

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 01.02.2024
Pronounced on: 19.02.2024

1. CWP-1662-1997

GRAM PANCHAYAT RESHAMSHAHWALA THROUGH ITS
SARPANCH JAGDISH SINGHPetitioner

Versus

ADDITIONAL DIRECTOR CONSOLIDATION OF HOLDINGS
PUNJAB AT MOHALI AND ANR.Respondents

2. CWP-7475-1997

DARSHAN SINGHPetitioner

Versus

GRAM PANCHAYAT OF VILLAGE ROSHANSHAHWALA
THROUGH ITS SARPANCH AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Sandeep Punchi, Advocate
for the petitioner (in CWP-1662-1997) and
for the respondent-Gram Panchayat
(in CWP-7475-1997).

Mr. Ishpuneet Singh, Advocate
for respondent No. 2 (in CWP-1662-1997).
for the petitioner (in CWP-7475-1997).

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since both the writ petition(s) (supra), involve common questions of law, besides, with the controversy involved therein appertaining to similar parcels of lands, thus, they are amenable to be decided through a common order.

2. One Darshan Singh instituted a petition under Section 42

of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as 'the 1948 Act') against the Gram Panchayat and also against the Jumla Mushtarka Malkan of Village Reshamshahwala, whereins, he claimed that since in the jamabandi drawn for the years 1957-58, the suit land was described therein to be owned by *Mushtarka Malkan Digar Hissadaran Hasab Rasad Rakba* and that when in the column of cultivation thereof, the entry of *Maqbuja Malkan* occurred. Therefore, the petitioner therein, contended that the petition lands were in the individual cultivating possession of his predecessor-in-interest one Bhagat Singh, who was cultivating the suit lands in terms of his share in the *Mushtarka Malkan land*.

3. The petitioner therein-Darshan Singh also contended that in the consolidation scheme, the suit land was allotted to Bhagat Singh but subsequently through Mutation No. 554, the ownership of the suit lands became conferred upon the Gram Panchayat, and, resultantly the petitioner therein becoming recorded as *Gair Marusi* under the Gram Panchayat.

4. The petitioner therein thus contended that the Consolidation Authorities had no jurisdiction to change the title of the suit land and that the mutation (supra) is null and void.

5. To succor the above claim, the petitioner therein contended that he had been in continuous possession of the suit lands for more than 40 years and he had never paid any *chakota* or *batai* to the Gram Panchayat or to any other person and merely on account of a clerical mistake committed by the consolidation officer, thus thereby, the

Panchayat concerned, is completely illegal, as ownership over the suit lands was to be conferred upon him.

6. Though, the petition became contested by the Gram Panchayat concerned. However, the Additional Director, Consolidation of Holdings, through the impugned Annexure P-4, proceeded to conclude, that despite in the *Khatauni Pamaish*, the suit lands becoming allotted to the predecessor-in-interest of the petitioner therein, yet, the contested mutation (*supra*) becoming untenably entered in the name of the Gram Panchayat concerned.

7. Consequently, through the impugned Annexure P-4, the Additional Director Consolidation of Holdings, Punjab, declared the said mutation to be null and void. Contrarily, he proceeded to declare that since the petitioner is entitled to re-distribution and re-partitioning of the Government lands, thereby, after accepting the apposite petition, he proceeded to make the hereinafter extracted changes in the consolidation scheme.

Sr.No.	Name of owner.	Area with drawn Kh. No. Area	Area given Kh.No. Area
1.	Gram Panchayat	1/6 (0-13)	
	Khewat/Khn. No.	2//7(0-4) 8(2-7) 9/1 (1-13) 9/2 (2-9) 10/1 (0-10) 10/2 (4-19) 13/1/2(2-11) 2//14/1(0-5) 7//10/2/1(0-9)	

2.	Darshan Singh s/o Dharam Singh s/o Bhagat Singh	1//6(0-13) 2//7(0-4) 8(2-7) 9/1(1-13) 9/2(2-9) 10/1 (0-10) 10/2 (4-19) 13/1/2 (2-11) 2//14/1 (0-5) 7//10/2 (0-9)	
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8. The Gram Panchayat concerned becomes aggrieved from the drawing of the impugned Annexure P-4, and thereby has instituted thereagainst the instant writ petition before this Court.

9. Though the learned counsel for respondent No. 2 – Darshan Singh has vehemently submitted that the impugned order (Annexure P-4) is legally sound and as such it does not require any interference being made.

10. However, for the reasons to be assigned hereinafter this Court finds merit in the writ petition and is constrained to allow it.

11. Undisputedly, in the jamabandi for the year 1957-58, thereins rather suit lands in the column of ownership thereof, are entered as *Mushtarka Malkan Digar Hissadaran Hasab Rasad Rakba*, and, in the column of cultivation thereof, an entry of *Maqbuja Malkan* exists.

12. Be that as it may, undisputedly, a civil suit bearing No. 533-1/5.5.93/15.6.93, became instituted by the Gram Panchayat concerned, wherein, the private respondent-Darshan Singh, became arrayed as a defendant therein alongwith one Jarnail Singh. In the said

suit, the Gram Panchayat concerned, claimed the making of a declaratory decree for assigning qua it, right, title and interest as owners over the disputed lands, which are not disputed to be the very same lands as became pleaded in the petition cast, under Section 42 of 'the 1948 Act', whereons, the impugned order Annexure P-4 became passed.

13. Furthermore, in the said suit a decree of possession was claimed against one Darshan Singh on account of the fact that he was refusing to deliver the possession of the suit lands to the Gram Panchayat concerned.

14. It also appears that since one Darshan Singh who became arrayed as co-defendant No. 1 in the civil suit (supra), thus had earlier obtained a decree in civil suit No. 165/1, from the Court of learned Sub Judge, First Class, Zira, whereby, he became declared as owner in possession of the apposite suit lands, thereby it appears that in Civil Suit No. 533-1/5.5.93/15.6.93, as preferred by the Gram Panchayat, a claim was made, that the decree made on suit No. 165-1, as became preferred as a plaintiff, by defendant No. 1-Darshan Singh, thus being a colourable or a collusively made decree, and, as such a declaration for the same being annulled was claimed from the Civil Court concerned.

15. After striking of issues on the contested pleadings of the parties, the learned Sub Judge, Second Class, Zira, through a decision (Annexure P-3), as made on the civil suit (supra), thus assigned the espoused declaratory decree to the Gram Panchayat concerned, and, also declared the judgment and decree dated 13.12.82, as made on suit No.165-1, to be null and void.

aggrieved defendant before the First Appellate Court concerned, but it has been pleaded in paragraph No. 4 of the petition, that despite the pendency of the appeal, Darshan Singh, instituted the application (supra), before the authority concerned, whereons, the impugned order (Annexure P-4) became passed.

17. Since the Gram Panchayat concerned, received a favourable decree (Annexure P-3), on the suit claim (supra), thus from the learned jurisdictionally competent Civil Court concerned, and though there may have been an appeal preferred thereagainst before the learned First Appellate Court concerned.

18. Nonetheless, when the dispute engaging the contesting litigants relates to the validity of attestation of mutation (supra), and, also when at this stage, it is not known whether a final conclusive adjudication has been rendered thereons. Therefore, uptill a final and conclusive adjudication became rendered by the jurisdictionally competent Court, thereupto, there was no occasion for one Darshan Singh to yet during the pendency of the appeal, thus covering also a subject matter, but similar to the one, which became propagated by him, in the instant petition, to yet move a petition under Section 42 of 'the 1948 Act' before the Additional Director, Consolidation concerned.

19. The reason for forming the above conclusion is two fold. Firstly, unless it was demonstrated that the Civil Court concerned, was debarred from exercising jurisdiction in respect of the subject lands, thereby, the affirmative decree rendered on the Gram Panchayat's suit was required to be not put to a further test, thus through the said Darshan Singh subsequent to the institution of the said suit, moving an

concerned. However, when apparently the jurisdictional empowerment of the Civil Court to try a dispute relating to the validity of the order of mutation (*supra*), as done by the Consolidation Officer concerned, but does not become snatched by the provisions engrafted in Section 42 of 'the 1948 Act'. Therefore, and besides when the scope of the jurisdiction to be exercised in a petition under Section 42 of 'the 1948 Act' is limited, to making of corrections of clerical or arithmetical errors, as occur in the records of rights, as prepared in sequel to the consolidation operations conducted in the *mohal* concerned, and/or is confined to create a consolidation *rasta* but if the said *rasta* is not carved in the consolidation scheme.

20. Resultantly, when therebys no valid jurisdiction became conferred upon the Competent Authority contemplated under Section 42 of 'the 1948 Act', thus to either try or make a decision upon a disputed question of title, in respect of the subject lands. In sequel, when there is no material placed on record declaring that the correction as was made in the impugned order, was of a clerical or arithmetical mistake, rather when apparently an entrenched dispute arose, with respect to the entitlement of the respondent vis-a-vis the disputed lands, as such, there was no jurisdiction vested in the authority contemplated under Section 42 of 'the 1948 Act' to either try or make an adjudication on the said motion nor could it be exercised so as to tinker with the consolidation scheme.

21. Therefore, the institution of the said application post the institution of the said suit, thus before the Additional Director, Consolidation, rather also became hit by the estoppel created by the

22. Secondly, the jurisdictional competence of the Civil Court to decide any dispute arising inter-se the estate holders, and, the Gram Panchayat concerned, thus relating to valid or invalid allotment(s) being made in the consolidation scheme, thus is also to be tested in terms of the expostulations of law, as made in case titled as '**Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others**' reported in **2014 (2) R.C.R. (Civil) 721**.

23. The relevant paragraphs of the verdict recorded by this Court in **Parkash Singh's case (supra)**, becomes extracted hereafter, wherein, there is a complete interdiction against the authority exercising jurisdiction under Section 42 of the 'Consolidation Act, 1948', to after the finalization of the consolidation scheme, by the consolidation officer rather re-distribute or re-partition, the disputed lands amongst the estate holders concerned. Contrarily, it is mandated therein, that the remedy to ask for re-distribution or re-partition of the disputed lands amongst the estate holders concerned, after the completion of the finalized consolidation scheme, is through, the makings of a challenge to the purported untenable allotment(s) made either to the estate holders or to the Gram Panchayat concerned, rather through a declaratory suit being filed, before the jurisdictionally competent Civil Court concerned.

46. We, therefore, have no hesitation in recording that it is beyond debate that, if a question arises, before an officer exercising power under the Consolidation Act, regarding any right, title or interest in "Shamilat Deh" "vested" or deemed to have vested in a Gram Panchayat, a Consolidation Officer, the State or its delegate exercising plenary power under Section 42 of the Act, are

not empowered, while examining the correctness of any scheme prepared during consolidation or order passed thereunder to record a finding on such a question of title or to hold that land is or is not “Shamilat Deh” and as a consequence whether any right, title or interest vests or does not vest in the Gram Panchayat. The only authority empowered to answer such a question is the Collector, exercising power under Section 11 of the 1961 Act. As a necessary corollary an order passed under Section 42 of the Consolidation Act, holding that the land vests or does not vest in a Gram Panchayat would be illegal and nonest for assumption of jurisdiction where there is none, as opposed to a mere erroneous exercise of jurisdiction or may, at best be construed to be an order passed by a tribunal of limited jurisdiction, in the exercise of its limited powers to correct errors in the scheme or orders passed during consolidation and nothing more. The latter conclusion would require a degree of explanation.”

24. Resultantly, the petition laid before the Additional Director, Consolidation of Holdings, Punjab, whereons, the impugned order Annexure P-4, was passed rather was a mis-constituted petition, the same being hit not only by the principle of *res sub judice*, but also the same being hit by the complete lack of jurisdictional empowerment in the Officer concerned, to make any adjudication on the petition laid before him.

FINAL ORDER OF THIS COURT.

25. In aftermath, this Court finds merit in the writ petition (CWP-1662-1997), and, with the above observations, the same is allowed. The impugned order (Annexure P-4), is quashed and set aside.

26. However, this Court reserves liberty to the private respondent concerned to access the legally permissible remedies in

terms of *Parkash Singh’s case (supra)*.

27. Furthermore, **CWP-7475-1997**, has been instituted by one Darshan Singh praying for the issuance of a mandamus directing the respondent to not hold the auction of the disputed lands.

28. However, since, this Court (**in CWP-1662-1997**), has annulled the impugned order (Annexure P-4), as passed by the Additional Director, Consolidation, thereby, the above asked for mandamus by the petitioner-Darshan Singh cannot be made upon the respondent. Therefore, CWP-7475-1997 is disposed of, as such.

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

19.02.2024

kavneet singh

(LALIT BATRA)
JUDGE

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