

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

CWP-10718-2022

Date of Decision: November 10, 2022

BIRINDER KAUR AND ORS Petitioners

Versus

STATE OF PUNJAB AND OTHERS Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Rajiv Kataria, Advocate for the petitioners.

Mr. Sandeep Jain, Addl.AG, Punjab.

Mr. Kulbir Singh Saini, Advocate for respondent No. 3.

LISA GILL, J.

Petitioners seek a direction to the respondents for sanctioning in their favour, mutation of the land, as described in the writ petition.

It is submitted that petitioners claim to be owners in possession of land in dispute since their forefathers and that this land does not fall within the definition of Shamilat Deh. Land was, however, mutated in favour of the Gram Panchayat in 1961 by virtue of letter dated 22.09.1961 and thereafter Gram Panchayat tried to take possession of land in question. Petitioners filed CWP-12653-1991, wherein dispossession of the petitioners was stayed.

Petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short – ‘PVCL Act’) it is stated, was filed by the petitioners and petition under Section 7 of the PVCL Act was filed by

respondent No. 3. Both the cases were consolidated and decided by common decision dated 04.05.1998 by the Collector-cum-District Development and Panchayat Officer, Patiala. Eviction of the petitioners was directed with the ownership of the Gram Panchayat being declared. Appeal filed by the petitioners, it is stated, was decided in their favour on 25.01.2002 (Annexure P4). Learned counsel for the petitioners further submits that CWP-12653-1991 filed earlier by the petitioners was disposed of on 16.03.2011. At that point of time, petitioners had been declared to be owner vide order dated 25.01.2002 but somehow this fact could not be brought to the notice of the Court. Therefore, said writ petition was dismissed with liberty to the parties to take recourse to the remedies as provided under law while observing that the question, whether the land is Shamilat Deh is a disputed question of fact and is to be decided in terms of Section 11 of the PVCL Act.

Respondent No. 3 being aggrieved of order dated 25.01.2002 passed by Director-cum-Special Secretary to Government of Punjab, Department of Rural Development and Panchayats, Chandigarh, filed CWP-20610-2011 which was dismissed on 07.03.2012. It is submitted that it was claimed by the respondent – Gram Panchayat that order dated 25.01.2002 was obtained by the present petitioners in collusion with the then Sarpanch/Administrator of the Gram Panchayat. Gram Panchayat, vide order dated 07.03.2012 passed in CWP-20610-2011 was relegated to file an appropriate application before the Director-cum-Special Secretary to Government of Punjab, Department of Rural Development and Panchayats, Chandigarh to seek adjudication of the disputed question of fact being raised by it, i.e. whether order dated 25.01.2002 was obtained by collusion, fraud

or connivance. It was further directed that in case such an application is filed, it shall be decided in accordance with law after giving an opportunity of hearing to all concerned.

Learned counsel for the petitioners submits that after passing of order dated 07.03.2012, respondent – Gram Panchayat did not file any application whatsoever, thus order dated 25.01.2002 attained finality. Still, mutation of the land in question was not being entered in favour of the petitioners in an illegal and unjustified manner. Petitioners, it is submitted, approached respondent No. 2 on various occasions with the last application being submitted on 20.12.2019. Patwari was directed to take further action on this application but till date, no action has been taken. Therefore, present writ petition has been filed.

Learned counsel for the State on 19.05.2022 was directed to seek instructions with reference to the averments as above. Learned counsel for respondent No. 3 – Gram Panchayat informs that application dated 23.08.2022 for recalling of order dated 25.01.2002 has now been filed in view of the directions/liberty afforded to respondent No. 3 vide order dated 07.03.2012 in CWP-20610-2011, therefore, this writ petition should be dismissed as mutation can be entered only after decision of the abovesaid application. Learned counsel for the petitioners, however, terms this application to be highly belated, not maintainable and liable to be dismissed. Be that as it may, we do not find it appropriate to express any opinion on this aspect, however, it is to be noted that learned counsel for the respondents are unable to deny that mutation cannot be kept in abeyance. It is submitted by learned counsel for the respondents that in case mutation is to be entered,

specific remarks/red entry regarding pendency of the application should necessarily be inserted therein.

Keeping in view the facts and circumstances as well as the stand of the respondents, respondent No. 2 is directed to take necessary action and finally decide application dated 20.12.2019 filed by the petitioners in accordance with law within a period of four weeks from receipt of certified copy of this order.

Learned counsel for respondent No. 3 at this stage, submits that Director-cum-Special Secretary to Government of Punjab, Department of Rural Development and Panchayats, Chandigarh may be directed to decide application dated 23.08.2022 expeditiously in a time bound manner.

Learned counsel for petitioners submits that in case copy of application dated 23.08.2022 is supplied, petitioners do not have any objection to the decision of this application in a time bound manner.

Parties/their authorised representatives to appear before Director-cum-Special Secretary to Government of Punjab, Department of Rural Development and Panchayats, Chandigarh on 29.11.2022. Application dated 23.08.2021 filed by the Gram Panchayat be decided by the above said authority in accordance with law after affording due opportunity of hearing to all concerned within three months of 29.11.2022.

Writ petition is disposed of, accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 10, 2022

rts

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