

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

CWP-18212-2019

Date of Decision: 19.11.2019

Sewa Singh

. Petitioner

Vs.

State of Punjab and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE SUVIR SEHGAL**

Present: - Mr.Ankur Bansal, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is claiming himself to be a proprietor, who has allegedly contributed his land in the common pool for shamlat. He has challenged the order dated 17.10.2018 by which his application filed for recalling of the order dated 11.5.2011 has been dismissed.

In brief, the Gram Panchayat filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 [for short 'the Act'] alleging that during the consolidation a pro-rata cut was imposed upon the right holders for reserving the land for the common purposes measuring 214 kanal 1 marla but by mistake this land has wrongly been shown in the name of the right holders and should have been mentioned as '*Jumla Musarka Malkan*'. The said petition was allowed on 08.4.1994. The alleged proprietors challenged that order before the Director Consolidation and vide order dated 10.8.1994, the said order was set aside because it was passed *ex parte* and the matter was remanded back to decide the same once again. After the remand, order

dated 09.08.1995 was passed by the Director Consolidation and the petition filed by the Gram Panchayat was ultimately dismissed. Though it was for the Gram Panchayat to challenge the said order but the same was challenged by the proprietors of the village by way of revision. The said revision was accepted on 11.12.2001 and the matter was again remanded back. It is submitted that the orders Annexures P-4 to P-7 were set aside in CWP-12273-2006 by this Court vide order dated 02.12.2010 and the matter was again remanded back to the Director Consolidation to reconsider the matter after giving an opportunity of hearing to the parties concerned. Thereafter, the order dated 11.05.2011 has been passed finding no mistake committed by the Department of Consolidation. Though the said order should have been challenged by the Gram Panchayat but the petitioner filed an application for recalling of the same which was dismissed on 17.10.2018 and thus, the present petition has been filed.

Counsel for the petitioner, on the strength of the jamabandi (Annexure P-9), has submitted that the land recorded in jamabandi is bachat land. However, on the perusal of the record, we have found that the entire land, as recorded, is the land used for common purposes.

During the course of hearing, counsel for the petitioner has submitted that the basic grievance of the petitioner is that respondent No.3 is trying to alienate the land on the pretext that the land belongs to him being the proprietor whereas there is no re-partition of bachat land so far to give right to respondent No.3 to alienate the said land as per his share.

We have considered the argument raised by counsel for the petitioner and on perusal of record, are of the considered opinion that insofar as the present petition is concerned, there is no merit in it for the purpose of interference but in case the petitioner is aggrieved that respondent No.3 is to

be restrained to alienate the suit property though he is not the owner and the petitioner being the proprietor having share in the land, may avail his remedy of filing a civil suit, if so advised.

With these observations, the present petition is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

19.11.2019
Vivek

(SUVIR SEHGAL)
JUDGE

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*