

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

**CWP No.24348 of 2017
Date of decision: 27.10.2017**

Nirmal Singh and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. G.S. Nagra, Advocate, for the petitioners.

Ajay Kumar Mittal,J.

1. Prayer in this petition is for striking down the amendment inserted by way of Section 42-A in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 2007 (in short, “the 2007 Act”) vide Punjab Act No.6 of 2007, being illegal, arbitrary, unconstitutional and hit by Articles 13, 14, 16, 19, 21 and 31-A of the Constitution of India. Further direction has been sought for striking down the definition of ‘common purpose’ as interpreted in the objects of the amendment without amending the definition of common purpose given in the Act.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are the residents of Village Lutera Kalan, Tehsil and District Jalandhar. There is 750 acres of land in this Village. Mustarka malkan land is 1592 kanals 8 marlas and out of that, 183 kanals 19 marlas is cultivable land as per

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jamabandi for the year 2012-13. There is gair mumkin choe (seasonal nala) having *ban* on both sides. Some proprietors have also land within this choe. The Gram Panchayat filed petition under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (in short, “the 1973 Act”) against some of the petitioners and total 66 persons in the court of District Development and Panchayat Officer-cum-Collector, Jalandhar. An ex parte order dated 9.3.2015, Annexure P.2 was passed by the District Development and Panchayat Officer. The appeal by the petitioners and some other persons against the said order is pending with the Joint Development Commissioner, Punjab who has not granted any stay in favour of the petitioners inspite of filing stay application. The State of Punjab made amendment vide Punjab Act No.6 of 2007 which came into force on 23.7.2007. According to the petitioners, this amendment is ultra vires the Constitution of India being not protected under Article 31-A of the Constitution of India as the same is not agrarian and not for the benefit of the villagers and proprietors of the village and further it takes away the fundamental right enshrined under Articles 14, 16, 19, 21 and 31-A of the Constitution of India. As per the said amendment, the management and control of the *jumla mustarka malkan* land vests with the Gram Panchayat and it shall be utilized and continue to be utilized for common purpose. The partition of the said land cannot be made although such *jumla mustarka malkan* land belongs to the proprietors of the Village. This amendment was earlier challenged in CWP No.15509 of 2007 before this Court. Vide order dated 20.5.2011, a Division Bench of this Court upheld the amendment with the observation that this will apply as per affidavit dated 4.8.2010 filed by the State of Punjab. The appeal before the apex Court against the said order is

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pending and status quo has been granted on 25.11.2011. Hence the instant petition by the petitioners.

3. We have heard learned counsel for the petitioners.

4. The amendment in question by way of Section 42-A in 2007 Act reads thus:-

“42-A. Notwithstanding anything contained in this act or in any other law for the time being in force, or in any judgment, decree, order or decision of any court, or any authority, or any officer, the land received for common purposes whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village and it shall be utilized and continue to be utilized for common purposes.”

5. The issue is no longer res integra and has already been decided by this Court in ***Mahatam Singh and others vs. State of Punjab and others***, 2011(4) RCR(Civil) 498 wherein after examining the relevant statutory provisions and the case law on the point, the amendment in question has been held to be valid although it has been observed that all judgments, decrees, orders or decisions of any Court or of any authority or any Officer where partition of Jumla Malkan lands has been implemented/given effect to before the date of notification of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Ordinance 2007 i.e. 22.05.2007, the amendment would not be applicable. The appeal against the said order is pending before the Apex Court.

6. Learned counsel for the petitioners has not been able to controvert the decision rendered by this Court in ***Mahatam Singh's*** case

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(supra). Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

October 27, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes
Yes