

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

(1) **CWP-14189-1992 (O&M)**

Hamir Kaur and others ...Petitioners

Versus

Director of Panchayats, Punjab and others ...Respondents

(2) **RSA-3838-2007 (O&M)**
Date of decision : 05.02.2024

Hamir Kaur and others ...Appellants

Versus

Hargian Singh and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Dinesh Arora, Advocate
for the petitioners (in CWP-14189-1992) and
for the appellants (in RSA-3838-2007).

Mr. Maninder Singh, D.A.G., Punjab.

HARSH BUNGER, J.

1. This order shall dispose of **CWP No.14189 of 1992** titled as **Hamir Kaur and others vs Director of Panchayats, Punjab and others** as well as **RSA No.3838 of 2007** titled as **Hamir Kaur and others vs Hargian Singh and others**, as both the cases involve common question of law and facts.

2. In **CWP No.14189 of 1992**, petitioners seek issuance of a writ in the nature of *certiorari* for quashing of an order dated 16.05.1988 (Annexure P-8) passed by the District Development and Panchayat Officer, Jalandhar (exercising the powers of Collector under the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973;

whereby, an eviction petition filed by respondent No.3 (Gram Panchayat, Village Dhandour, Tehsil and District Jalandhar) against the writ petitioners, has been allowed and the petitioners have been ordered to be evicted from the land in question.

Petitioners further seek setting aside of an order dated 17.07.1991 (Annexure P-14); whereby, the appeal filed by them against the order dated 16.05.1988 (Annexure P-8), has been dismissed.

RSA No.3838 of 2007, has been filed by the above-said petitioners (appellants in the RSA) against the judgment and decree dated 29.09.2007 passed by the Court of learned Additional District Judge, Jalandhar; whereby, an appeal filed by the plaintiffs in the suit, has been allowed, holding that the land measuring 161K-7M, situate at Village Dhandour, Tehsil and District Jalandhar, is the ownership of *Mushtarkan-Malkan*. A further declaration has been made that the decree dated 23.12.1972 passed in Civil Suit No.259/1972 titled as ***Santokh Singh vs Gram Panchayat*** passed by the Court of Sh. Jagroop Singh, the then Sub Judge, IIIrd Class, Jalandhar and the consequent Mutation No.1441, are illegal, fraudulent and not binding upon the rights of the plaintiffs with a further declaration that the judgment and decree dated 18.02.1991 passed in Civil Suit No.123/1991 passed by the Court of Sh. N.K. Goel, Sub Judge Ist Class, Jalandhar, in case titled as ***Hamir Kaur and others vs Gram Panchayat and others*** and also a subsequent order dated 01.03.1994 passed by Sh. V.B. Handa, Additional District Judge, Jalandhar, is collusive, illegal and has no binding effect on the rights of the plaintiffs.

3. For the sake of convenience, the facts are being derived from ***CWP-14189-1992*** titled as ***Hamir Kaur and others vs Director of***

Panchayats and others and the parties are addressed as per their status in the writ petition.

4. Succinctly, on 25.04.1972, the Tehsildar (Sales) Jalandhar transferred land measuring 58K-06M situate in Village Dhandour, Tehsil and District Jalandhar in favour of Santokh Singh son of Tarlok Singh (predecessor-in-interest of the petitioners herein). The said land was transferred to Santokh Singh on the basis of his alleged cultivating possession on the afore-said land. The said transfer was confirmed by the Settlement Officer (Sales) on 05.06.1972.

5. It appears that said Santokh Singh exchanged the afore-said land (58K-4M) with the land measuring 112K-8M belonging to *Mushtarkan-Malkan Tehat Panchayat Deh* vide Resolution dated 08.05.1972 passed by the then Gram Panchayat, Dhandour. Thereafter, Santokh Singh filed a Civil Suit No.259 of 1972 titled as ***Santokh Singh vs Gram Panchayat***; which came to be decided by the Court of Sh. Jagroop Singh (PCS), Sub-Judge IIIrd Class, Jalandhar, vide decree dated 23.12.1972 (Annexure P-1). The said decree sheet reads as under :-

<i>“Value for purposes of jurisdiction.</i>	<i>Rs. 200/-</i>
<i>Court fee.</i>	<i>Rs. 200/-</i>
<i>(Decree in Original suit).</i>	

*In the Court of Shri Jagroop Singh PCS, Sub Judge 3rd Class,
Jullundur.*

Civil Suit No.259 of 1972

*Santokh Singh son of Tarlok Singh resident of Village Dhandor Teh.
& Distt. Jullundur.*

...Plaintiff.

Vs.

*Gram Panchayat (Mushtarka Malikan) Village Dhandor Teh. And
Distt. Jullundar through Shri Harcharan Singh Sarpanch resident of
Vill. Jalpoth, Tehsil and Distt. Jullundur.*

...Defendant.

Plaint presented on : 15-12-1972.

Claim for : Suit for declaration to the effect that the plaintiff is owner in possession of land measuring 112K-8M comprise in Khasra No. 41.

<u>23</u> 7-12				<u>24</u> 8-0				<u>25</u> 8-0			
<u>42</u>				<u>55</u>							
<u>21</u> 1-1	<u>22/1</u> 2-6	<u>22/2</u> 2-14	<u>23</u> 8-0	<u>1</u> 5-12	<u>2</u> 7-8	<u>3/1</u> 1-0	<u>10/1</u> 4-4				
<u>55</u>				<u>56</u>							
<u>10/2</u> 1-1	<u>11</u> 5-19	<u>3/1</u> 6-15	<u>4/1</u> 7-11	<u>5</u> 8-0	<u>6</u> 7-14	<u>7/1</u> 4-0	<u>14/2</u> 3-5	<u>15/1</u> 4-7			

situated in the area of Village Dhandor Teh. & Distt. Jullundur, on the basis of an Exchange Deed incorporated in the Panchayat resolution dated 8-5-72, according to which in lieu of the above area, land measuring 58K-4M belonging to the plaintiff was given to the defendant, bearing Khasra No.

<u>61</u>				<u>62</u>			
<u>24</u> 860	<u>25</u> 8-0	<u>12</u> 8-0	<u>19</u> 8-0	<u>21</u> 8-0	<u>22min</u> 6-16	<u>23</u> 4-0	

64 as the land then belonging to the defendant was 4min
1-12 8-0

inferior quality and that the plaintiff has brought about improvements upon the land in dispute and spent a sum of Rs.15,000/- and for mandatory injunction directing the revenue authorities to sanction the mutation on the basis of the exchange and decree of declaration.

This suit coming that day for final disposal before (Sh. Jagroop Singh PCS Sub Judge) in the presence of Sh. R.C. Sharma Advocate counsel for the plaintiff and Shri Jagjit Singh Advocate counsel for the defendant, it is ordered that suit of the plaintiff for declaration the effect that the plaintiff is owner in possession of agricultural land measuring 112K. 8M. in lieu of the land measuring 58K 4M given to the defendant as fully described above is the claim and that the plaintiff has spent a sum of Rs.15,000/- on improvement of land in dispute and for mandatory injunction directing the revenue authorities to sanction the mutation on the basis of exchange and this decree of declaration prayed for, and the same is hereby decreed in favour of the plaintiff against the defendants. It is further ordered that the parties shall bear their own costs.

	<u>Memo of costs</u>	
	<u>Plaintiff</u>	<u>Defendants</u>
1. Stamp for plaint	19-50	-
2. Stamp for power	1-25	1-25
3. Pleader's fee.	15-00	15-00
4. Subsistence for witness	-	-
5. Service of process.	0-75	-
6. Misc	-	-

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<u>Total</u> 36-50	<u>16-25</u>
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Given under my hand and seal of Court this 23rd of December, 1972.

(Seal)	Sd/-Jagroop Singh
True copy	Sub Judge III Class
	Jullundur

6. It is borne out from the petition that Mutation No.1441 was sanctioned on 16.06.1975 in favour of said Santokh Singh and in the record of rights (*Jamabandi*), said Santokh Singh was entered as owner in possession of 79K-15M's land and regarding the remaining land, Santokh Singh is stated to have suffered a decree in favour of one Smt. Chint Kaur.

7. On the other hand, the Department of Rehabilitation made *suo moto* reference to the Chief Sales Commissioner on 13.08.1975 for revision of the transfer order i.e. the transfer of land measuring 58K-6M in favour of Santokh Singh, on the basis of his alleged cultivating possession on the said land i.e. 58K-6M. The same was accepted by Deputy Secretary, Rehabilitation-cum-Chief Sales Commissioner vide his order dated 09.09.1976 and it was ordered that the amount paid by the transferee i.e. Santokh Singh, as price of the land, should be refunded after deducting the amount of damage charges and Santokh Singh be dispossessed from the land.

8. Being aggrieved against the afore-said order dated 09.09.1976, Santokh Singh appears to have filed a Revision Petition, which was ultimately heard by the Commissioner, Jalandhar Division, Jalandhar and was rejected vide order dated 30.04.1984.

The order dated 30.04.1984 was further impugned by Santokh Singh before the Financial Commissioner (Revenue), Punjab by way of ***MR No.121 of 1983-84***, which was also dismissed vide order dated 15.10.1985.

9. Simultaneously, it would be appropriate to indicate that in the

year-1982, Santokh Singh filed another Civil Suit bearing No.72 of 03.03.1982, seeking a decree of permanent injunction against the then Sarpanch and other Panches of the Village. In the said Civil Suit No.72 of 1982, the Sarpanch/Panches were impleaded as defendants but they did not appear and were proceeded against *ex-parte*. The suit for permanent injunction filed by said Santokh Singh was decreed *ex-parte* vide judgment and decree dated 19.08.1982 (Annexure P-4) and the defendants in the suit were restrained from interfering into the possession of Santokh Singh over the land in dispute, except in due course of law. It appears that said Santokh Singh died on 25.10.1985 and the writ petitioners succeeded to his estate.

10. In the *Jamabandi* of 1984-85 (Annexure P-5) pertaining to the land, which was taken in exchange by Santokh Singh in lieu of the land which was transferred to him by the Rehabilitation Department, came to be reflected as the ownership of '*Mushtarkan-Malkan Tehat Panchayat*' and Santokh Singh son of Tarlok Singh (Predecessor-in-interest of petitioners) and Smt. Chint Kaur, were reflected as un-authorized occupants. It is apposite to note here that in the remarks column of the said *Jamabandi* for the year 1984-85, there is an entry of "*Salam Raqba cancel Bahak Mushtarkan Malkan, Rapat No.466 dated 26.06.1985*".

11. On 27.10.1987, the writ petitioners filed a Suit for Declaration and injunction, which came to be registered as Civil Suit No.123 of 1991 titled as "***Hamir Kaur and others vs Gram Panchayat and Mushtarkan-Malkan***", seeking a declaration that they are owners in possession of the land in question, being legal heirs of deceased Santokh Singh.

12. On the other hand, in May-1987, the then Gram Panchayat,

Village Dhandour filed a petition under Sections 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 seeking ejectment of the petitioners from the land comprised in Khewat No.195, Khatauni No.313 and Khasra Nos.41//23, 24, 25, 42//21, 22/1, 22/1, 2355//1, 56//3/1, 4/1, 5, 7/1, 14/2 totalling 76 Kanals 15 Marlas situated in the revenue estate of Village Dhandaur as entered in the jamabandi for the year 1979-80.

13. The said ejectmentpetition came to be allowed by the District Development and Panchayat Officer-cum-Collector, Jalandhar vide his order dated 16.05.1988 by holding as under :-

“I have heard the learned counsel for the Gram Panchayat in detail. The Counsel for the Gram Panchayat argued that the land in dispute in Mushtarka Malkan in the revenue record. I have also been the judgment dated k9-2-85 Distt. Judge dated 30-4-84 and of Sh. Dinesh Chands IAS, Commissioner, Jalandhar Division, Jalandhar judgment dated 15-10-85 passed by Mrs. Usha Vohra, IAS, Financial Commissioner Revenue and Secy. to Govt. Punjab Rehabilitation Deptt. Ex.-A4 and judgment dated 7-12-87 passed by Hon’ble Punjab & Haryana High Court, Chandigarh. As per jamabandi for the year 1984-85, Ex.-A6 the suit land in question has been executed in the name of Mushtarka Malkan through Gram Panchayat. Rojnamcha report No.465 canceliation Salam Khewat No.195 total area 79 Kanals 15 Marlas. As per Section 23-rule(iii) of Consolidation of Holdings (Prevention and Fragmentation) Act, 1988 all the Mushtarka Malkan Lands Vest in the management and control of Gram Panchayat. The auction of the land effected by the Rehabilitation Department in the name of Sh. Santokh Singh has been cancelled. The respondents have no right or interest of the land in question. They are in forcibly and illy possession over the suit land

and nothing are giving to the Gram Panchayat. The respondent may be ordered to vacate the suit land and possession be delivered to the Gram Panchayat. In addition to than the respondent may be order to deposit mense profit Rs.24,000/- on account of use and occupation of the land since 1972 to 1975.

In view of the above detailed discussion I am fully agree with the arguments of learned counsel for the Gram Panchayat. As per revenue record the land in dispute vest under the management and control of Gram Panchayat. The respondent are its illegal and forcible possession and nothing is giving to the Gram Panchayat on account of use and occupation of the land in question. The application of the Gram Panchayat is accepted and the respondent are ordered to vacate the suit land measuring 79 Kanals 15 Marlas and possession be delivered to the Gram Panchayat immediately. Warrant for possession may be issued. In addition to that the respondents are liable to deposit Rs.24,000/- at the rate of 8,000/- per annum in the Panchayat fund on account of illegal use and occupation of the land in dispute since 1972 to 1975, as claimed by the Gram Panchayat. I order accordingly.”

14. Being aggrieved against the afore-said ejectment order dated 16.05.1988, the writ petitioners filed an appeal under Section 9 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973.

15. In the meantime, on 18.02.1991, the Civil Suit bearing No.123 of 1991 came to be decreed by the Court of Sub Judge Ist Class, Jalandhar, vide his judgment and decree dated 18.02.1991 (Annexures P-6 and P-7) holding that the petitioners are the owners in possession of the suit property measuring 79K-15M.

16. On the other hand, the appeal filed by the appellants under Section 9 of the Punjab Public Premises and Land (Eviction and Rent

Recovery) Act, 1973 came to be finally heard and decided by the then Director, Rural Development and Panchayat, Punjab vide his order dated 17.07.1991 (Annexure P-14); whereby, the appeal of the petitioners against the ejectment order was dismissed.

17. Accordingly, the petitioners filed the instant Civil Writ Petition No.14189 of 1992 before this Court.

18. In the year 1994, certain proprietors of Village Dhandour representing the *Mushtarkan-Malkan* of Village Dhandour filed a Civil Suit No. 517 of 2002; wherein the following prayer was made :-

“Claim for: Suit for declaration to the effect that the plaintiffs being Mushtarkha Malkan, are owners of land measuring 161 kanal 7 marla comprised in khasra No.35/16/2(2-0), 34/20(7-0), 11/1(4-15), 12/2(4-9), 5/2K(7-2), 22/1(1-16), 15/1(8-0), 2/1(2-0), 9/2(1-12), 10/1(6-9), 14/6/1(0-16), 55/3/1 (1-0), 42/23(7-12), 24(8-0), 25(8-0), 42/21(8-0), 22/1(2-6), 22/2(2-14), 23(8-0), 56/3/1(6-15), 4/1(7-11), 56/5(8-0), 6(7-14), 7/1(4-0), 14/2(3-5), 15/1(4-7), 55/1(5-12), 2(7-8), 11(5-19), 10/1(4-4), 10/2(1-1), 274(4-0), situated in village Dhandor Tehsil and Distt. Jalandhar and the alleged exchange of land by the Gram Panchayat village Dhandor defendant No.8 with Santokh Singh deceased, now represented by defendant No. 1 to 7, measuring 112 kanal 8 marla is null, void, fraudulent and has got no binding effect on the rights of the plaintiffs, as the Gram Panchayat Dhandor has got no right or title or interest in the said land and to make exchange; And for declaration that the decree passed in Civil Suit No.259/1972 passed by the Court of Shri Jagroop Singh the then, Sub Judge Ist Class, Jalandhar vide judgment and

decree dated 23.12.1972 in re-Santokh Singh Versus Gram Panchayat (Mushtarka Malkan) village Dhandor through Shri Harcharan Singh Sarpanch and the mutation No. 1441 entered and sanctioned on the basis of the said decree are illegal fraudulent, collusive, ultravires, null, void without jurisdiction and are not binding upon the rights of the plaintiffs in any manner.

AND

For declaration that the judgment and decree passed in Civil Suit No. 123/1991 passed by Shri N.K.Goel, S.J.I.C., Jalandhar, vide judgment and decree dated 18.2.1991 in re-Hamir Kaur and others Versus Gram Panchayat and others and subsequently order dated 1.3.1994 passed by Shri V.B. Handa, Addl. Distt. Judge, Jalandhar or any order by Hon'ble High Court, or Hon'ble Supreme Court in the said case is collusive, ultravires, illegal, fraudulent, without jurisdiction obtained by fraud and misrepresentation and has no binding effect on the rights of the plaintiffs and the plaintiffs are still owner as Mushtarkan Malkan of village Dhandor of the land measuring 161 kanal 7 marla and for possession of land measuring 112 kanal 8 marlas comprised in Khasra No. 41//23(7-12), 24(8-0), 25(8-0), 42//21(8-0), 22/1(2-6), 23(8-0), 22/2(2-14), 55//1/2(5-12), 56//3/1(6-15), 6(7-14), 4/1(7-11) 15/1(4-7), 5(8-0), 7/1(4-0), 14/2(3-5), 55//2(7-8), 3/1(1-0), 10/2(1-1), 10/1(4-4), 11(5-9), as entered in the said jamabandi for the year 1989-90 Hadbast No.73, of village Dhandor Distt. Jalandhar.

AND

For permanent injunction restraining the defendants No. 1 to 7 from alienating the land measuring 112 kanal 8 marla in any manner whatsoever and further restraining the defendants No. 1 to 7 from getting their names mutated in the revenue record on the basis of above said judgment and decree in place of Mushtarkan Malkan.”

19. The said suit came to be dismissed by the Court of Civil Judge (Junior Division), Jalandhar vide its judgment and decree dated 26.03.2005.

20. Being aggrieved against the afore-said judgment and decree dated 26.03.2005, the said proprietors (plaintiffs in Civil Suit No.517 of 2002) filed an appeal before the learned Additional District Judge, Jalandhar, which came to be allowed vide judgment and decree dated 29.09.2007 wherein it was held as under :-

“11. Appreciating the submissions of the two sides counsel for both the sides squarely accepts that it is the established position of law that any decree obtained by fraud is a nullity in the eyes of law and in ratios cited on behalf of the appellants in Jai Narain Parasrampur's case and in Bank of India's case (ibid) lays down that by now it is well settled that fraud vitiates the most solemn acts and by that position of law limitation does not come into play besides the well entrenched law that right to property or thing is a continuing right and thus the limitation cannot come into play.

12. In this case the judgment-dated 18.2.1991 is proved as Ex.P4 and its decree as Ex.P5, which shows that the suit has been filed by Hamir Kaur etc. Against Gram Panchayat defendant No.1 and Mushtarka Malkan Dhandor through Fakir Singh and Kabul Singh and all the proprietors of the village have not been arrayed as

defendants. When the very provisions of Order 1 rule 8 CPC lays down that where numerous persons have the same interest in a suit, one or more persons may with the permission of the court sue or defend such a suit on behalf of the other persons and for which the court has a mandatory duty to give notice to all persons so interested and thus as is the position of law laid down in AIR 1990 (S.C.) 396 Kalyan Singh Vs. Smt. Chhote, permission of the court under Order 1 Rule 8 CPC is mandatory and only after due adherence, such a judgment decree binds the others and the defendants could not establish by any means that such a necessity was under gone and, therefore, the judgment decree dated 18.2.1991 Ex.P4 is certainly nonest and needs to be set aside and which is also the position of law laid down in 1996(1) Civil Court Cases 487 (P&H) titled as Har Kishan & ors. Vs. Durga & ors. cited by the plaintiffs/appellants.

13. Commensurate with the submissions of Shri N.K. Aggarwal and in this case much of the evidence is the revenue documents and jamabandi Ex.P1 shows that apart of this property, which is owned by the Central Government, has been gifted but Dhan Kaur widow of Naranjan Singh consisting of Khasra numbers 61 and 62 and which is also subject matter of this disputed exchange and Ex.P2 shows that property bearing Khasra No.38, 37, 62, 63, 64 have similarly gifted by the Central Government as War Jagirs and Ex.P3 shows this property so claimed by Santokh Singh to exchange the land with Gram Panchayat land bearing Khasra No.41, 42, 55 and 56 was already under mortgage measuring 91 kanals 16 marlas and which is as per column No.4 of the jamabandi vests in Mushtarka Malkan and so khasra No. 55 which is in occupation of Chint Kaur. The copy of the Patwari Rapat Ex.P6 shows that the exchange of the land Mushtarka Malkan with that of property owned by Chint Kaur wife of

Mangal Singh and Santokh Singh and which titled of Santokh Singh was already under cloud. Shri Sanjeev Bansal, Advocate could not impress upon the court how the Bachat land vests in the Gram Panchayat or the Gram Panchayat is competent to enter into such an arrangement. The law has been well laid down in Gurjant Singh's and B.L. Wadhera's cases by our own High Court as well as by the Hon'ble Apex Court that Bachat land which remained un-utilized does not vests in the Panchayat and further more if for the sake of arguments it is accepted to be so, even then where a party has been deprived of a property due to defect of a title in the property of any another party the law and equity demands that the party, who has suffered is entitled to the return of that very property and in this case, it is the clearly established fact that the plaintiffs are robbed of their property, who are entitled to its return by all means.

14. The arguments of Shri Sanjeev Bansal, Advocate, counsel for the respondents does not impresses the court as on the one hand, the defendants claims to be the owners in possession of the suit property and on the other hand have raked up the plea of adverse possession, which are exclusively mutually contradictory.

15. Besides the element of hostile assertions impressively or impliedly denial of title of true owners have also to be affirmed. In this respect reliance has been placed on Rama Kanta Jain's case and which element is also missing and, therefore, the learned lower Court while adjudicating of principle issues No.1 & 2 have wrongly come to the conclusion that the exchange deed in favour of predecessors of defendants No.1 to 7, was legal or that the judgment and decree dated 23.12.1972 has become final along with judgment and decree dated 18.2.1991 and order dated 1.3.1994 and, therefore, findings of the learned lower Court on issues No.1 and 2 are set aside and

in view of these findings issues No.3 and 4 are also decided in favour of the plaintiffs and the findings of the learned lower Court on both these issues are set aside and, therefore, the plaintiffs are entitled to declaration prayed in the suit and findings on issues No.5 are also reversed. Since it has been positively held that the plaintiffs are rightful and truthful owner, they are also entitled for decree for permanent injunction and findings of the learned lower Court on issue No.6 are also reversed and consequently upon these findings issues No.3 and 13 are also decided in favour of the plaintiffs. No arguments were advanced on issues No.7, 8, 10, 11 and 12.

16. In view of the afore going finding on issues, the learned lower court has taken a total lackadaisical approach into the matter and which findings are erroneous, adverse and as such the same are set aside by way of acceptance of this appeal, however, with no orders as to costs, thereby decreeing the suit of the plaintiffs for declaration to the effect that the plaintiffs being Mushtarka Malkan, are owners of land measuring 161 kanal 7 marla comprised in khasra No. 35/16/2(2-0), 34/20(7-0), 11/1(4-15), 12/2(4-9), 5/2K(7-2), 22/1(1-16), 15/1(8-0), 2/1(2-0), 9/2(1-12), 10/1(6-9), 14/6/1(0-16), 55/3/1(1-0), 42/23(7-12), 24(8-0), 25(8-0), 42/21(8-0), 22/1(2-6), 22/2(2-14), 23(8-0), 56/3/1(6-15), 4/1(7-11), 56/5(8-0), 6(7-14), 7/1(4-0), 14/2(3-5), 15/1(4-7), 55/1(5-12), 2(7-8), 11(5-19), 10/1(4-4), 10/2(1-1), 274(4-0), situated in village Dhandor Tehsil and Distt. Jalandhar and the alleged exchange of land by the Gram Panchayat village Dhandor defendant No.8 with Santokh Singh deceased, now represented by defendant No. 1 to 7, measuring 112 kanal 8 marla is null, void, fraudulent and has got no binding effect on the rights of the plaintiffs and for declaration that the decree passed in civil suit No.259/1972 passed by the court of Shri Jagroop Singh, the then, Sub Judge Ist Class,

Jalandhar, dated 23.12.1972 in Santokh Singh Vs. Gram Panchayat and the mutation No. 1441 entered and sanctioned on the basis of said decree are illegal, fraudulent and not binding upon the rights of the plaintiffs in any manner. And the judgment and decree passed in civil suit No. 123/1991 passed by Shri N.K.Goel, Sub Judge Ist Class, Jalandhar, dated 18.2.1991 in case Hamir Kaur and others Vs. Gram Panchayat and others and subsequently order dated 1.3.1994 passed by Shri V. B. Handa, Addl. District Judge, Jalandhar, or any order of Court, in the said case is collusive, ultravires, illegal and has no binding effect on the rights of the plaintiffs and they are still owners as Mushtarka Malkan of village Dhandor of the land measuring 161 Kanals 7 Marlas and for possession of land measuring 112 Kanals 8 Marlas as entered in the jamabandi for the year 1989-90 Hadbast No.73 of village Dhandor and for permanent injunction restraining the defendants No. 1 to 7 from alienating the land measuring 112 kanals 8 marlas in any manner whatsoever and further restraining them from getting the land mutated in their names on the basis of said judgment and decree. Decree be drawn accordingly. Record of the trial Court be sent back.

No costs.

File of the Appellate Court be consigned to the Record Room.”

21. Accordingly, the petitioners have filed the afore-said RSA No.3838 of 2007, challenging the judgment and decree dated 29.09.2007 passed by the learned Additional District Judge, Jalandhar.

22. In the backdrop of afore-stated facts, both the petitions i.e. **CWP-14189-1992** and **RSA-3838-2007** have come up for hearing before us.

23. Learned counsel for the petitioners has submitted that the petitioners have already been declared to be the owners in possession of the land in question by two decrees passed by the Civil Court and in the face of these decrees, the ejectment orders (Annexures P-8 and P-14) cannot be sustained in the eyes of law. As regards the RSA No.3838 of 2007 is concerned, learned counsel for the petitioners (appellants in the RSA) have submitted that the lower Appellate Court has erred in law and fact in reversing the decree passed by the trial Court without considering the fact that the predecessor-in-interest of the petitioners i.e. Santokh Singh had been declared as the owner in possession of the land in dispute and even the suit filed by petitioners i.e. Civil Suit No.123 of 1991 had also been decreed in their favour. It is submitted that the Civil Suit No.517/2002 was filed by the proprietors in the year 1994, which is after the passing of more than 22 years of the first judgment and decree dated 23.12.1972 (passed in Civil Suit No.259 of 1972) and after more than three years of the passing of second judgment and decree dated 18.02.1991 (passed in Civil Suit No.123 of 1991); therefore, the same was hopelessly time barred and was rightly dismissed by the trial Court vide its judgment and decree dated 26.03.2005; however, the said decree dated 26.03.2005 has been wrongly reversed by Additional District Judge, Jalandhar vide judgment and decree dated 29.09.2007. Accordingly, it is submitted that the impugned orders (Annexures P-8 and P-14 in **CWP No.14189 of 1992**) and also the judgment and decree dated 29.09.2007 passed by the Additional District Judge, Jalandhar be set aside.

24. On the other hand, learned State counsel has submitted that the land which was transferred in favour of the predecessor-in-interest of the

petitioners namely, Santokh Singh by the Rehabilitation Department, Punjab was secured by way of a fraud and upon learning about the same, the Department of Rehabilitation had made a *suo-motto* reference recommending cancellation of the transfer made in favour of Santokh Singh, which was accepted by the Chief Sales Commissioner and the subsequent appeal/revision filed by Santokh Singh came to be dismissed; wherein, the final order was passed by the Financial Commissioner (Revenue), Punjab on 15.10.1985 in **MR No.121 of 1983-84** (Annexure R-1 attached to the written statement filed on behalf of Gram Panchayat, Village Dhandour to the CWP No.14189-1992). Learned State counsel further submits that it is the said land, which was exchanged by Santokh Singh with the then Gram Panchayat by way of a Resolution dated 08.05.1972 passed by the then Gram Panchayat. It is submitted that the exchange was an oral exchange and no procedure as prescribed under the Punjab Village Common Land (Regulation) Act, 1961 for exchange of land was followed by the then Gram Panchayat. It is further submitted that before passing of the aforesaid resolution dated 08.05.1972, the then Gram Panchayat had not sought prior permission from competent authority for exchange of land. It is contended that apparently, the exchange was of 58K-4M's of land given by Santokh Singh in lieu of land measuring 112K-8M given by the Gram Panchayat to Santokh Singh (predecessor-in-interest of petitioners) and there is nothing on record to indicate that the valuation of the two parcels of land exchanged with each other was the same. Learned State counsel submits that even otherwise, once the land, in lieu of which the land in question forming part of 112K-8M was given in exchange by the Gram Panchayat to Santokh Singh, stands cancelled by the Rehabilitation Department and the

petitioners having not brought on record anything to show that the land in lieu of which Santokh Singh had got the land in exchange, was still standing in the name of Santokh Singh; there is no question of any exchange. It is, therefore, submitted that since the transfer of land in favour of Santokh Singh (predecessor-in-interest of petitioners) by Rehabilitation Department was vitiated by fraud; therefore, the exchange of said land carried out by Santokh Singh with Gram Panchayat and also the subsequent decree dated 23.12.1972 (Annexure P-1 of CWP-14189-1992) based upon aforesaid exchange of land, were not sustainable.

As regards the judgment and decree dated 18.02.1991 passed in Civil Suit No.123 of 1991 is concerned, it is submitted by State counsel that the same had been passed without complying with the mandatory provisions of Order 1 Rule 8 of the CPC so as to bind the proprietors (plaintiffs) in Civil Suit No.517 of 2002; accordingly, the same has been rightly set aside vide judgment and decree dated 29.09.2007 passed by Additional District Judge, Jalandhar. Therefore, it is submitted that there is no merit in the writ petition as well as in the RSA and prayer for dismissal of the same has been made.

25. We have heard learned counsel(s) for the respective parties and perused the paper-books with their able assistance.

26. Apparently, the predecessor-in-interest of the petitioners namely, Santokh Singh was transferred land measuring 58K-6M situate at Village Dhanour Tehsil and District Jalandhar on 25.04.1972 by the then Tehsildar (Sales) Jalandhar on the basis of his (Santokh Singh's) alleged cultivating possession thereupon. The Department of Rehabilitation made a *suo-motto* reference to the Chief Sales Commissioner on 13.08.1975 for

revision of the said transfer order as upon enquiry, it was revealed that tampering with the record was done to bring the case of Santokh Singh within the purview of the press note of 06.10.1971. Ultimately, the *suo-motto* reference came to be allowed by the Chief Sales Commissioner vide its order dated 09.09.1976 with a further direction to refund the amount paid as price of the land by Santokh Singh, after deducting the amount of damage charges and it was also directed that Santokh Singh be dispossessed from the land. The appeal filed against the afore-said order came to be dismissed vide order dated 30.04.1984 passed by the Commissioner, Jalandhar Division, Jalandhar and the further Revision Petition i.e. ***MR No.121 of 1983-84*** filed by Santokh Singh, was also dismissed by the learned Financial Commissioner (Revenue), Punjab vide order dated 15.10.1985. The petitioners have not brought on record any material to show that the afore-said order dated 15.10.1985 passed by the Financial Commissioner (Revenue), Punjab was set aside. It is, thus, evident that the land which was transferred to Santokh Singh by the Rehabilitation Department stood cancelled.

27. It is not disputed before us that it is the said land which was transferred to Santokh Singh by the Rehabilitation Department on 25.04.1972 (*subsequently cancelled*), which was orally exchanged by Santokh Singh with Gram Panchayat land on the basis of a Resolution dated 08.05.1972 of gram panchayat; whereby, in lieu of land measuring 58K-4M's given by Santokh Singh to Gram Panchayat, Santokh Singh got land measuring 112K-8M.

It is interesting to notice from the record that Santokh Singh

(predecessor-in-interest of the petitioners); had entered into exchange of land transferred to him by the Rehabilitation Department with the Gram Panchayat by way of Resolution dated 08.05.1972, which was even prior to 05.06.1972 i.e. the date when the aforesaid transfer of land made by the Rehabilitation Department in his (Santokh Singh's) favour was confirmed. It is thus manifest that conduct of Sh. Santokh Singh (Predecessor-in-interest of petitioners) was not above board.

28. Apparently, Santokh Singh filed a Civil Suit No.259 of 1972 on the basis of the afore-said exchange of land, which was decreed in his favour by the then Court of Sub Judge, Jalandhar vide decree dated 23.12.1972. It appears that upon cancellation of transfer of land made in favour of Santokh Singh by the Rehabilitation Department, vide order dated 09.09.1976 and as upheld by the Commissioner vide its order dated 30.04.1984, the Gram Panchayat had sought eviction of Santokh Singh. However, since Santokh Singh had expired on 25.10.1985; accordingly, the present petitioners were impleaded as his legal heirs and the ejectment proceedings were taken against them; which culminated into the passing of the ejectment order dated 16.05.1988 (Annexure P-8). The said ejectment order was challenged by the petitioners by way of an appeal, which was also dismissed on 17.07.1991 (Annexure P-14). Accordingly, the Civil Writ Petition (CWP-14189-1992) was filed by petitioners.

29. Considering the totality of circumstances, it is apparent that the entire basis of the claim of the petitioners is that their predecessor-in-interest i.e. Santokh Singh had become the owner of the land in dispute on the basis of decree dated 23.12.1972 (Annexure P-1 in CWP-14189-1992),

which is based upon the exchange of land by Santokh Singh (*transferred to Santokh Singh by Rehabilitation Department, Punjab*) with the land of Gram Panchayat. The land transferred to Santokh Singh by Rehabilitation Department, Punjab, was subsequently cancelled as upon enquiry, it was revealed that tampering with the record was done to bring the case of Santokh Singh within the purview of the press note of 06.10.1971. The said cancellation of transferred land to Santokh Singh was upheld upto the court of Financial Commissioner (Revenue) Punjab. Therefore, in our considered view, once the land in lieu of which the exchange had occurred with the land of the Gram Panchayat/*Mushtarkan-Malkan*, was cancelled by the Rehabilitation Department; accordingly, the consideration for the exchanged land of the Gram Panchayat having been taken away, the exchange was no more in existence. Consequently, all subsequent transactions; in the absence of any valid exchange, would also fail. It is well established that once the foundation is removed, it is inevitable that the building shall also collapse.

30. As regards judgment & decree dated 29.09.2007 passed by Additional District Judge, Jalandhar (as impugned in RSA No. 3838-2007) is concerned, a perusal of the same would reveal that the proprietors of village Dhandor had filed the Civil Suit No. 517/2002, *inter-alia*, seeking declaration that the decree dated 23.12.1972 passed in Civil Suit No.259/1972 titled as ***Santokh Singh vs Gram Panchayat*** passed by the Court of Sh. Jagroop Singh, the then Sub Judge, IIIrd Class, Jalandhar and the consequent Mutation No.1441, are illegal, fraudulent and not binding upon the rights of the plaintiffs (*proprietors of village Dhandor*) with a further declaration that the judgment and decree dated 18.02.1991 passed in

Civil Suit No.123/1991 by the Court of Sh. N.K. Goel, Sub Judge Ist Class, Jalandhar, in case titled as ***Hamir Kaur and others vs Gram Panchayat and others*** and also a subsequent order dated 01.03.1994 passed by Sh. V.B. Handa, Additional District Judge, Jalandhar, is collusive, illegal and has no binding affect on the rights of the plaintiffs. Although the trial court had dismissed the suit, however, learned Additional District Judge, Jalandhar vide its judgment & decree dated 29.09.2007 decreed the suit (Civil Suit No.259/1972) by holding that the judgment and decree dated 18.02.1991 passed in Civil Suit No.123/1991 by the Court of Sh. N.K. Goel, Sub Judge Ist Class, Jalandhar, in case titled as ***Hamir Kaur and others vs Gram Panchayat and others***, was non-est as all the proprietors had not been arrayed as party in the said suit and there was non adherence to the mandatory provisions of Order 1 Rule 8 CPC.

As regards exchange of land by Santokh Singh with Gram Panchayat land is concerned, it has been held that the same was already under the cloud. It has also been noticed that the petitioners herein had also raised a plea of ownership by way of adverse possession of the land in dispute, however the said plea was found to be mutually destructive of the plea of the petitioners that they are owners of the land. Consequently, it has been held that the exchange of land measuring 112 Kanal – 8 Marlas by Gram Panchayat with Santokh Singh (since deceased) and represented by petitioners herein, and also the decree dated 23.12.1972 passed in Civil Suit No.259/1972 titled as ***Santokh Singh vs Gram Panchayat*** passed by the Court of Sh. Jagroop Singh, the then Sub Judge, IIIrd Class, Jalandhar and the consequent Mutation No.1441, are illegal and fraudulent.

Learned counsel for the petitioners has been unable to controvert the aforesaid findings in the judgment & decree dated 29.09.2007 passed by Additional District Judge, Jalandhar (as impugned in RSA No. 3838-2007) especially in view of the fact that once the land which was transferred to Santokh Singh (predecessor-in-interest of the petitioners) by Rehabilitation Department was cancelled and as discussed in foregoing paras, the exchange of land by Santokh Singh with Gram Panchayat land was not sustainable.

31. Accordingly, the judgment and decree dated 29.09.2007 passed by the learned Additional District Judge, Jalandhar, is affirmed; however, with the clarification/modification that the land in question, which is subject matter of Civil Suit No.517 of 2002 and has been held to be the ownership of *Mushtarkan-Malkan*, shall not be subjected to partition in case, the same was beyond the ceiling limit of the individual proprietor/right holder at the time when the consolidation proceedings were initiated and also in case, the said land or part thereof, has been reserved for common purposes for the village/village community under the consolidation scheme or if the said land is otherwise used for common purposes of the village/village community.

32. Considering the totality of circumstances, the Civil Writ Petition (*CWP-14189-1992*) is dismissed. The Regular Second Appeal (*RSA No. 3838-2007*) shall also stand dismissed subject to the afore-said clarification as no substantial question of law arises for consideration therein.

33. Since the main case itself has been decided, thus, all the

pending application(s), if any, also stand(s) disposed of.

34. A photocopy of this order be placed on the file of another connected case.

(SURESHWAR THAKUR)
JUDGE

(HARSH BUNGER)
JUDGE

February 05, 2024

gurpreet

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No