

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-21510-2014

Date of Decision: August 22, 2017

Harjit Singh and others

.....Petitioners

Versus

Director Rural Development and Panchayat Department, Punjab 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.G.S.Nagra, Advocate
for the petitioners.

Mr.Rajesh Bhardwaj, Sr.DAG, Punjab.
Mr.Naresh Kaushik & Mr.Ashok K.Sharma, Advocates
for respondent No.3.

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SURYA KANT, J.

Respondent No.3-Gram Panchayat of village Momendpur, Tehsil and District Jalandhar, filed a petition under Section 7 read with Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for brevity, 'the 1961 Act') seeking declaration of its title-cum-ownership qua the land measuring 84K 11M, fully described in the head note of the petition and consequentially sought eviction of the persons impleaded as respondent Nos.1 to 22 in the said petition. The Collector decided that

petition vide order dated 09.02.2006 holding that out of 84K 11M, the land measuring 47K 14M belonged to the proprietors, who had sold the same by way of registered sale-deeds, for consideration, to the petitioners. He also specifically recorded that “the Gram Panchayat has not claimed its ownership on this land”. The remaining land measuring 36K 17M was held to be under the management and control of the Gram Panchayat. Consequently, the application was allowed in part qua the land measuring 36K 17M. The aggrieved Gram Panchayat filed appeal claiming its ownership qua the remaining land too and the Appellate Authority allowed its appeal vide order dated 15.10.2010. The said order was challenged by the petitioners before this Court in CWP No.23203 of 2010 (**Harjit Singh and others vs Director, Rural Development and Panchayat Department, Punjab and others**) which was allowed in part on 19.03.2012 and the case was remitted to the Commissioner-cum-Appellate Authority for a fresh decision in accordance with law. This Court observed as follows:-

“We have perused the impugned order and are satisfied that the learned Commissioner did not deal with much less peruse the revenue record, produced in evidence, by the petitioners and appended as Annexures P-5 to P-7. The petitioners are recorded as share holders to column of ownership. The Commissioner was, therefore, required to examine the record of pre and post consolidation khasra numbers and thereafter determine the nature of land, i.e. whether it was shamlat deh before consolidation, and whether the land was reserved during consolidation for common purposes of the village. The Commissioner has, however, failed to refer to much less consider the documents Annexure P-5 to P-7.”

[2] In purported compliance of the above reproduced directions, the Appellate Authority has again accepted the appeal of the Gram Panchayat vide order dated 03.10.2013 (Annexure P-12), which is under challenge in the instant writ petition.

[3] We have heard learned counsel for the parties and gone through the record.

[4] This is an admitted fact that the consolidation took place in the village in the year 1962-63. In this view of the matter, it was imperative upon the Appellate Authority, as was directed by this Court, to determine as to how much *shamlat deh* land was there before consolidation and what were its revenue khasra numbers or how much land was reserved during consolidation for common purposes of the village? Suffice to observe the the land which was already recorded as *shamlat deh* before consolidation surely vests in Gram Panchayat under Section 2(g) of the 1961 Act and as regard to the land which was reserved during consolidation for common purposes, the 'management' and 'control' of such land also vests in the Gram Panchayat. In other words, the proprietors of the village might not have any right qua such type of land. However, if a land was not reserved for any common purpose, though put in common pool by applying the cut on *pro rata* basis, and if it continues in possession of the proprietors, it becomes debatable whether the Gram Panchayat has any claim qua such land?

[5] In the case in hand the land measuring 47K 14M was shown to be in the name of proprietors and they sold it for consideration by way of registered sale-deeds. The petitioners claim themselves to be the *bona fide* purchasers. The Appellate Authority in the impugned order dated 03.10.2013

has referred to the jamabandies for the year 1965-66 and subsequent thereto in which the ownership of the land is shown in favour of the Gram Panchayat except Khasra No.110. There is obviously reference to the post consolidation revenue record only. The pre-consolidation revenue record as was directed by this Court, has not been returned to or discussed. Similarly, there is no determination as to how much land was *shamlat deh* or how much land was reserved for common purposes during the consolidation? There is no identification of the land which might have been reserved during consolidation for common purposes or the 'management' and 'control' whereof can be said to have vested in the Gram Panchayat under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The Appellate Authority has made only sweeping observations to the fact that the sale-deeds were registered by the officials of the revenue Department in collusion and connivance and such sale deeds would not confer any right on the petitioners. Such a finding can be appreciated only if it is categorically held that the land sold by the proprietors was either *shamlat deh* or it was reserved for common purposes and, thus, its 'management' and 'control' was with the Gram Panchayat. In the absence of any such finding, it appears to us that the order passed by the Appellate Authority dated 03.10.2013 cannot sustain.

[6] For the reasons aforestated, the writ petition is allowed in part, the appellate order dated 03.10.2013 is set aside and the matter is again remitted to the Appellate Authority to decide the same afresh and in accordance with the law and strictly in terms of the observations made

[7] The parties are directed to appear before the Appellate Authority on 11.09.2017. The Appellate Authority is directed to decide the appeal within four months.

**(SURYA KANT)
JUDGE**

August 22, 2017
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**(SUDHIR MITTAL)
JUDGE**

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |