

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 15788 of 2017(O&M)

Date of Decision: January 10, 2023.

1. Gram Panchayat Bagge Ke UttarPetitioner

Versus

Joint Development Commissioner (IRD) and others

..... Respondents

AND

CWP No. 15789 of 2017(O&M)

2. Gram Panchayat Bagge Ke UttarPetitioner

Versus

Joint Development Commissioner (IRD) and others

..... Respondents

AND

CWP No. 15790 of 2017(O&M)

3. Gram Panchayat Bagge Ke UttarPetitioner

Versus

Joint Development Commissioner (IRD) and others

..... Respondents

AND

CWP No. 15791 of 2017(O&M)

4. Gram Panchayat Bagge Ke UttarPetitioner

Versus

Joint Development Commissioner (IRD) and others

..... Respondents

AND

CWP No. 15792 of 2017(O&M)

5. Gram Panchayat Bagge Ke UttarPetitioner

Versus

Joint Development Commissioner (IRD) and others

..... Respondents

AND

CWP No. 15793 of 2017(O&M)

6. Gram Panchayat Bagge Ke Uttar

.....Petitioner

Versus

Joint Development Commissioner (IRD) and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Nakul Sharma, Advocate
for the petitioner (s).

Mr. Sandeep Jain, Addl.AG., Punjab.

Mr. S.K.Aneja, Advocate
for the private respondents.

LISA GILL, J.

All the abovesaid writ petitions are being taken up together for hearing and decision at request and with consent of learned counsel for the parties as all the petitions arise out of common order dated 22.02.2017/15.03.2017, Annexure P-3, passed by the Joint Development Commissioner (I.R.D), Vikas Bhawan, Sector 62, SAS Nagar, (Exercising the Power of Commissioner).

Brief facts necessary for adjudication of the matter are that the petitioner-Gram Panchayat Bagge Ke Uttar, Tehsil Jalalabad, District Fazilka, in all the cases filed petitions under Sections 4, 5 and 7 of the Punjab Public Premises and (Land Eviction & Rent Recovery) Act, 1973 (for short '1973 Act') seeking ejectment of the private respondents. All the petitioners were contested by the private respondents. The District

Development and Panchayat Officer (Exercising the powers of Collector),

Fazilka, vide order/s dated 04.09.2015 (attached as Annexure P-1 in all the writ petitions), dismissed the petitions seeking ejectment on the ground that land in question is owned by the private respondents and Gram Panchayat has no right over the same with a specific observation that no evidence whatsoever had been led by the Gram Panchayat to prove its rights over the land neither any document evidencing that the land had been leased out by the Gram Panchayat as claimed was placed on record.

Appeals against the said order filed by the petitioner-Gram Panchayat were dismissed by the Joint Development Commissioner, Punjab (Exercising Powers of Commissioner) at Vikas Bhawan, Sector 62, Mohali, Commissioner, Mohali, vide common order dated 22.02.2017, Annexure P-3. Joint Development Commissioner, while upholding order dated 04.09.2015, Annexure P-1, concluded that according to the plea raised by the Gram Panchayat, land in dispute is Jumla Mushtarka Malkan (belonging to joint owners) and that if any person, raises any objection or dispute regarding ownership of Jumla Mushtarka Malkan, the Civil Court in that event has got the right to decide the matter. Thus, the parties it was directed were at liberty to avail the remedy available to them in accordance with law in this regard.

Aggrieved therefrom, petitioner-Gram Panchayat has filed the abvoesaid six writ petitions challenging impugned orders dated 04.09.2015, (Annexure P-1 in all writ petitions) and 22.02.2017/15.03.2017, Annexure P-3 (in all writ petitions), dismissing its petitions and appeals, respectively. As facts and pleadings are similar in all the writ petitions, reference is being to the facts in CWP No. 15788 of 2017 for the sake of convenience and brevity.

Learned counsel for the petitioner(s) argued that the land in question is admittedly reflected as Jumla Mushtarka land and relevant record along with jamabandies since 1960-61 were produced before the Appellate Court and that the land in dispute was being leased out by the Gram Panchayat to various cultivators including the private respondents. Reference is made to Resolutions dated 03.07.2008, 30.06.2009, which would reflect giving out of land on lease to various persons including private respondents. Learned counsel for the petitioner(s) submitted that the relevant entries in the Wazib Ul Arz, were duly presented before the authorities, but the same has not been considered. It is submitted that as per the Wazib Ul Arz, 20 acres of land was reserved during consolidation for income of the Gram Panchayat and land mentioned in Jamabandi for the year 1960-61 reflect possession of the Gram Panchayat on the land measuring 348 Kanal out of which 183 kanal 4 marlas is mentioned to be Gair Mumkin. 29 Kanal 4 Marlas is reflected as Gair Mumkin reserved for Panchayat Ghar, Hospital, Shamshanghat, School ground, Hadda Rori and Gram Panchayat latrines and 29 part from Khasra nos. 75 to 136 land measuring 79 Kanals 4 Marlas was reserved for Ghada Khad. 9 Parts of land measuring 47 Kanals 11 Marlas was under Abadi and after deducting the Gair Mumkin land for common purpose, 165 Kanals i.e., 20 Acres 5 Kanals was reserved for income of the Gram Panchayat as per the restitution of Wazib Ul Arz. In the revenue entries after 2006-07, the land is incorrectly and without any basis shown to be under the ownership of proprietors jointly.

It is further submitted that even so, it is not mentioned that the land has been partitioned or brought under the individual cultivation as per their share and in-fact the land in dispute has been leased out to the cultivators for the year 1960-61, 1972-73, 1976-77, 1981-82, 1988-89, 1991-

92, 1996-97, 2001-02, 2006-07, 2011-12, Annexures P-4 to P-13. It is further contended that the entries were wrongly changed on the basis of a collusive judgment and decree dated 20.03.2002, which has been obtained fraudulently by the private respondents in connivance with the then office bearers of the Gram Panchayat. Learned counsel for the petitioners submits that Gram Panchayat, which was proceeded ex parte, at that stage, did not contest the suit titled 'Darbara Singh Vs. Krishan Kumar and others' apparently in collusion with private respondents. Hence the collusive decree passed.

Learned counsel further argues that despite the said decree, Gram Panchayat was auctioning this land to different persons for cultivation and receipt form no. 4 was also issued. Furthermore, private respondents themselves had also taken the land in auction/lease. It is thus prayed that these writ petitions be allowed.

Learned counsel for the private respondents while refuting the arguments raised on behalf of the petitioners, vehemently argues that the land in question does not belong to the Gram Panchayat and is clearly Mushtarka Malkan land and the private respondents being the proprietors of the village have the right to continue in possession of the said land. The said land it is stated, was never used for common purposes. Gram Panchayat, it is submitted has no connection whatsoever with the land in question. It is further submitted that the petitioner-Gram Panchayat in these writ petitions has deliberately concealed passing of judgment and decree dated 20.03.2002 passed by learned Civil Judge (Jr. Division), Ferozepur, attached as Annexure R-3/1 with the reply filed by the private-respondents, consequent to which correction in the revenue record was carried out. Impugned orders, it is submitted have been correctly passed keeping in view the facts and

circumstances. Petitioner, if aggrieved in any manner can very well avail the remedy available to it in accordance with law and as per liberty afforded by the Joint Development Commissioner (I.R.D) in impugned order dated 22.02.2017/15.03.2017. It is thus prayed that these writ petitions be dismissed.

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

Perusal of the file reveals that the Collector, Fazilka, has dismissed the petitions under Section 4, 5 and 7 of the 1973 Act filed by the petitioner-Gram Panchayat while observing that as per jamabandi for the year 2011-12, Gram Panchayat is not the owner of the land in dispute as the same is recorded to be owned by the private respondents. It is further observed that the Gram Panchayat has not produced any document or evidence on file which would prove the land to be owned by the Gram Panchayat and that no evidence had been led regarding leasing out the said land. The Joint Development Commissioner (IRD), while upholding the said order dated 04.09.2015, has observed as under:-

“After hearing the arguments led by learned counsel for both the parties and perusal of record belonging to lower court, I have come to the conclusion that according to the plea put by Gram Panchayat, the land in dispute is Jumla Mushtarka Malkan (belonging to joint owners). If any person raise any objection/ dispute regarding ownership of Jumla Mushtarka Malkan, in that event, the Civil Court has got right to decide the matter in compliance to order dated 08.11.2013, passed by Hon’ble Punjab & Haryana High Court in Civil Writ Petition No. 2318/2002. According to the provisions of Section 18 & 23 of Consolidation Act, 1948 and Section 17 (ii) of consolidation Rules, 1949, the management and control of land belonging to Jumla Mushtarka Malkan vests in the Gram Panchayat. Gram

Panchayat has submitted record and brought receipts regarding leasing out the land from time to time on record. Hence Gram Panchayat is having management & control of said land.

According to the order passed by Lower Court, a direction is hereby issued to Jumla Mushtarka/ parties that they may avail remedy as per law in compliance to order dated 08.11.2013, passed by Hon'ble Punjab & Haryana High Court in Civil Writ Petition No. 2318/2002, titled as Parkash Singh etc., Vs. Joint Development Commissioner. The present appeal is disposed of vide this order by upholding the order dated 04.09.2015 passed by Ld. Court below."

Learned counsel for private respondents relied on judgment and decree dated 20.03.2002 passed by learned Civil Judge (Jr. Division), Ferozepur to assert that Gram Panchayat has no connection with the suit property. The said suit was filed by one Darbara Singh son of Harbans Singh seeking a declaration to the effect that he is a co-sharer to the extent of 75/4202 share in the total land measuring 326 Kanals 1 Marla bearing Khewat no. 143 Khatauni no. 361 to 374 and 388 to 393 as per jamabandi for the year 1991-92 and for possession of the land as described therein apart from *mesne* profits and damages for the alleged unauthorized use and occupation of the land. Challenge was to order dated 28.07.1995 passed by the Deputy Commissioner, Ferozepur, for sanction of mutation of the land in question in favour of the Gram Panchayat as well as for setting aside mutation no. 1044 dated 31.08.1995, entered on the basis of the said letter. The then, Deputy Commissioner, Ferozepur, vide memo dated 28.07.1995 while noting the factum of land reserved for common purposes in number of villages not being entered in the name of the Gram Panchayat and continuing to be recorded under the ownership of co-sharers which led to difficulty to the Gram Panchayat for removal of encroachment, directed necessary action to be taken. It was directed as under:-

“It is, therefore, quite clear that the land reserved for common purpose (Bachat land etc.) should not be recorded in the ownership of individual co-sharers but it should be recorded as Gram Panchayat-Jumla Malkan or Gram Panchayat Hasab Rasad as stipulated in Rule 16 (ii). You are, therefore, directed to scrutinize the entries relating to all such lands and if the land reserved for common purpose is entered in the ownership of individual co-sharers or as only Jumla Malkan then enter and sanction a mutation changing the ownership from individual co-sharers/Jumla Malkan to Gram Panchayat Jumla Malkan/ Hasab Rasad. The Mutation should be entered and sanctioned in a time bound manner and the entire work should be completed by 31.08.1995. You are requested to record certificate that the entries relating to Bachat/ Land reserved for common purpose have been scrutinized and the needful has been done.”

It is a matter of record that Gram Panchayat was proceeded *ex parte* in the suit filed by Darbara Singh. It was his case that the land in question had been incorrectly leased out by the Gram Panchayat to the private defendants therein. Written statement had been filed on behalf of one of the lessees only, but ultimately all were proceeded *ex parte*. Learned trial Court decreed the suit while holding that none had appeared to show that the suit land was the land which indeed had been set aside for common purposes of the village during consolidation proceedings. The action of entering mutation No.1044, it was held could not have been taken on the basis of a communication issued by the Deputy Commissioner, Ferozepur. Therefore, the suit was decreed.

The private respondents claimed title on the basis of the said decree. It is a matter of record that the entries in the revenue record in favour of all the private respondents was changed pursuant to passing of the said decree dated 20.03.2002. It is relevant to note that learned counsel for the

petitioner referred to the Wazib Ul Arz to indicate that there was no *Shamilat* Land in the village, but at the time of consolidation, 20 acres of land was reserved for the Gram Panchayat which would be cultivated by the Gram Panchayat through lessees and income therefrom would be spent for the welfare of inhabitants of the village. Reference is also made to Jamabandi for the year 1996-97 to 2006-07, wherein the petitioner-Gram Panchayat is reflected in Column 4 of the Jamabandi. Learned counsel referred to Resolutions dated 03.07.2008 and 30.06.2009 to indicate that the land was leased out to cultivators by the Gram Panchayat including the private respondents.

It is undeniable that the Joint Development Commissioner (IRD), has not even adverted to the relevant documents as placed before it. The effect of judgment and decree dated 20.03.2022 as well as the question of its effectiveness or validity and binding nature of the judgment and decree dated 20.03.2002 should necessarily have been considered by the Appellate Authority as the Gram Panchayat raised a specific plea about the decree being collusive in nature and it being a matter of record that the then Gram Panchayat choose not to even contest the same. In the given circumstances it was incumbent upon the Appellate Authority to have considered the same in the light of the documents as referred to by learned counsel for the parties. Reference in this respect can gainfully be made to judgment of the Hon'ble Supreme Court in **Gram Panchayat of village Naulakha Vs. Ujagar Singh, 2000 (4) RCR (Civil) 749**.

It is also relevant to note, at this stage, that the Hon'ble Supreme Court in **State of Haryana through Secretary to Government of Haryana Vs. Jai Singh and others, 2022 (2) RCR (Civil) 803**, held that in respect to land mentioned as Jumla Mushtarka Malkan or Mushtarka

Malkan, it is the authority under the 1961 Act and the machinery provided therein which would exercise jurisdiction to determine as to whether it is reserved for common purpose or not and not the principal Court of civil jurisdiction. It has further been held in the said case that Mushtarka Malkan Land vests in the Gram Panchayat and that once land has been reserved for common purposes, irrespective of description in the revenue record and whether it is being utilized for common purposes or not, such land would vest with the Panchayat/the State and the only condition is that it should not be within the permissible limits of the proprietors. As reflected in Para-53 of the abovesaid judgment of the Hon'ble Supreme Court, the conclusion by the High Court in **Parkash Singh and others Vs. Joint Development Commissioner, Punjab and others, 2014 (2) RCR (Civil) 721**, to the effect that Jumla Mushtarka or Jumla Mushtarka Land as described in the revenue record would not vest with the Panchayat, was held to be based on incorrect reading of judgment of the Hon'ble Supreme Court in **Ranjit Singh vs. State of Punjab, AIR 1965 (SC) 632**. It is apparent that the Appellate Authority while passing impugned order dated 22.02.2017/15.03.2017, Annexure P-3, has ignored the relevant and material documents presented before it and not adverted to the arguments raised before it.

Keeping in view the above, order dated 22.02.2017/15.03.2017, Annexure P-3, passed by the Joint Development Commissioner (I.R.D), Vikas Bhawan, Sector 62, SAS Nagar, (Exercising the Power of Commissioner) is set aside and the matter remitted to the Joint Development Commissioner (I.R.D), to decide the same afresh after affording due opportunity of hearing to all concerned and taking into consideration the entire relevant record and aspects which have been referred to as above.

Parties are directed to appear before the Joint Development Commissioner on 01.02.2023. Liberty is afforded to the parties to present any further documents they seek to rely upon within four weeks of appearance before the Joint Development Commissioner (I.R.D). Appeals be decided expeditiously and preferably within a period of four (04) months from appearance of the parties. It is clarified that there is no expression of opinion on the entitlement or otherwise of any of the parties and the same is clearly within the realm of consideration by the Joint Development Commissioner (I.R.D) in accordance with law.

All the writ petitions are partly allowed and disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

January 10, 2023.
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.