

206

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

CWP-14984-1997 (O&M)
Date of decision:15.05.2023

GRAM PANCHAYAT VILLAGE GAJIPUR

...Petitioner

Versus

DIRECTOR CONSOLIDATION OFFICER OF HOLDINGS AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. J.S. Bhandohal, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab

Mr. Chander Shekhar, Advocate
for Mr. Manmohan Saroop, Advocate
for respondents No.43(i) to (iii).

SURESHWAR THAKUR, J. (ORAL)

1. Despite valid service being reported to be caused, upon all the respondents concerned, but excepting co-respondents No.43(i) to (iii), who are represented by Shri Manmohan Singh, Advocate, no other respondents either appeared in person nor through their validly engaged counsel. Therefore, all the respondents, excepting co-respondents No.43(i) to (iii) are directed to be proceeded against ex-parte.

2. Through, the instant writ petition a challenge is made to Annexure P-1, which has been drawn by the Director, Consolidation of Holding Punjab, Jalandhar, thus exercising power(s) of Government under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”), whereby he accepted the motion, as became cast before him by Om Parkash and others.

3. Through the above made order Annexure P-1, the Authority concerned after annulling, and, setting aside mutation No.867, as became attested by the Consolidation Officer concerned, after completion of the consolidation proceedings, thus proceeded to, assign the disputed lands in favour of the petitioners mentioned, as such in the impugned order.

4. A thorough reading of the impugned order discloses, that though in the column of ownership relating to the disputed lands, the said lands are shown to be owned by the Panchayat concerned, but in the jamabandi relating to the year 1950-51, there occurs in the column of possession an entry of *Maqbuja Malkan*. Therefore, it appears that the Authority which drew Annexure P-1 had, on the basis of the said entry concluded, that the petitioners in the impugned order, were through their predecessors in interest, thus independently cultivating the disputed lands, and, as such they were entitled to the benefit of the saving clause, as, carried in Section 2(g)(viii) of the The Punjab Village Common Lands (Regulation) Act, 1961.

5. If that be so, there had to be evidence on record suggestive, that the predecessors in interest of the said petitioners in the impugned order were, as a matter of fact in cultivation of the disputed lands. Apparently, there is no mention of the name(s) of the predecessors in interest of the respondents herein thus in the said column of cultivation. Therefore, *prima facie* there were no reason available to the Authority concerned, to yet assign the benefit of the said apposite saving clause to the petitioners, who claim themselves to be the valid successors in interest of their predecessors in interest.

6. Apart from the above, the stark illegality, and, also the gross material impropriety, thus committed by the Authority which drew Annexure P-1, is embedded in the factum, that the jurisdiction to decide a petition, cast under Section 42 of the Act of 1948, is limited to making corrections of gross,

apparent errors in the scheme of consolidation, and, which resulted in concomitant patent mistakes, thereafter also, occurring in the updation of records, as made, on termination of consolidation operations.

7. Apparently, in the evident face of the above factual situation, the jurisdiction exercised, on a petition cast under Section 42 of the Act of 1948, thus would become a validly exercised jurisdiction. Contrarily, the instant challenge, is not to any gross illegality or any patent error, thus occurring in the updation of record(s) of the rights, as became so updated in pursuance to termination of the consolidation scheme, but the errors relate to the recording of mutation No.867, by the Consolidation Officer, thus after the termination of the consolidation proceedings. The above error became the subject matter of contest among the contesting litigants.

8. Therefore, the said purported illegality in the drawing of the above contested mutation, when obviously resulted in the emergence of a dispute about title, over the disputed lands, purportedly of the estate holders, thus planked on the pre-consolidation records, whereby they purportedly became entitled to the benefit of the apposite saving clause. However the Panchayat concerned, rested its title over the disputed lands, thus on the basis of the said mutation, rather being correctly drawn, but on the basis of the pre-consolidation revenue records. Therefore, in terms of the verdict made by Full Bench of this Court in CWP-2318-2002, titled 'Parkash Singh And Others vs Joint Development Commissioner, Punjab and others', the jurisdiction to test the validity of the said order of mutation, thus warranted, its determination being made only in a civil suit, and, not in a petition cast under Section 42 of the Act of 1948. Importantly when for reasons above stated, the contest germinating amongst the litigants concerned, relates to valid title or otherwise, thus respectively vesting in the entity whereons title as owner became conferred, through the order of

mutation or title vesting in, and/or, on the estate holders. As but a natural corollary, thus it was completely outside the jurisdiction of the Authority, which drew Annexure P-1, to make a decision thereon.

9. In the light of the above, this Court finds merit in the instant petition, and, is constrained to allow it. In sequel, the instant petition is allowed, and, the impugned order Annexure P-1 is quashed, and, set aside. However, liberty reserved to the private respondents concerned, to raise a title suit, under the relevant provisions of law, before the Competent Statutory Authority concerned, who shall on receiving the title suit, hence make an expeditious lawful decision thereon, but after hearing all affected concerned.

10. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

15.05.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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