

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

2024:PHHC:099092-DB



(202)

CWP-6788-2000

Date of Decision: 02.08.2024

Tarsem Singh

--Petitioner

Versus

State of Punjab & others

--Respondents

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

Present:- None for petitioner.

Dr. D.S. Lamba, DAG, Punjab.

G.S. SANDHAWALIA.J (Oral)

1. As per office report, learned counsel for petitioner has been informed about the date fixed. None has entered appearance on behalf of the petitioner.

2. Challenge in the present petition is to the proceedings of ejectment initiated against the petitioner under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short the Act) regarding the land falling in Khasra No.82(8-0), Khewat No.91, Khatauni No.302, Hadbast No.725 which is located in village Phulra.

3. The District Development and Panchayat Officer, Gurdaspur while exercising the power of Collector came to the conclusion that land in dispute as shown in Jamabandi for the year 1990-91 was Mustarka Malkan, was left as Gair Mumkin school ground and was under the care of Panchayat. The present petitioner had no concern with the land in dispute and therefore he had been directed to pay compensation to the tune of 20

times of the lease amount. It was also directed that as the present petitioner being Member Panchayat had taken illegal possession over the land in dispute, separate proceedings be initiated against him. It was also directed that the possession of the land be handed over to the Panchayat.

4. A perusal of the above order would go on to show that statement of Panchayat Secretary was recorded as AW-1, wherein it was stated that auction of the land in dispute had taken place on 10.05.1993. It was further stated that at the time of auction the land was under the possession of petitioner and he was directed to leave the possession over the land in question but he refused to do so. It was also directed that the possession of the disputed land be handed over to the Panchayat. Under such circumstances the petition was filed. The pendency of proceedings before the consolidation proceedings was dealt with by the Commissioner. The appeal filed was dismissed by the Commissioner vide order dated 26.11.1999 (Annexure P-2) and relevant part of which reads as under:-

“According to Jamabandi 1990-91 the ownership is recorded as Mustarka Malkan and not Panchayat. The possession has been recorded as Makbuza Ahle Sikkia in column No. 8 of Jamabandi Khasra number in dispute is recorded as 'Gair Mumkin school ground'. From these entries it is established that land does not vest in Gram Panchayat but is the ownership of all the residents of the village. In the possession column no individual has been recorded but the possession is with the education institute and it is being used for school ground. Under the East Punjab Holding(Consolidation and Prevention of Fragmentation) Act, 1948, the lands in the joint ownership of Mustarka Malkan are controlled and managed by the Gram Panchayat and are used for canon needs of the village Thus the Gram Panchayat and has full authority and jurisdiction to seek eviction of illegal

occupants from the public premises known as Mustarka Malkan. From the record, it is also revealed that appellant being a member of Gram Panchayat encroached upon this land. The Collector has specifically mentioned in his order that action against the appellant being in illegal possession will be initiated separately. At the time of argument the ld. counsel for the appellants also argued that this land vests in Central Government but he failed to substantiate his contention with documentary evidence.

In this way it is beyond doubt that the land vests in Mustarka Malkan and Gram Panchayat has an authority to control and manage this land which is meant for the school ground.

ii) The appellants approached the Additional Director Consolidation with the request that certain khasra numbers should be allotted to them. One copy of the order of the Addl. Director has been placed on record. This order reveals that Consolidation was completed in 1975 whereas the present appellants approached Addl. Director Consolidation in 1995 i.e. after 20 years. No consolidation Authority even exercising the powers of the State Government U/s 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 is empowered to adjudicate upon a grievance which should have been raised in appeals at the time of consolidation u/s 21 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948. If the authority u/s 42 is exercised in this manner all the decisions of the revenue and civil courts during the long period can be nullified. This is neither letter nor the spirit and intention of the legislature as far as section 42 of the Act is concerned. No Authority including State is justified to reopen the proceedings which had been completed in 1975. Thus is the order of Addl. Director Consolidation is without any jurisdiction and has to be ignored being irrelevant.

*In view of discussion above I do not find any merit
in the appeal and hence it is dismissed.*

5. The final authority below came to the conclusion that petitioner had encroached upon the land in dispute, auction whereof had taken place on 10.05.1993 as per Ex. A-1. The question of entitlement, as such, could not be raised and which is now contended on the strength of consolidation proceedings.

6. Resultantly, we dismiss the present writ petition and therefore the interim order passed in favour of petitioner shall stand vacated. Learned counsel for the State shall apprise the concerned Gram Panchayat about the decision of this Court through the concerned B.D.P.O and accordingly, the appropriate steps shall be taken by the competent authority.

(G.S. SANDHAWALIA)
JUDGE

02.08.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No