

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

CWP-6972-1996

Date of Decision : 09.01.2024

GRAM PANCHAYAT BALPUR

.....Petitioner

Versus

ADDL. DIRECTOR CONSOLIDATION OF HOLDINGS, PUNJAB,
JALANDHAR AND OTHERSRespondents

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

Present : Mr. Umesh Kumar Kanwar, Advocate for
Mr. Sukhjinder Singh, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J. (Oral)

1. Despite valid service being caused upon the private respondents, neither they have appeared in person, nor through any validly engaged counsel. Therefore, they are ordered to be proceeded against ex-parte.

2. Through the instant petition, a challenge is made to Annexure P-2, whereby the Director Consolidation of Holdings, Punjab, Jalandhar, while exercising jurisdiction under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Consolidation Act, 1948'), after making interference with the finalized consolidation scheme, rather proceeded to re-partition or re-distribute the disputed lands, to the petitioner(s), in the said petition, who are arrayed as respondents in the instant writ petition.

3. The jurisdiction to re-distribute or re-partition the disputed lands amongst the estate holders concerned, and that too, after finalizations being made to the consolidation scheme, by the empowered revenue officer concerned, does apparently, cause breach to the mandate recorded by this Court in case titled as '**Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others**' reported in **2014 (2) R.C.R. (Civil) 721**. The relevant paragraphs of the verdict recorded by this Court in **Parkash Singh 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.

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57. *"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"*

58. *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.

59. 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”.

60. 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”.

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62. 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.

63. *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.

64. 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.”

4. In the wake of the above expostulations of law made in **Parkash Singh's case (supra)**, this Court finds merit in the instant writ petition and after quashing the impugned Annexure P-2, this Court reserves liberty to the private respondents to institute a civil suit before the jurisdictionally competent Civil Court concerned.

5. Since the main case itself has been disposed of, thus, all pending applications, if any, are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

09.01.2024
kavneet singh

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