

CWP No.23181 of 2016 (O&M)

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

CWP No.23181 of 2016 (O&M)

Date of decision:23.03.2017

Gram Panchayat village Dharamgarh @ Kathgarh
& others

... Petitioners

Vs.

State of Punjab and others

... Respondents

CWP No.23182 of 2016 (O&M)

Gram Panchayat village Dharamgarh @ Kathgarh
& others

... Petitioners

Vs.

State of Punjab and others

... Respondents

CWP No.23183 of 2016 (O&M)

Gram Panchayat village Dharamgarh @ Kathgarh
& others

... Petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Hardeep Singh, Advocate
for the petitioners.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Mahir Sood, Advocate
for respondents No.3 and 4/caveator
(in CWP Nos.23182 and 23183 of 2016).

AMIT RAWAL J. (Oral)

Notice of motion.

On asking of the Court, Mr. Mahir Sood, Advocate accepts notice on behalf of respondents No.3 and 4/caveator in CWP Nos.23182 and 23183 of 2016 .

The controversy raised in the present writ petition is that a fall out of the proceedings initiated under the provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter after referred to as “1973 Act”) owing to findings rendered by Hon'ble Division Bench of this Court in various civil writ petitions and lead case is ***CWP No.13240 of 1992 titled as Varinderjit Singh (through LRs) vs. Additional Director, Panchayat, Punjab and another, decided on 23.04.2015***, the aforementioned order came to passed in the writ petition, on the premise that Gram Panchayat had initiated proceedings under Sections 7 and 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “1961 Act”). This Court while holding the nature and character of the property to be recorded in jamabandi as “*Jumla Mushtaka Malkan*” which is created during consolidation after applying pro-rata cut on the holdings of proprietors and therefore, by interpreting the provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as “1949 Rules”) and as well as East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “1948 Act”) granted the liberty to initiate the proceedings under 1973 Act.

The contention of Mr. Hardeep Singh, learned counsel for the petitioner is that the Collector while deciding the aforementioned petition after examining the revenue record held that certain persons were recorded to be gair marusi, therefore, could not be proprietors, thus, possession is unauthorized and allowed the petition but the same has been dismissed by the Commissioner by holding that Gram Panchayat had no locus standi to initiate the proceedings as they have failed to produce on record duly executed resolution and factum of management and control of land.

He further submits that no doubt, the documents sought to be placed on record vide miscellaneous application bearing No.4365 of 2017 (Annexures P-14 to P-19) are not part and parcel of the record of the authorities below but if taken on record, *prima facie*, establish the status of persons would be of *gair marusi*', therefore, the order under challenge is not sustainable in the eyes of law.

Dr.Anmol Rattan Sidhu, Sr. Advocate assisted by Mr. Mahir Sood, Advocate appearing on behalf of respondents No.3 and 4/caveator in CWP Nos.23182 and 23183 of 2016 submits that his clients along with other persons have already filed a civil suit before the Civil Court, in view of the findings arrived at by the Hon'ble Full Bench of this Court in ***Parkash Singh and others vs. Joint Development Commissioner, Punjab and others 2014(2) RCR (Civil) 721*** and jurisdiction of this Court is not barred, in view of the provisions of Section 44 of 1948 Act.

In this regard, he has drawn the attention of this Court to the findings arrived at in paragraph 63 of the aforementioned judgment which

read as under:-

“63. The question that now remains is to identify the forum, a person who raises a plea that the land is not "Jumla Mushtarka Malkan" or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. [Section 44](#), however, cannot be read to prohibit Civil Courts from deciding a question of title relating to "Jumla Mushtarka Malkan" as what is prohibited by [Section 44](#) is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding "Jumla Mushtarka Malkan" is, therefore, not barred by Section

44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in "Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court."

He, thus, submits that until and unless, claim of the private respondents/plaintiffs in the civil suit, according to the status of proprietorship is not decided, the eviction petition would not be maintainable. The question of title could not have been taken in the proceedings initiated under 1973 Act and has handed over a copy of one of civil suits in dispute during the course of hearing in which ad interim injunction qua forcible dispossession has been ordered.

I have heard learned counsel for the parties and appraised the paper book.

On perusal of the extracted portion of the findings rendered by the Hon'ble Full Bench in Parkash Singh's case (supra), it is revealed that jurisdiction of the Civil Court for establishing the right of proprietorship under 1948 Act is not barred, in essence, Section 44 of the aforementioned Act, would not come to the rescue of Gram Panchayat as nature and character of the land in the revenue record reflected as '*Jumla Mushtaka Malkan*' is nothing but a pro-rata cut on the holdings of proprietors. It has to be established as to whether Gram Panchayat is owner of the land or not, much less can initiate the proceedings under the aforementioned Act, in case, the respondents herein and plaintiffs in civil suit are able to establish

their title. Equally so, if the trial Court arrives at a finding that the status of the persons is not of proprietors but of a gair marusi, perhaps the remedy availed would have been correct one. There would be no impediment for the Gram Panchayat to initiate the proceedings in accordance with law, in case the civil suit with the aforementioned observations is decided against the respondents to initiate the proceedings afresh as the strict consequence of compliance of provisions of Section 11 CPC, i.e., *doctrine akin to res judicata* would not be applicable to such summary proceedings.

With the aforementioned observations, the order under challenge for the time being is upheld with the caveat as indicated above. Consequently, all the miscellaneous applications filed in three writ petitions are hereby allowed.

(AMIT RAWAL)
JUDGE

March 23, 2017
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No