

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

CWP-13665-2022

Date of Decision: August 24, 2022

BHAJAN SINGH AND ORS

..... Petitioners

VERSUS

STATE OF PUNJAB AND ORS

..... Respondents

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

Present: Mr. Narinder Singh Swaitch, Advocate for the petitioners.

Mr. Sandeep Jain, Addl. AG, Punjab.

Mr. Kanisth Ganeriwala, Advocate for respondent No. 11.

LISA GILL, J.

This writ petition has been filed seeking direction to respondents No. 7 to 10 to sanction mutation in favour of the petitioners as per their respective share in terms of order dated 06.04.2016 passed by learned Commissioner-cum-JDC, Rural Development and Panchayats Department, Punjab.

Learned counsel for the petitioners submits that respondent No. 11 – Gram Panchayat, Village Ghungrali Sikhan filed a petition seeking eviction of the petitioners from land measuring 57 kanal 7 marlas in village Ghungrali Sikhan. Petitioners filed petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short – ‘the Act’) seeking declaration to the effect that they are owner in possession of land in dispute prior to January, 1950.

Respondent No. 8 dismissed the petition under Section 11 of the Act on

14.03.2013, while observing that ownership of land in dispute as per column No. 4 of jamabandi of the year 2008-09, is reflected to be of *Mushtarka Zumla Malkaan*, which does not come under the definition of Panchayat Deh, therefore, said Court has no jurisdiction to decide the matter. It was further observed that petitioners, who are reflected as 'Gair Marusi' in the abovesaid jamabandi did not annex any document/proof on the basis of which they staked their claim.

Petitioners filed appeal challenging order dated 14.03.2013 passed by the learned Additional Deputy Commissioner (Development)-cum-Collector, Ludhiana. Learned Commissioner-cum-JDC, Rural Development and Panchayats Department, Punjab set aside order dated 14.03.2013 vide order dated 06.04.2016 while holding that the matter had to be decided like a civil suit, which has not done by the learned Collector. Issues, it is observed, were not framed on the basis of pleadings of both the parties nor parties given an opportunity to submit evidence on the basis of issues.

It is submitted that CWP-18825-2016 challenging order dated 06.04.2016, filed by the Gram Panchayat was dismissed on 26.04.2017 and SLP (C) No. 6317/2021 was dismissed as withdrawn by the Gram Panchayat on 08.04.2012. In this view of the matter, petitioners are aggrieved of mutation of respective shares of the petitioners not being entered by the official respondents, despite the matter having attained finality.

Short reply by way of affidavit dated 13.08.2022 of Mr. Sarabjit Singh, BDPO, Block Samrala, District Ludhiana has been filed on behalf of respondents No. 1 to 9. It is pointed out that learned Appellate Court vide order dated 06.04.2016 did not adjudicate upon the rights of the parties and in fact did not decide the question of ownership and accepted the petition only on the ground that order dated 14.03.2013 was passed without framing of issues and not

affording an opportunity to the parties to lead evidence but at the same time the matter was not remanded to the authority for a decision afresh in accordance with law. Writ petition filed by the Gram Panchayat was dismissed primarily on the ground that an incorrect statement was found to have been made at the time of issuance of notice of motion. SLP (C) No. 6317/2021 was withdrawn on 08.04.2021 with liberty to avail other remedies, if any.

Learned counsel for respondent No. 11 submits that in this view of the matter, application dated 24.04.2021 was filed before the learned Additional Deputy Commissioner (Development)-cum-Collector, Ludhiana seeking clarification of order dated 06.04.2016 to the extent that direction should be given to the competent authority after remand of the matter for deciding the same in accordance with law after affording due opportunity to the parties to lead evidence. Petitioners, it is submitted, have filed reply to the application and have contested the same but have omitted to mention the same in this writ petition, which deserves to be dismissed.

Heard learned counsel for the parties and have gone through the file with their able assistance.

Dismissal of the application filed by the petitioners under Section 11 of the Act vide order dated 14.03.2013 as well as passing of order dated 06.04.2016 is a matter of record. Perusal of order dated 06.04.2016 reveals that order dated 14.03.2013 has been set aside by the learned Commissioner while observing as under:-

“ After hearing the arguments of both the parties, I have reached the conclusion that ‘shamlat’ and ‘Jumla Mushtarka’ lands are separate from each other and the land in dispute does not come within the provisions of Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961, because as per the record

of the Revenue Department, the land in dispute is the ownership of 'Jumla Mushtarka Malkaan' (proprietors of the village). The Gram Panchayat has not submitted any record to prove that the land in dispute was being used for common purposes and nor they have submitted any such record, which proves that this land was reserved for common purposes and the Gram Panchayat was having its possession over this land and they have been giving it for cultivation on the basis of auction. But as per the decision of the higher courts, the decision of this petition was to be given like a Civil Suit, which has not been done by the lower court, because neither the issues has been framed on the basis of pleadings of both the parties nor the parties have been given any opportunity to submit their evidence on the basis of issues. Therefore, by agreeing with the pleadings of the counsel for the appellants, I hereby set aside the illegal orders of the lower Court and accept the Appeal of the appellants."

CWP-18825-2016 filed by the respondent – Gram Panchayat was dismissed on 26.04.2017 solely on the ground that contention on behalf of the petitioners while issuing notice of motion to the extent that order dated 06.04.2016 was passed without hearing the matter as predecessor of the authority in question had heard the arguments on 04.02.2016 and was transferred on 15th of the same month and the successor had pronounced order dated 06.04.2016, was found incorrect. Order dated 08.04.2021 in SLP (C) No. 6317/2021 reads as under:-

“ After some arguments, leave is sought to withdraw the special leave petition to avail other remedies, if any.

The special leave petition is dismissed as withdrawn.”

Subsequent thereto, application under Section 24.04.2021 is stated to have been filed. Application No. 93 of 2021 in Appeal No. 3/14 is stated to have

been filed seeking clarification of order dated 06.04.2016 for fixing a particular date before the learned Additional Deputy Commissioner (Development)-cum-Collector, Ludhiana for deciding the petition under Section 11 of the Act filed by the petitioners on merits. However, admittedly notice of this application was issued to the present petitioners on 13.10.2021 for 24.11.2021 and the present petition was filed on 31.05.2022, therefore, there is no question of any concealment at the part of the petitioners.

Learned counsel for the petitioners has argued that application for clarification apart from being barred by limitation is totally misconceived and liable to be dismissed. However, in the given factual matrix, we would not enter adjudication on the said application, which is admittedly stated to be pending before the learned Additional Deputy Commissioner (Development)-cum-Collector, Ludhiana for 19.09.2022.

Keeping in view the facts and circumstances as above, it is directed that application dated 24.04.2021 be decided by the learned Additional Deputy Commissioner (Development)-cum-Collector, Ludhiana within a period of two months from the date fixed before him in accordance with law. It is made clear that there is no expression of opinion on the merits of the matter.

Present petition is, accordingly, disposed of.

(LISA GILL)
JUDGE

August 24, 2022
Rts

(HARSH BUNGER)
JUDGE

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