

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

CWP-7014-1996

Reserved on: 01.02.2024

Pronounced on: 19.02.2024

GRAM PANCHAYAT DHANUR

.....Petitioner

Versus

COLLECTOR, SIRSA AND ANR.

....Respondents

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

Argued by: Mr. S.K.S.Bedi, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Respondent No. 2 ex-parte vide order dated 01.02.2024.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner-Gram Panchayat lays a challenge to the order dated 12.12.1995 (Annexure P-7), as made by the Collector, Sirsa whereby the latter allowed the suit of the plaintiff therein, whereby he claimed that mutation in respect of the disputed lands be entered in his favour.

Brief facts of the case.

2. It has been averred in the writ petition that the petitioner-Gram Panchayat is the owner of the disputed lands which was being leased out by the Gram Panchayat from time to time.

3. That the land in question is *Gair Mumkin Chhapar* which was being used for the benefit of the village community. The entry in

the name of Gram Panchayat has been done in terms of Notification No.6653/R/11/61/6239-57 dated 22.09.1961 and necessary mutation in favour of Gram Panchayat was entered into vide mutation No. 300 dated 22.02.1965. Since, 1965 till date the Gram Panchayat is in possession of the land in question as owner and the same is being used for the common purposes.

4. That one Ram Narain filed a petition before the Collector, Sirsa, for entering mutation of land measuring 49 kanals 19 marlas, comprised in Rect. No. 63, Killa No. 10/1, 10/3, 10/4, Rect. No. 84 Killa No. 6, 15/1, 9/2, 11, and, Khasra No. 145 and Rect. No. 74 Killa No. 17/2 (2-16) situated in Village Dhanoor District Sirsa and for delivery of possession of land comprised in Khasra No. 145 (29 kanals 16 marlas), on the premise that after use of the land for common purpose, bachat land is the property of the proprietors.

5. Through an order made thereons, on 12.12.1995 (Annexure P-7), the Collector concerned, accepted the said petition and ordered for the change of mutation besides ordered for handing over the possession of the disputed lands to the plaintiff.

6. Feeling aggrieved, the petitioner-Gram Panchayat filed an appeal before the Commissioner, Hisar Division. Through an order made thereons, on 01.02.1996, the Commissioner, Hisar, set aside the order dated 12.12.1995 (Annexure P-7) of the Collector, Sirsa.

7. However, respondent No. 2 challenged the said order of the Commissioner, Hisar, through his filing CWP No. 3321 of 1996 before this Court.

8. Through an order made on 09.05.1995, on the apposite writ

the order is extracted hereinafter.

“Learned counsel for the parties are agreed that the order of the Commissioner, Annexure P-5 be quashed and it be held that he has no jurisdiction to entertain the revision petition. The counsel for the Gram Panchayat has submitted before us that he may be permitted to file a writ petition. The Gram Panchayat if so advised may file a writ petition challenging the order of the Collector dated 12.12.1995 against which the revision petition was filed. In view of the agreement of the counsel for the parties, the writ petition is disposed of and the order Annexure P-5 is hereby quashed.”

9. The petitioner-Gram Panchayat has now preferred the instant writ petition challenging order dated 12.12.1995 (Annexure P-7).

Inference of this Court.

10. Undisputedly, in the revenue records the disputed lands are entered as *Gair Mumkin Chappar*. Moreover, an entry of *mushtarka malkan* is also occurring in the revenue records. *Prima facie*, the above made entries are a sequel of a mutation in respect of the lands (supra), becoming attested in the year 1965, thus in favour of the Gram Panchayat concerned.

11. In making the said espousal, the petitioner rested the same on anvil of orders passed by this Court, on 08.05.1995, on CWP No.10632 of 1992. The said writ petition was filed at the instance of one Ram Narain and ultimately this Court through a decision made thereons, on 08.05.1995, disposed of the said writ petition alongwith other connected cases, through its making the hereinafter extracted orders.

“ This writ petition is disposed of in terms of decision of

Full Bench in CWP No. 5877 of 1992 (Jai Singh and Others Vs. State of Haryana and Others) rendered on January 18, 1995. Since there are different kinds of cases in this bunch, any party which has a grievance may approach the Collector concerned.

12. It appears that in the writ petition (supra), a challenge became made to a notification dated 11.02.1992, issued by the Government of Haryana, whereby the State Government introduced an amended provision, inasmuch as, to Section 2(g)(6) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (hereinafter for short called as 'the Act'), an explanation thereto became added. The introduced/added explanation whereof becomes extracted hereinafter.

2. (g) [(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 entered 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 shamilat deh within the meaning of this section;]

13. However, the said writ petition was disposed of in terms of a decision of a Full Bench rendered, upon, CWP No. 5877 of 1992 (Jai Singh and Others Vs. State of Haryana and Others) on January 18, 1995, and, therebys, the amendment (supra) in 'the Act' was quashed and set aside.

14. Be that as it may, the quashing of the amendment/ [explanation] (supra), as made to Section 2(g)(6) of 'the Act', rather

became upheld by the Hon'ble Apex Court in a verdict rendered on 07.04.2022, in case titled as 'State of Haryana Vs. Jai Singh and Others', reported in 2022 AIR (SC) 1718'.

15. Therefore, in view of the said judgment, the import of the order (supra), as made by this Court on CWP No. 5877 of 1992 titled as 'Jai Singh and Others Vs. State of Haryana and Others', becomes completely irrelevant, the same being overruled by a judgment rendered by the Hon'ble Apex Court in case titled as 'State of Haryana Vs. Jai Singh and Other', reported in 2022 AIR (SC) 1718'.

16. Consequently, any reliance, as made thereons, in the suit, by one Ram Narain, thus was a completely mis-placed reliance thereons, nor therebys, through Annexure P-7, the Collector could proceed to set aside the attestation of mutation, as made in respect of the disputed lands vis-a-vis the Gram Panchayat concerned, in the year 1965.

17. Be that as it may, since, *prima facie*, the disputed lands become entered in the revenue records as *Gair Mumkin Chappar* lands, whereby, but obviously the said lands are to be construed to be reserved, as such for the benefit of the entire village community, thus, by the Consolidation Officer in his drawing the finalized consolidation scheme.

18. *Prima facie*, the above made description of the disputed lands in the revenue records, does appear to be a result, of the said *chappar* existing prior to the conducting of consolidation operations in the *mohal* concerned.

19. Moreover, it also, *prima facie*, appears that the said pond

owned by the estate holders concerned, nor also it can be said that after a pro-rata cut being made from the lawfully held estate of the proprietors concerned, thus the said pond becoming reserved for the benefit of the village proprietary body concerned.

20. Contrarily, it appears that the said pond, even if it became thus reserved, it became so reserved, only after measurement(s) being made of the estates of the estate holders, and, such measurement(s) revealing that their respective cultivating possession(s) rather were in excess of their lawful entitlements, as declared in the pre-consolidation records.

21. In consequence, any private individual could not contend that vis-a-vis any *Gair Mumkin Chappar*, he has any right of re-partitioning or re-distribution thereof to him/them.

22. If any right whatsoever, was raisable in respect of the *Gair Mumkin Chappar*, the said right was to be cogently established, through a civil suit becoming preferred by the private individual, before the Civil Court of competent jurisdiction, and, his asking for the setting aside of the mutation attested in favour of the disputed lands/*chappar*, vis-a-vis, the Gram Panchayat concerned.

23. The reason for making the above inference flows, from the factum that only when in a civil suit, on the contentious pleadings of the parties, thus all the relevant issues become formulated, and, also when the evidence adducing discharging onus becomes cast upon the litigant concerned, that thus a full/complete trial is entered upon the contentious issues, whereas, the said recourse remaining un-adopted by the Collector concerned, though, it was to be so adopted by him.

a gross fallacy of its making departures from the norm, relating to the settlement of a dispute relating to the making of the contentious order of mutation.

24. Even otherwise, the jurisdiction to nullify the mutation attested vis-a-vis the disputed lands, qua the Gram Panchayat concerned, was not to be exercised by the Collector, on a simpliciter petition, laid before him, rather merely for asking for a mutation being entered, on the premise of the judgment (supra), especially when the judgment (supra), has been annulled and set aside by the verdict made by the Hon'ble Apex Court in 'State of Haryana Vs. Jai Singh and Others, reported in 2022 AIR (SC) 1718'.

25. Be that as it may, irrespective of the above, when in terms of the verdict made by a Full Bench of this Court in '**Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others**' reported in **2014 (2) R.C.R. (Civil) 721**, any dispute arising from any reservation(s) being made on account of any pro-rata cuts being made by the Consolidation Officer, from the lawfully held estates of the estate holders concerned, rather is triable only before the Civil Court of competent jurisdiction and/or before the Authority contemplated under Section 11 of 'the Act'.

26. The relevant paragraph of the said verdict is extracted hereinafter and its insightful perusal manifests, that the jurisdiction as has been exercised, was rather not in terms thereof, thus exercisable by the Authority, who drew the impugned order Annexure P-7. Therefore, in terms of the hereafter extracted para, the drawing of the impugned Annexure, but in a summary manner, does constrain this Court to annul

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.”

FINAL ORDER OF THIS COURT.

27. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed. The impugned order (Annexure P-7) is quashed and set aside.

28. However, this Court reserves liberty to the private respondent concerned to access the legally permissible remedies in terms of ***Parkash Singh’s case (supra)***.

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

(SURESHWAR THAKUR)
JUDGE

19.02.2024

(LALIT BATRA)
JUDGE

kavneet singh

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