

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

CWP-8633 of 1997 (O&M)

Date of decision : February 05, 2024

SANTOKH 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 *Mandamus/Certiorari* for restraining the Gram Panchayat, Village Panjola (respondent No.3) from auctioning the property in question with a further prayer for directing the respondents not to interfere in the peaceful possession of the petitioners/right holders.

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 holdings of the proprietors to the tune of 226K-4M (standard), which was contrary to the provisions of Section 25 of the Consolidation Act. It is the case of the petitioners that the Gram Panchayat by taking benefit of the entries in the revenue records, tried to interfere in the possession of the right holders and further tried to lease out some area;

whereupon, the petitioners and other 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.48, Khatoni No.110 to 115* of Jamabandi for the year 1990-1991 be distributed 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. It appears that the afore-said order dated 09.06.1995 (Annexure P-1) passed by the Additional Director, Consolidation, Punjab was challenged by the then Gram Panchayat, Panjola by way of filing **CWP-14403-1995** and another writ petition i.e. **CWP-1766-1996** came to be filed by **Kiru @ Bhagat Ram and others**. The afore-said **CWP-14403-1995** came to be dismissed by this Court vide order dated 07.10.1996 (Annexure P-2) by observing that no interference is called for in the impugned order, ordering re-partition of the land which was admittedly of the proprietors; whereas the other writ petition i.e. **CWP-1766-1996** was dismissed as withdrawn to enable the petitioners therein to file a Civil Suit. Still further, the Gram Panchayat, Village Panjola preferred a Special Leave to Appeal (Civil) No.1362-1997 against the order dated 07.10.1996 (Annexure P-2) passed in **CWP-14403-1995** by this Court; however, the same was also dismissed by the Hon'ble Supreme Court vide order dated 03.02.1997 (Annexure P-3).

4. In the backdrop of the afore-mentioned facts and circumstances,

the petitioners have filed the instant writ petition before this Court on the plea that on the basis of the order dated 09.06.1995 (Annexure P-1) passed by the Additional Director, Consolidation, Punjab, the proceedings were taken up by the consolidation officer and the shares of the right holders, including the petitioners were determined and even a mutation was sanctioned in the name of the right holders and they were put in possession of the property in question; whereupon, the crops had been sown; however, the respondent-Gram Panchayat, in a totally unjustified, illegal and arbitrary manner, declared that they will put the land in question to auction.

5. In the afore-mentioned circumstances, the instant writ petition has been filed.

6. At the time of issuance of notice of motion in this case, the auction was stayed till further orders and the writ petition came to be admitted on 08.12.1997 and it was ordered that the stay shall continue.

7. 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 Director (Consolidation) has no authority to go into the question of title and also to determine the shares of the right holders.

8. In response to para No.11 of the writ petition; wherein the petitioners had claimed that the Gram Panchayat had proclaimed that they will put the land to auction on 12/13.06.1997, the Gram Panchayat has stated in its response that no auction of the disputed land was made by it on 12/13.06.1997.

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

10. It appears that the proprietors of the 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. The said order was upheld by this Court in ***CWP-14403-1995*** and a further challenge to the said order by the Gram Panchayat before the Hon'ble Supreme Court had also failed. It is the case of the petitioners that in pursuance to the 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 was filed on the plea that despite the passing of the afore-said order, the Gram Panchayat was proceeding to put the land on auction on 12/13.06.1997.

11. However, on the other hand, it is the stand of the Gram Panchayat in para No.11 of its reply that they had not put the disputed land on auction on 12/13.06.1997, as was claimed by the petitioners.

12. In this view of the matter, we are of the considered view that nothing survives in the instant writ petition inasmuch as that 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.

13. Accordingly, we dispose of this writ petition with liberty to the petitioners that in case, they apprehend any threat to their 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.

14. 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