

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 5905 of 2000 (O&M)

Reserved on: 20.09.2023

Date of decision: 26.09.2023

GRAM PANCHAYAT VILLAGE SOHALI

-PETITIONER

VERSUS

ADDL. DIRECTOR CONSOLIDATION PUNJAB AND ORS.

-RESPONDENTS

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

Present : None for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Gaurav Datta, Advocate
for the proposed applicants.

Ms. Bhavna Datta, Advocate with
Mr. Anirudh Singh Shera, Advocate
for the respondent No.6.

Mr. Kanwal Goyal, Advocate with
Mr. Govind Tanwar, Advocate
for the proposed respondent No.50.

SURESHWAR THAKUR, J.

CM-7447-CWP-2022

1. As prayed for, the applicants are ordered to be impleaded as co-respondents No.49 to 50, being both just and proper parties. The amended memorandum of parties, as enclosed along with the instant application, is taken on record.

Main Case

2. Through the instant writ petition, the petitioner- Gram Panchayat

challenges the validity of Annexure P-3. Annexure P-3 has been drawn in a list inter se one Balbir Singh and other residents of Village Tirtha, and, Jumla Mushtarka Malkan of Village Tirtha, Tehsil Kharar, District Ropar, Hakam Singh and others, residents of Village Tirtha, Tehsil Kharar, District Ropar.

3. The decision, as enclosed in Annexure P-3, was made on a petition cast under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act of 1948'). Through the impugned Annexure P-3, after accepting the petitioners' claim, as became rested upon the underlined portion of the savings clause to the definition of "shamlat deh", as exists in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), provisions whereof stand extracted hereinafter, whereby the proprietors concerned claimed, that the petition lands, excepting the lands described in the reservation scheme, as Gair Mumkin Johar, rather be declared to fall to their ownership, theirs becoming independently cultivated by them prior to 1950.

"2(g) "Shamlat deh" includes

(1) lands described in the revenue records as shamlat deh [but excludes abadi deh, unless otherwise expressly provided in this Act];

(2) shamlat tikkas;

(3) lands described in the revenue records as shamlat, Tarafs, Pattis Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, schools, drinking wells, or ponds within abadi deh or gorah deh; [----]

[(4a) vacant land or plot situated in abadi deh or gorah deh not owned

by any person; and]

(5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records,

[----]

but does not include land which:

(i) [-----]

(ii) has been allotted on quasi-permanent basis to a displaced person;

[ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950.

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the Jamabandi or is supported by a valid deed; [and is not in excess of the share of the co-sharer in the shamilat deh].

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used; according to revenue records for the benefit to the village community or a part thereof or for common purposes of the village.

[vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act].

(vii) [----]

(viii) was Shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or

[ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act]. ”

4. Moreover, it was also claimed in the petition, that the description made in the revenue records qua a portion of the petition lands, being Gair Mumkin Charand and Banjar Qadim, is erroneous and further that, the said lands were never reserved for the benefit of the village proprietary body concerned.

5. It appears that the said claim became founded upon the premise, that only after a pro-rata cut being made from the lawful estates of the estate-holders concerned, that the apposite reservations were made. Further, the said claim became planked on the fact, that since assuming the petition lands, with the above categories, thus became reserved as such for the benefit of the village proprietary body concerned, but since the village proprietary body concerned yet did not in fact make user thereof. Resultantly, it appears and was contended that the petition lands be reverted to the petitioners or theirs being entitled to seek re-partition thereof, in their favour.

6. In other words, it appears to have been contended, that since the reservation of the petition lands, were made after a pro-rata cut being made, from the legitimate holdings of the estate-holders concerned. Therefore, since the purpose of reservation, did not become fulfilled, inasmuch as the said Gair Mumkin lands, Charand lands, and, Banjar Qadim lands, rather never evidently became used for the benefit of the village community or a part thereof or for common purposes of the village concerned. Resultantly, it appears to have been contended, that the estate-holders concerned became entitled to seek reversions thereof, in their favour.

7. The learned Additional Director concerned, who drew the impugned Annexure P-3, after accepting the above pleas, proceeded to make

an order of remand, upon, the Consolidation Officer, Kharar, thus with directions upon him, that after his re-checking the records and assessing the shares of the estate-holders concerned, in terms of their shares, at the time of holding of consolidation in the village qua Khewat No.139/126 and Khataunis, as mentioned in petition, thereby his proceeding to rectify the errors in the consolidation scheme.

8. In the petition, it is pleaded that since after making pro-rata cuts or deductions from the legitimate holdings of the estate-holders concerned, thus reservations were made of said truncated lands, thus for the benefit of the village proprietary body concerned. Therefore, obviously the Gram Panchayat concerned became the manager and controller of the said reserved lands, but yet ownership rights became vested in the members of the village proprietary body concerned or in the enlisted Bartandarans of the village proprietary body concerned. Resultantly, it is claimed in the writ petition, that since the Gram Panchayat concerned, thus was the manager and controller of the reserved lands, therefore, the impleadment of the Gram Panchayat concerned in the array of respondents, in the relevant petition, thus was imperative, the same being both a just and a proper party to the lis, thus for ensuring the makings of a clinching determination, upon, the entire gamut of the lis.

9. The above made argument is, in terms of the claim made in the relevant petition, wherein, it is pleaded that the reservations, as became made for the benefit of the entire village proprietary body concerned, thus were made purportedly after making a pro-rata cut from the legitimate holdings, as were held by the estate-holders concerned. If so, the Gram Panchayat concerned became the manager and controller of the said reserved lands, thus

for ensuring the better and the fittest user thereof, by all the members of the village proprietary body concerned.

10. If so, the impleadment in the array of respondents rather in the relevant petition, thus of the Gram Panchayat concerned, was obviously imperative, as it was the manager and controller of the said reserved lands. However, it remained unimpleaded in the relevant lis. Consequently, despite it being both a just and a necessary party, thus for ably contesting the lis, thus as manager and controller of the reserved lands, thereby its non-impleadment rather resulted in gross prejudice being caused to the other lawful estate-holders concerned, in whose favour the lands were reserved, and for the ablest user thereof, by the village proprietary body concerned, rather the Gram Panchayat concerned, thus became statutorily bestowed with the function of its managing and controlling hence the said reserved lands.

11. In consequence, since a necessary party to the lis, rather remained unimpleaded, as such, thereby there is breach caused to the principle of “*audi alteram partem*”. Resultantly, the further legal consequence of the said breach, is that, thereby the impugned order requires its being quashed and set aside.

12. Be that as it may, it appears that the lis appertains to assertion of the title as owner by the estate-holders concerned vis-a-vis the disputed lands. The above assertion became planked upon the above extracted savings clause, to the definition of shamlat deh. Moreover, the further claim made in the petition related, to the mis-descriptions in the revenue records of the said reserved lands, inasmuch as, theirs being incorrectly described as Charand lands, or, as Banjar Qadim lands. Therefore, it was contended that even if

assumingly the said lands were reserved purportedly rather on a pro-rata cut being made from the legitimate holdings of the estate-holders concerned, yet when there was non-user thereof by the members of the village proprietary body concerned. Therefore, the estate-holders concerned became entitled to the reserved lands becoming reverted to them, or, theirs being entitled to seek re-partitionings thereof.

13. It is now got to be determined, whether in terms of the jurisdiction conferred under Section 42 of the Act of 1948, provisions whereof become extracted hereinafter, whether the said assertions, do *per se* tantamount to assertion of title over the disputed lands, rather by the estate-holders concerned, thus could become ably or tenably exercised in a petition cast under Section 42 of the Act of 1948.

“42. Power of State Government to call for proceedings: The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under Act, call for and examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto as it thinks fit;

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.”

14. For determining the limits of the aforesaid adjudicatory jurisdiction conferred upon the authority concerned, as constituted under Section 42 of the Act of 1948, it is apt to extract the relevant portion of the judgment, recorded by a Full Bench of this Court, on 08.11.2013, upon, CWP-2318-2002, paragraphs whereof become extracted hereinafter.

“The arguments addressed by counsel for the parties, appear to

suggest a broad agreement that the Director Consolidation, has no power whether under Section 42 of the Consolidation Act or under any other provision to decide a question of title relating to “Shamilat Deh” but as counsel for the petitioners has raised a plea that in case there is an error in consolidation proceeding and the error is likely to affect ownership of a proprietor or the Gram Panchayat in “Shamilat Deh”, the Director Consolidation would be entitled, in the exercise of power under Section 42 of the Consolidation Act, to order such a correction, even if it adversely affects the ownership of a Gram Panchayat, the plea requires a degree of consideration. Counsel for the petitioners also contends that as “Jumla Mushtarka Malkan” is not included in “Shamilat Deh” by Section 2(g) of the 1961 Act, Consolidation authorities, who have created “Jumla Mushtarka Malkan” in the exercise of powers under Section 18, 23-A of the Consolidation Act and Rule 16(ii) of the Consolidation Rules would necessarily be empowered to decide whether the land is or is not “Jumla Mushtarka Malkan”, i.e., whether it was created by applying an excessive pro-rata cut on the holdings of proprietors and whether land described as “Jumla Mushtarka Malkan” was actually earmarked or reserved for a common purpose and as a consequence whether the land vests in the State Government or the Gram Panchayat, for the purpose of management and control.

Section 42 of the Consolidation Act reads as follows:-

“42. Power of State Government to call for proceedings:-The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under Act, call for and examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto as it thinks fit;

Provided that no order or scheme or repartition shall be varied or reserved without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.”

Accepting for a moment that power conferred by Section 42 of

the Consolidation Act empowers the State or its delegate, the Director Consolidation/ Director Land Records to order correction of any error committed, while establishing the “Shamilat Khewat” or creating “Jumla Mushtarka Malkan” and while doing so to adversely affect the proprietary or possessory rights of a Gram Panchayat or the State, such an order, in our considered opinion, cannot be held to be a binding or a final adjudication on a question of title. Section 42 of the Consolidation Act merely empowers the State, to satisfy itself as to the legality or propriety of any order, passed or scheme prepared during consolidation and to correct any errors committed during consolidation but does not empower the authority to decide a disputed question of title. Thus, if a party raises a question of title, under Section 42 of the Consolidation Act or pleads that land has been wrongly allotted to the Gram Panchayat as it is not “Shamilat Deh” or there is an error in allotment of “Jumla Mushtarka Malkan” land, the Director Consolidation, should generally desist from passing an order touching upon a question of title and should direct parties to file a petition under Section 11 of the 1961 Act, where the land is “Shamilat Deh” and before an appropriate forum where the land is “Jumla Mushtarka Malkan”. If, however, the authority does not adopt such a course and passes an order holding that the land does not vest in the Gram Panchayat or that the land is not “Jumla Mushtarka Malkan”, the order so passed would at best be an order passed by a Tribunal of limited jurisdiction and, therefore, not conclusive as to the proprietary and possessory rights of a Gram Panchayat or a private individual, so as to estopp the Gram Panchayat or a private individual from approaching the adjudicatory authority i.e. the Collector exercising power under Section 11 of the 1961 Act or an appropriate forum to determine whether land vests or does not vest in a Gram Panchayat. As referred to in the preceding paragraphs, Consolidation authorities, including the authority exercising plenary jurisdiction, under Section 42 of the Consolidation Act, exercise powers of a revenue officer under the 1887 Act. A revenue officer is not competent to decide disputed questions of title as held by a Full Bench in Ajit Singh's case (supra) and the Hon'ble Supreme Court in Gram Panchayat, Nurpur (supra). Thus, even if we were to hold that

Consolidation authorities are empowered, under the Consolidation Act, to correct errors, touching upon a question of title, such an exercise of power cannot be held to a final or a binding opinion on a question of title.

Consolidation authorities are tribunals of limited jurisdiction, conferred with power to consolidate land holding. A finding on a question of title by a tribunal of limited jurisdiction is binding or final as to the correction so ordered but cannot, be held to be final on a matter that does not fall to its jurisdiction. Such an order would be subject, necessarily to any adjudication on the question of title, by the jurisdictional forum, in case the land is “Shamilat Deh” by the Collector, exercising powers under Section 11 of the 1961 Act, in case the land is “Jumla Mushtarka Malkan” by an appropriate forum. We will deal with the forum that may be called upon to decide a dispute whether the land is “Jumla Mushtarka Malkan” at a later stage. At this stage, we would like to once again clarify that though counsel for the petitioner has canvassed that inherent in the exercise of a power to order correction, is the passing of an order holding that the land is or is not “Shamilat Deh” or “Jumla Mushtarka Malkan”, such an order would not be binding on a question of title, whether it pertains to a Gram Panchayat or private individuals, or the Government.”

15. A reading of the above extracted paragraph, occurring in judgment (supra), delivered by the Full Bench of this Court, makes this Court draw a conclusion, that since therein becomes enunciated a principle, that when there is an assertion of title in the petition cast under Section 42 of the Act of 1948, and/or, therein thus becomes embodied any assertion about mis-allotment of lands to the Gram Panchayat concerned, thus on the ground, that the allotted lands rather fall within the exception(s) to the definition of shamlat deh, or, if there is any error in allotment of Jumla Mushtarka Malkan, thereupon the authorities constituted under the Act of 1948, are required to desist from delving into, or, making an adjudication, upon, the said raised question(s) of title.

16. It appears on a reading of the impugned order, that all the assertions (supra), thus devolved upon assertion of title or ownership, inter se the contesting litigants. The said assertions became banked on the beneficent grace of the hereinabove underlined portion of the savings clause (supra) to the definition of shamlat land, thus becoming assigned to the estate-holders concerned. Therefore, the authority constituted under Section 42 of the Act of 1948, but obviously became barred to either delve into, or, make an adjudication, upon the said assertion of title by the estate-holders concerned, vis-a-vis, the disputed lands. Contrarily, it appears that through the drawing of the impugned order, the authority concerned not only delved into the question of title, but also prima facie made an affirmative adjudication thereons, vis-a-vis, the estate-holders concerned. The above exercisings of jurisdiction by the authority concerned is in breach of the above principles enunciated in the judgment (supra). Therefore, the authority concerned in drawing the impugned order thus has exceeded the jurisdiction conferred upon it, under Section 42 of the Act of 1948. Resultantly, when the jurisdiction conferred under Section 42 of the Act of 1948 has been exceeded, thereby the impugned order warrants an interference being made.

17. This Court may have validated the impugned order only if the authority, who drew the impugned order, had thus in its making it, proceeded to correct arithmetical or clerical mistake(s). Reiteratedly, the said jurisdiction does not extend to either delve into, or, to determine the question of title, as has been untenably done.

18. Cumulatively, this Court finds merit in the instant writ petition and is constrained to allow it. Accordingly, the writ petition is allowed. The

impugned order is quashed and set aside, leaving liberty to the estate-holders concerned, to thus access the jurisdictionally competent forums, or, courts, for raising and also for ensuring the makings of adjudications about the assertion (supra), as became raised before a jurisdictionally incompetent forum.

19. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

26.09.2023
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No