

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

CWP-7615 of 1996

Date of decision : February 05, 2024

HARDEV SINGH AND OTHERS

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present : Mr. M.L. Saini, Advocate
for the petitioners.

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

HARSH BUNGER, J.

1. Petitioners herein have filed the instant writ petition, seeking a writ of *Certiorari/Prohibition* for directing the Block Development and Panchayat Officer, Tehsil and District Fatehgarh Sahib (respondent No.2) and Gram Panchayat, Village Panjola (respondent No.3), not to dispossess the petitioners from the land which has been declared as ownership of the right holders and has been partitioned and given to petitioners.

2. Briefly, the petitioners state that during consolidation operation in the village Panjola; the consolidation authorities committed a mistake by imposing a cut upon the proprietors. It is stated that a cut to the tune of 165K-2M was wrongly and arbitrarily imposed upon the holdings of right holders and upon detection of the said mistake, the right holders filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (here-in-after referred to as 'the 1948 Act'), which

came to be allowed by the Additional Director, Consolidation, Punjab vide an order dated 09.06.1995 (Annexure P-1) and it was directed that the land comprised in *Khewat No.46, Khatoni No.72 to 105 and Khewat No.148, Khatoni No.110 to 115* of Jamabandi for the year 1990-1991 be partitioned as per shares only to those petitioners, who were recorded as right holders. It was observed that the land to be given measures about 142K and the remaining land may be left for the benefit of the non-proprietors for cultivation.

3. On the basis of order dated 09.06.1995 (Annexure P-1), the proceedings were taken up by the consolidation officer and the shares of the right holders, including the petitioners were specified vide order dated 11.01.1996 (Annexure P-2) and even a Mutation No.626 dated 17.01.1996 (Annexure P-3) was sanctioned. Petitioners claim that since they were already in possession of the property allocated to them except minor variations; however, while partitioning land, some area measuring about 56 kanals was given to Gram Panchayat. It is stated that the respondent-Gram Panchayat, while auctioning the land given to it i.e. about 56 kanals; proceeded in an arbitrary and unjustified manner by auctioning entire land including lands allocated to petitioners and other right holders; vide auction held on 06.05.1996.

4. In the afore-mentioned circumstances, the petitioners have filed the instant writ petition with a prayer for directing respondents No.2 and 3 not to disturb the possession of the petitioners and the order of auction made on 09.06.1995 be kept in abeyance.

5. At the time of issuance of notice of motion in this case, the *status-quo* regarding possession was ordered to be maintained till further orders and the writ petition came to be admitted on 01.07.1997 and it was

ordered that the stay shall continue.

6. The instant writ petition is opposed by respondent No.3-Gram Panchayat by filing its reply, *inter alia*, on the plea that the land in question is *shamlat* land and is covered under the provisions of Section 2(g) of the Punjab Village Common Land (Regulation) Act, 1961 and the same was being leased out from time to time in open auction. It is also submitted that the Additional Director (Consolidation) Punjab; has no authority to go into the question of title and also to determine the shares of the right holders.

7. In response to para No.8 of the writ petition; wherein the petitioners had claimed that the Gram Panchayat had put the land to auction on 06.05.1996, the Gram Panchayat has stated in its response that no auction of the disputed land was made by it on 06.05.1996.

8. We have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

9. It appears that the proprietors of Village Panjola had approached the consolidation authorities by filing a petition under Section 42 of the 1948 Act; wherein, a direction was issued for determining the shares of the right holders in the land which was carved out by imposing a pro-rata cut on the proprietors. It is the case of the petitioners that in pursuance of order passed by the Additional Director (Consolidation) Punjab; the Consolidation Officer had determined the shares of the right holders (including petitioners) and they had been put in possession thereof. The instant writ petition has been filed on the plea that despite the passing of the afore-said orders, the Gram Panchayat was proceeding to dispossess the petitioners as they have put the land on auction.

10. However, on the other hand, it is the stand of the Gram Panchayat

that they had not put the land on auction on 06.05.1996, as was claimed by the petitioners.

11. In this view of the matter, we are of the considered view that nothing survives in the instant writ petition inasmuch that since the petitioners are claiming certain rights on the basis of above referred orders and in case, petitioners apprehend any threat to their alleged possession, which they claim to have acquired on the strength of aforesaid orders, then they can avail their remedies and/or enforce their rights in common law by filing a suit in Civil Court. A writ petition under Article 226 invoking equitable extra ordinary jurisdiction is not maintainable.

12. Accordingly, we dispose of this writ petition with liberty to the petitioners that in case, they apprehend any threat to the land and/or their possession (as claimed by them), then they can avail their remedy under the civil law by filing an appropriate suit before the Court of competent jurisdiction.

13. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(HARSH BUNGER)
JUDGE

February 05, 2024
gurpreet

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