

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-12200-2022

Reserved on: 02.11.2023

Pronounced on: 30.11.2023

KIRPAL SINGH (DECEASED) THROUGH LR.Petitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

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

Argued by: Mr. D.S.Gurna, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Sukhjinder Singh, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, a prayer is made for the annulment of Annexure P-4, as, became passed by the Collector concerned, on the latter exercising jurisdiction under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter for short called as the 'Act of 1961'), besides for the quashing of the order Annexure P-7 passed by the learned Commissioner, whereby the latter affirmed Annexure P-4.

2. Furthermore, a mandamus is also asked to be made upon co-respondent No. 3 to refer and get the *lis* adjudicated, under, Section 11 of the 'Act of 1961', as a question of title is involved thereins.

3. Through the above impugned Annexures, the petitioners were ordered to be evicted from the petition lands. The petition lands are comprised in Khewat Khatauni No. 28/34 Khasra No. 11//14/2 (0-13), 23/2/(2-9), 24/3(1-6) total 4 kanal 8 marla, and, are situated in village Shampur Gram Panchayat Sidhuwal.

4. A perusal of the impugned orders reveals, that therein occurs a discussion, that the revenue entry, as made in respect of the disputed lands, is nomenclatured as '*Jumla Mushtarka Malkan wa Digar Haqdaraan Arazi Hasab Rasad Raqba*' (hereinafter for short called as '*Jumla Mushtarka Malkan*'). The nomenclature (supra) as became assigned to the petition lands, was so made, in the finalized consolidation scheme, as became prepared by the consolidation officer concerned, as per the provisions of 'The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Consolidation Act, 1948').

5. Therefore, in terms of Rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter refer to as the 'Consolidation Rules, 1949'), the above revenue designation, thus imparted to the petition lands, rather makes them to come under the control and management of the Gram Panchayat concerned, thus for regulating the common purpose for which the petition lands became reserved, but the ownership thereof continues to vest in the proprietors.

Upholding of the constitutionality of the provisions of the 'Consolidation Act, 1948' and the 'Consolidation Rules, 1949'.

6. Though the vires of the 'Consolidation Act 1948' as well as of the 'Consolidation Rules, 1949', particularly the provisions requiring

the Consolidation authorities to rather apply a pro-rata cut, on the holdings of the proprietors, thus for creating '*Jumla Mushtarka Malkan*' lands, became challenged, but the said provisions became declared intra vires the constitution, through a judgment made by the Hon'ble Apex Court in case titled as '**Ranjit Singh and Ors. Vs. State of Punjab and others**' reported in AIR 1965 (SC) 632.

7. The premise for upholding the constitutionality of the said provisions, ensued from the trite factum, that lands with the said revenue designation, become so created, as a measure of agrarian reforms, and thus become protected by Article 31-A of the Constitution of India, as the lands with the above designation, are utilized for the benefit of the village community as a whole, thereby there is no divestment of ownership thereof qua any estate holder concerned.

Verdict in Parkash Singh's case makes the Collectors constituted respectively under the the Punjab Gram Panchayat (Common Purposes Land Eviction and Rent Recovery) Act, 1976 (hereinafter for short called as 'the 1976 Act'), and the Collector constituted under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter for short called as 'the 1973 Act'), to enjoy able jurisdiction, to make valid orders of eviction, but in case a disputed question of title becomes raised, before the authority contemplated under the 'Consolidation Act, 1948', thus the said question is not to be decided by the said authority, but the said question is to be agitated before the Civil Court concerned.

8. Conspicuously thereby, the revenue description (supra) imparted to the disputed lands, thus in terms of the verdict rendered, by this Court, in case titled as '**Parkash Singh and Others Vs Joint Development Commissioner, Punjab and others**' to which CWP No. **2318 of 2002** became assigned, decided on 08.11.2013, relevant

paragraph whereof, thus makes an expostulation thereins, that for the purpose of making eviction of encroachers, qua the lands created, as such, during consolidation, vests in the Collector constituted, respectively under 'the 1976 Act', and, 'the 1973 Act'. Further, that the remedy for seeking eviction of the encroachers from the land with the designation (supra), is not vested in the Collector under the provision of Section 7 of the 'Act of 1961' but vested in the Collectors constituted, respectively under 'the 1976 Act', and, 'the 1973 Act'. The said expostulations of law are extracted hereinafter.

“The 1961 Act was enacted, so as to consolidate, amend the law regulating rights in “Shamilat Deh” and “Abadi Deh”. The 1961 Act is confined to rights in “Shamilat Deh” and “Abadi Deh”. Section 2(g) of the 1961 Act defines “Shamilat Deh” by including land described in Section 2(g)(1 to 5) and excluding land described in Section 2(g)(i) to (ix) in “Shamilat Deh”. Section 2(g) of the 1961 Act (reproduced in the earlier part of the judgment) does not declare that land reserved for common purposes, during consolidation by a Consolidation Officer, after applying a pro-rata cut , i.e., “Jumla Mushtarka Malkan” shall also be included in “Shamilat Deh”

Section 3 of the 1961 Act sets out the land to which the 1961 Act applies but does not include “Jumla Mushtarka Malkan”.

Section 4 pertains to the vesting of rights in Panchayat and non proprietors in land, which is included in “Shamilat Deh” of any village, and also does not refer to “Jumla Mushtarka Malkan”.

Section 5 of the Act provides for regulation of use and occupation etc. of land vested or deemed to have vested in panchayats, under the 1961 Act.

Section 7 of the Act confers the power to put a panchayat in possession of “Shamilat Deh”, but does not refer to “Jumla Mushtarka Malkan” land.

Section 7-A, confers the power of appeal upon the Commissioner.

Section 8 provides for saving of existing cultivating possession in “Shamilat Deh”.

Section 9 provides for utilisation of income.

Section 11 bears the title “Decision of claims of right, title or interest in “Shamilat Deh” and empowers the Collector to adjudicate any claim, right, title or interest in “Shamilat Deh”.

Section 11 does not refer to much less confer power upon the Collector to decide disputes with respect to any right, title, or interest in land reserved during consolidation by applying a pro-rata cut i.e. “Jumla Mushtarka Malkan”.

Thus, an appraisal of provision of the 1961 Act makes it absolutely clear that “Jumla Mushtarka Malkan” land is not included in “Shamilat Deh” and, therefore, provisions of the 1961 Act including provisions of Section 11 that empower the Collector to decide a dispute regarding title shall not apply if the land is “Jumla Mushtarka Malkan”.

9. In another relevant paragraph as carried in the judgment (supra), para whereof stands extracted hereinafter, does carry an expostulation of law vis-à-vis, in case the impartings of the said revenue designation (supra) to the disputed lands concerned, becomes contested by the proprietor concerned, thereby the jurisdiction to decide, the said raised contest, vests rather not in the authority constituted under the 'Consolidation Act 1948', but is vested in the civil Court concerned.

“We draw support for our conclusions from provisions of the Punjab Gram Panchayat (Common Purposes Land

Eviction and Rent Recovery) Act, 1976 (hereinafter referred to as 'the 1976 Act'). The State of Punjab was conscious of the fact that “Jumla Mushtarka Malkan” is not “Shamilat Deh”, and proceedings whether for eviction or for declaration of title cannot be initiated under the 1961 Act. The State of Punjab enacted the 1976 Act, providing for eviction from land created during consolidation. Section 2 and 3 of the 1976 Act, when read together provide for eviction from land reserved for common purposes of a village under Section 18 and 23-A of the Gram Panchyat Act. Section 3 of the 1976 Act provides that the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, shall apply to such land. The State of Punjab, while enacting the 1976 Act apparently, lost sight of the fact that the Collector exercising power under Section 11 of the 1961 Act exercises power to determine dispute relating to any right, title or interest in “Shamilat Deh” and not “Jumla Mushtarka Malkan” and, therefore, failed to provide a forum for deciding such a dispute.

The question that now remains is to identify the forum, a person who raises a plea that the land is not “Jumla Mushtarka Malkan” or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. Section 44, however, cannot be

read to prohibit Civil Courts from deciding a question of title relating to “Jumla Mushtarka Malkan” as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding “Jumla Mushtarka Malkan” is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in “Jumla Mushtarka Malkan” is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court.

Thus, where a party seeks to raise a plea that the land is not “Jumla Mushtarka Malkan” etc., he shall be obliged to approach a Civil Court, exercising jurisdiction in accordance with Section 9 of the Code of Civil Procedure till such time as the State does not provide an appropriate forum. The first question is answered accordingly.”

Section 42(A) of the 'Consolidation Act, 1948' bars re-partition of the lands with the above revenue description to the proprietors concerned.

10. Moreover, since Section 42(A) as incorporated in the ‘Consolidation Act, 1948’ provisions whereof become extracted hereinafter, bars re-partition of the lands rather with the above description vis-à-vis the proprietors concerned, thus the jurisdiction vested for seeking eviction of an encroacher, upon, the disputed lands, thus continues to vest in the Collector concerned, as, respectively constituted under 'the 1976 Act' and 'the 1973 Act'.

[42A. Prohibition to partition the land reserved for common purposes. - Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgement, decree, order or decision of any court, or any authority, or any officer, the land reserved for common purpose whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized for common purposes.]

11. Moreover though the vires of the said provision, became challenged before this Court, but in a decision rendered by this Court, in case titled as '**Mahatam Singh and Others Vs. State of Punjab and Others**' to which CWP No. 15509 of 2007 became assigned, thus the said provision become declared to be intra vires the Constitution.

12. Moreover, the trite expostulation of law setted in case titled as '**Mithu Singh and Others Vs. State of Punjab**' to which **CWP No. 7438-2010** became assigned, and the expostulation of law, as, made in case titled as '**Ashwani Kumar and Others Vs. Director Rural Development Panchayats Punjab**', to which **CWP-4789-2013** became assigned, thus are candidly personificatory, that vis-à-vis disputed lands rather carrying the above revenue designation, thereby the jurisdiction to seek eviction therefrom of the encroachers concerned, is vested in the Collector concerned, respectively constituted under 'the 1976 Act' and or 'the 1973 Act'.

13. Consequently, the learned counsel appearing for the petitioner argues, that the institution of a petition for eviction, before the Collector concerned under the 'Act of 1961', was an ill constituted endeavour for the relevant purpose. Therefore, he contends that the

orders of eviction passed against the petitioner be quashed and set aside.

Amendment to the 'Act of 1961' as brought through the Punjab Act No. 19 of 2022, whereby lands with the above revenue designation are included in the shamlat deh and impact thereof.

14. The Punjab Legislative Assembly through the Punjab Act No. 19 of 2022 rather has made an amendment to the 'Act of 1961' whereby in Section (2) in Clause (g), after sub-clause (5), the following sub-clause (6) has been inserted.

“ (6) lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid Act;

Explanation.- Lands created in the column of ownership of record of rights as “Jumla Malkan Wa Digar Haqdarani Arazhi Hassab Rasad”, “Jumla Malkan” or “Mushtarka Malkan” shall be shamlat deh within the meaning of this section;”

15. Therefore(s), but obviously when the above designation(s) imparted to the disputed lands, thus makes them fall within the ambit of the definition of *shamlat deh*. Resultantly thereby the jurisdiction to seek the eviction of the encroachers upon the lands, with the revenue designation (*supra*), now does vest, in the Collector constituted under the 'Act of 1961', than in the Collector(s) under 'the 1976 Act' and/or 'the 1973 Act'.

16. Since the said amendment is in force at the time when this Court is hearing the instant writ petition besides when the instant writ

petition is a continuation of the original *lis*. Therefore, when the

amendment is now in force, as such, given the continuity of the *lis* before this Court, thereby the said amendment does have consequential import, so as to, prima facie, negate the concurrently made orders of eviction.

However, irrespective of the above, for the further reasons to be assigned hereinafter vis-a-vis the instant case, the said made orders of eviction cannot be interfered with.

17. The reasons for making the above conclusion stems, from the factum, that though in terms of the proviso occurring in Section 7(1) of the 'Act of 1961', provisions whereof are extracted hereinafter, whereby leverage was bestowed, upon the petitioner to raise a question of title, and may be, on such a question of title being raised in respect of the disputed lands, thereby the Collector in his objective contemplation may have directed the litigant concerned, to thus submit his claim under Section 11 of the 'Act of 1961'.

18. Evidently, since the above mandate of the said proviso remain unavailed. Therefore, non availment of the said statutory provision, constitutes waiver and consequent thereto estoppel, rather working against the present petitioner, to thus at this belated stage, thus seek the bestowment qua him hence the benefit of the hereinafter extracted statutory provision.

[7. Power to put panchayat in possession of Shamilat deh- (1) The collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the state government by a general or special order], after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the Shamilat deh of that village

which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

[Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under Section 11 and till the question is so determined, the application shall remain pending.

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under Section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh.]

19. More imperatively when upon availment of the said proviso, before the authorities below by the petitioner, he could have also rested a claim of title of the suit lands but irrespective of the above revenue designation becoming imparted to the suit lands, especially within the four corners of any of the exceptions/savings clause(s), thus to the definition of the *shamlat deh*. Reiteratedly when the said remedy remained unavailed nor when but obviously any evidence supportive of the petitioner rather becoming well entitled, to rest a valid claim, for bestowment of title vis-a-vis the disputed lands, thus on the premise of his deserving the endowment of the benefit of the relevant savings

vestment of right, title and interest vis-a-vis the disputed lands in the village proprietors concerned. Therefore, the Gram Panchayat concerned, was well enabled to rather for enforcing, besides, for regulating the common rights of the village proprietors concerned, in the disputed lands, to well maintain a petition for eviction, and also to seek a valid order of eviction being made against the present petitioner, thus by the statutory authorities below.

20. In addition, since a detailed discussion is made in the concurrently made impugned verdicts, thus founded on the premise, that there is a complete lack of compatibility inter-se the old khasra numbers rather with the newly assigned khasra numbers to the disputed lands. Moreover, when it has also been discussed in the impugned Annexures, that there is a complete failure on the part of the petitioner, to justify his validly owning and possessing the disputed lands, thus through able revenue entries occurring in the revenue records concerned. Consequently, the concurrently made verdicts of eviction rather cannot be quashed and set aside.

21. Though the Collectors constituted under 'the 1976 Act' and, 'the 1973 Act' were vested with summary jurisdiction, to ensure eviction of encroachers from lands rather with the revenue designation (supra), but since the said jurisdiction is to be summarily exercised, and but with no reservation of right to the aggrieved to raise therebefore a question of title. Therefore, when the said question of title is reserved in **Paraksh Singh's case (Supra)** to be agitated by the aggrieved from such entries rather before the Civil Court concerned. In consequence, on analogical application of the said principle to the said summary proceedings, the Collectors under the Acts (supra), in any subjudice

proceedings before them, if otherwise maintainable in view of the amendment, rather may proceed to reserve liberty to the aggrieved from the said entries, thus to maintain a civil suit before the Civil Court concerned.

22. Be that as it may, the Collector concerned, prior to the coming into force of the amendment (*supra*) as made to the 'Act of 1961' whereby lands designated as '*Jumla Mushtarka Malkan*', were included in the definition of the *shamlat deh*, did enjoy an able jurisdiction, thus to make orders of eviction on the relevant eviction petitions. However, in both the statutes i.e. 'the 1976 Act' and 'the 1973 Act', unlike the proviso (*supra*) as occurs in Section 7(1) of the 'Act of 1961', there is no corresponding provision, whereby the purported encroacher concerned, thus can stake an able claim for title to the disputed lands, rather with the revenue designation (*supra*).

23. Since in **Parkash Singh's case (*supra*)**, in respect of the above revenue designations, though it was declared that an aggrieved from the said revenue entry, can make a contest through his raising, a suit before the civil Court concerned. Moreover, though the said liberty was assigned in respect of there being an ouster of jurisdiction in the authority constituted under the 'Consolidation Act, 1948' or the 'Act of 1961', to make such a declaration, but even if the said right to contest, is not bestowed under 'the 1976 Act' and, in 'the 1973 Act', upon the litigant aggrieved, from the said entry, yet on making an analogical application thereto, even with respect to the statute(s) (*supra*), rather the authorities under the said Act(s), may not have earlier also debarred the aggrieved, from the said entry, to raise a dispute with respect to title

raising a petition under Section 11 of the 'Act of 1961'. *In case of subjudice petition as led under the above Acts, if otherwise maintainable in view of the amendment (supra), the said reserved right may yet be considered to be bestowed upon the aggrieved from the said entry.*

24. Therefore, though the orders of eviction passed by the Collector(s) under the 'the 1976 Act' and/or 'the 1973 Act', may be so rendered, thus even without any adjudication being made, upon, the question of title, yet if the aggrieved concerned, had moved a title suit before the Civil Court concerned, but prior to the incorporation of the amendment in the 'Act of 1961', whereby lands with the revenue designation (supra) become declared as *shamilat deh* lands. Resultantly the institution of the said suit may be valid, as no effective adjudication(s) by the Collectors under the Acts (supra), rather can be made on the question of title.

25. Moreover, the declaration(s) granted in the civil suits by the Civil Court concerned, thus would prima facie govern the eviction orders passed by the Collectors, as, constituted under the Acts (supra).

26. Predominantly, in view of the amendment (supra), as made in the 'Act of 1961' whereby lands with revenue designation as '*Jumla Mushtarka Malkan*' rather become included in the definition of *shamilat deh*. Consequently, thereby jurisdiction in respect of lands, with the said revenue designation, as relating to eviction(s), being made in respect thereof, thus against the encroachers concerned, rather now cannot be exercised by the Collector under the 'the 1976 Act' or 'the 1973 Act', but it is to be exercised by the Collector(s) under the 'Act of

Final order of this Court.

27. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders/annexures are maintained and affirmed.
28. No order as to costs.
29. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

30.11.2023

kavneet singh

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