discussion, we are of the view that the impugned order does not satisfy the requirement of law as a speaking or reasoned order. The same is, accordingly, set aside. The matter is remitted to the Director Land Records, Jalandhar to decide it afresh and in accordance with law, keeping in view the relevant case law, to be cited by both the parties. It is, however, clarified that we have not expressed any opinion on

the merits of the case.

[7] The parties are directed to appear before the Director Land Record, Jalandhar, on 20.11.2017 who will decide the case within a period of six months.

(SURYA KANT)
JUDGE

October 24, 2017

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(SUDHIR MITTAL)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No

Yes/No