

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

**CWP-3856-1996 (O&M)
Date of Decision: 15.09.2022**

DARBARA SINGH

..... Petitioner(s)

Versus

GRAM PANCHAYAT VILLAGE NAULAKHA AND OTHERS

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. S.D. Sharma, Senior Advocate with
Mr. Anupam Sharma, Advocate
for the petitioner.

Mr. K.S. Kang, Senior DAG, Punjab.

LISA GILL, J.

Petitioner has filed this writ petition for setting aside order order dated 28.02.1992 (Annexure P-5), passed by the Collector/Divisional Deputy Director, Rural Development and Panchayats, Patiala – respondent no.3 and dated 09.08.1995 (Annexure P-6), passed the Joint Development Commissioner (IRD), Punjab - respondent no.2.

Brief facts as narrated in the writ petition are that petitioner is a proprietor/right-holder of village Naulakha and he is owner in possession of land in dispute measuring 23 Kanals 09 Marlas. Prior to consolidation, land in question, it is stated was recorded as *Shamlat Deh Hasab Rasad Zar Khewat* in the column of ownership and as *Maqbooza Malkan* in the column of cultivation. Description of land in the Jamabandi for the year 1951-1952 prior to consolidation, it is submitted is recorded as *Banjar Qadim*. Great-grand-father of the petitioner namely Sadha Singh is stated to have come to this village and purchased land from the then Maharaja of Patiala. This fact

is stated to find mention in *Kaifiat Deh* and *Sharat Wazub-Al-Araz*. However, mutation dated 11.06.1956 is contended to have been effected in an illegal manner wherein ownership of this area was transferred in the name of Nagar Panchayat. Said mutation carried out on 11.06.1956, it is stated is absolutely illegal as the same was without any kind of notice to the petitioner or other *Khewatdars*. Petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, challenging the consolidation proceedings is stated to have been filed. Director Consolidation allowed the said petition and directed the Consolidation Officer to distribute the land in dispute among right-holders/proprietors. Gram Panchayat filed CWP-5360-1985, challenging said decision. Above said writ petition, it is stated was allowed on the ground that Gram Panchayat was not properly served, therefore, matter was remanded to the Director Consolidation on 28.11.1991, which was challenged by the right-holders by filing CWP-2504-1992. It is stated that said writ petition was admitted for hearing.

Petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 filed by petitioner, was rejected on 28.02.1992 by the Collector/District Development and Panchayats Officer, Fatehgarh Sahib. Appeal filed by the petitioner was also dismissed on 09.08.1995. Aggrieved therefrom present writ petition was filed.

It is stated that impugned orders are illegal and arbitrary without taking into consideration the fact that land in question was duly recorded as *Shamlat Deh Hasab Rasad Zar Khewat*, therefore, it clearly belonged to the proprietor/s of the village. Petitioner is claimed to be a proprietor of the village and entitled to retain possession of land in question

being less than his share. Land in question, it is further stated was never used for any common purposes. Therefore, on this ground too, impugned orders should be set aside. It is mentioned in para 11 of the writ petition that the question if prior to consolidation, land in dispute is recorded as *Shamlat Deh Hasab Rasad Zar Khewat* and consolidation authorities frame an incorrect scheme keeping and transferring vast chunk of area, which is not even required for common purposes in the name of Gram Panchayat, then whether that scheme and re-partition made can be got corrected under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, from the Director Consolidation, stands settled. CWP-2504-1992 was stated to be pending, therefore, in any case impugned orders are un-sustainable. It is thus prayed that this writ petition be allowed.

Written statement on behalf of respondent no.1 stands filed refuting all the allegations raised on behalf of petitioner, while it is denied being incorrect that petitioner was in individual cultivating possession of the land in question prior to 1950. It is further denied that land in dispute was never used for common purposes. Mutation dated 11.06.1956, it is stated was correctly entered. It is thus, prayed that this writ petition being devoid of any merit be dismissed.

We have heard learned counsel for the parties and have gone through the file.

Case set up by the petitioner is that he is in cultivating possession of the land in question through his predecessors in interest before 1950 and that the land in question was recorded as *Shamlat Deh Hasab Rasad Zar Khewat* and mutation no. 408 dated 11.06.1956 was incorrectly entered. At this stage, it is relevant to note that CWP No. 2504

of 1992, titled 'Naranjan Singh and others Vs. The Director, Consolidation of Holdings, Punjab, Chandigarh and another', which is stated to have been filed challenging order dated 28.11.1991, passed by the Director Consolidation, stands disposed of on 09.10.2002 relegating petitioners therein to the remedy before the authorities concerned while observing as under:-

“In this petition, petitioners challenged order dated 28.11.1991 passed by The Director, consolidation of Holdings, Punjab, Chandigarh (for short, the Director) vide which the applications of the petitioners in relation to vesting of the land terms as Shamlat Deh Hasab Rasad Zar Khewat to be vested in the owners and not in the Gram Panchayat were rejected.

It is commonly conceded before this Court that in view of the judgment of Supreme Court in Gram Panchayat, Nurpur V. State of Punjab and others, 1997(1) PLJ 268 and keeping in mind the scope of Section 11 read with Sections 13-A and 13-AA of the Punjab Village Common Lands (Regulation) Act, 1961, the parties are required to pursue their statutory remedy available before the Specified Authorities.”

Learned counsel for the petitioner is unable to deny that in view of the judgment of the Hon'ble Supreme Court in ***State of Haryana through Secretary to Government of Haryana Vs. Jai Singh and others, 2022(2) RCR (Civil) 803***, it is not necessary that in case *Jumla Mushtarka Malkan* land is not put to common use it would be liable to be retained or re-partitioned among the proprietors. Furthermore, learned counsel for the petitioner is unable to point out any document on record to indicate the

petitioner to be a proprietor of village Naulakha or to show that petitioner was in actual cultivating possession of the land in question. Reference to the *Kafiat Deh* or the *Sharat Wazubal Arz* is of no avail as the petitioner is unable to connect the land in question with the same. Furthermore, in case the land is admittedly reflected to be *Banjar Kadim*, it is not understandable as to how the petitioner can be in 'cultivating' possession. In this factual matrix, the authorities passing the impugned order have correctly held that the petitioner failed to prove his share in the *Shamlat Deh* or produce any record to show that the present Khasra numbers allotted were in lieu of the old Khasra numbers and neither could he establish the fact of his possession over the said land before 22.01.1950. Possession of the petitioner has correctly been held to be un-authorised. It is a matter of record that as per the Jamabandi for the year 1951-1952, land in dispute is reflected to be *Shamlat Deh* and it necessarily by virtue of operation of the Punjab Village Common Lands (Regulation) Act, 1961, vests with the Gram Panchayat. After consolidation this land has been duly described as Nagar Panchayat Deh in the revenue records.

Keeping in view of the facts and circumstances as above, we do not find any ground whatsoever to interfere in this writ petition for setting aside impugned order dated 09.08.1995 (Annexure P-6), passed by the Joint Development Commissioner (IRD), Punjab - respondent no.2 and order dated 28.02.1992 (Annexure P-5), passed by the Collector/Divisional Deputy Director, Rural Development and Panchayats, Patiala – respondent no.3. Learned counsel for the petitioner is unable to point out any illegality, infirmity, irregularity or perversity in the impugned orders, which call for interference by this Court.

No other argument has been addressed.

Writ petition is accordingly dismissed.

(LISA GILL)
JUDGE

15.09.2022
Sunil

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No