

2024:PHHC:137428



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

CWP-28505-2024 (O&M)
Date of decision :21.10.2024

GRAM PANCHAYAT VILLAGE TALWARA,
TEHSIL AND DISTRICT JALANDHAR THROUGH
ITS ADMINISTRATOR

...Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vijay Rana, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

HARSH BUNGER, J. [ORAL]

The petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari*, for setting aside the impugned order dated 11.09.2024 (Annexure P-13) passed by respondent No.1-Joint Development Commissioner (IRD), Department of Rural Development and Panchayat, Punjab, vide which, an appeal filed by respondent No.3-Satnam Singh, has been accepted and the matter has been remanded to learned Collector for fresh decision.

2. Briefly, petitioner-Gram Panchayat, Village Talwara filed an eviction petition under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (in short '*the 1973 Act*') seeking eviction of respondent No. 3 (Satnam Singh) and others from land

situate at Village Talwara, Tehsil Jalandhar-1, District Jalandhar, comprised in *Khewat No. 143, Khatauni No. 188, Khasra No. 24//3(2-14), 4(3-0), 6/2(1-0), 7(8-4), 8 (3-9) as per Jamabandi 2016-17; inter-alia*, on the plea that the land in dispute is *Mushtarka Malkan* and the same has remained under management and control of Gram panchayat since the time of consolidation in the village. It was pleaded by petitioner-Gram Panchayat that the land in question was being leased out on yearly basis and the income derived therefrom was being used for the development of the village. It was further pleaded that respondent No. 3 and others had taken the land in question on lease from previous Gram Panchayat in the names of their relatives and on expiry of lease, they refused to surrender the possession, accordingly the aforesaid eviction petition was filed.

2.1 It appears that the aforesaid eviction petition was contested by respondent No. 3 and others, *inter-alia*, on the plea that they are recorded as owners in possession of the land in question, which was being cultivated through their uncle-Sh. Rattan Singh and the entries in the revenue records were also recorded in their names.

2.2 The learned Collector-cum-District Development and Panchayat Officer, Jalandhar vide order dated 06.06.2023 (Annexure P-5) allowed the eviction petition filed by petitioner-Gram Panchayat.

2.3 Being aggrieved against order dated 06.06.2023 (Annexure P-5), respondent No. 3 filed an appeal, which came to be allowed by respondent No.1 – Joint Development Commissioner, Punjab (exercising powers of Commissioner under the 1973 Act), vide its order dated 11.09.2024 (Annexure P-13); whereby the matter has been remanded to the learned Collector for fresh decision.

3. In the aforesaid circumstances, petitioner-Gram Panchayat has filed the instant writ petition for relief/s, as noticed above.

4. Learned counsel for the petitioner submits that the learned Joint Development Commissioner, Punjab, has erred in law and fact in passing the impugned order dated 11.09.2024 (Annexure P-13). It is submitted that the land in dispute is *Mushtarka Malkan* and the same has remained under management and control of Gram Panchayat since the time of consolidation in the village. It is next submitted that the land in question has vested in the Gram Panchayat in terms of Section 42-A of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948. It is further submitted that the land in question was being leased out on yearly basis and the income derived therefrom was being used for the development of the village. It is contended that respondent No.3 and others had taken the land in question on lease from previous Gram Panchayat in the names of their relatives and on expiry of lease, they refused to surrender the possession. It is further contended that the possession of respondent No.3 and others on the land in question is unauthorized and they were rightly ordered to be evicted. It is next contended that in pursuance to the eviction order passed by learned Collector, the possession of the land in question has already been delivered to the petitioner-Gram Panchayat vide *Rapat Roznamcha* dated 21.08.2023 (Annexure P-7) and at the time of delivery of possession, the value of the crops standing on the land in question was assessed as Rs. 20,000/- which was deposited by the Gram Panchayat on 04.10.2023 and even an FIR No. 56 dated 19.06.2024 was registered against respondent No.3 and his brother. It is submitted that respondent No.1—Joint Development Commissioner, Punjab, has wrongly remanded the matter to the learned Collector for fresh decision.

Accordingly it is prayed that the impugned order dated 11.09.2024 (Annexure P-13) may be set aside and eviction order dated 06.06.2023 (Annexure P-5) may be maintained.

5. Heard.

6. In the instant case, respondent No. 3 was ordered to be evicted from land in question vide order dated 06.06.2023 (Annexure P-5), the relevant extract thereof reads as under:-

“From the careful perusal of the records on the file, it has been found that the land in dispute is situated in village Talwara, Tehsil and District Jalandhar and as per the respondents, the purchase of this land is against the rules. The respondents are in illegal possession of this land. The respondents have no right to remain in illegal possession of this land. Therefore, the present petition of the petitioner is hereby accepted and the respondents are ordered to be evicted from the land in dispute and the directions are issued to the respondent to handover the vacant possession of the land in dispute to the Panchayat within 30 days failing which the Gram Panchayat may initiate the proceedings in accordance with law.”

6.1 Apparently, order dated 06.06.2023 (Annexure P-5) is a sketchy and non-speaking order. A perusal of vernacular copies of revenue record i.e. *Jamabandi* for the year 2016-17 (Annexure P-4) would show that the land in question [i.e. *Khasra Nos. 24//3(2-14), 4(3-0), 6/2(1-0), 7(8-4), 8 (3-9)*] is not only recorded as ownership of various persons with their shares specified against their names but the same is recorded in possession of “Pritam Singh S/o Harbans Singh; Nirvair Singh S/o Pal Singh; Gurmail Singh S/o Dharam Singh; Balwant Singh S/o Naranjan Singh; Gurdeep Singh S/o Kartar Singh”. Further, the land in question is a part of

been reflected in the “*remarks column*” of the Jamabandi for the year 2016-17 (Annexure P-4). There is no finding returned by learned Collector that the land in question is “public premises” as defined under the 1973 Act nor learned counsel for petitioner could refer to any document in the form of Consolidation Scheme etc. to indicate that the land in question was reserved for *common purposes* during consolidation operation in the village.

6.2 In ***Harpal Singh v. State of Punjab (Civil Appeal No. 8454 of 2010; decided on 17.9.2015)***, Hon'ble Supreme Court while considering an eviction petition under the Punjab Village Common Land (Regulation) Act, 1961; in respect of *Jumla Malkan* land, observed as under:-

*“16. Our attention has been drawn by the learned counsel for the appellants to the decision rendered by the Punjab and Haryana High Court in **Mahatam Singh and Ors. v. State of Punjab and Ors. [(2012) ILR Punjab and Haryana 72]** in which it was clearly noted that the State Government had filed an affidavit dated 24.08.2010 to the effect that Section 42A of the 1948 Act would not be given retrospective effect. In view thereof, the vires of Section 42A of the said Act were upheld and the consequence of this is that the decree in favour of the appellants cannot be disturbed.*

*17. We are told that the judgment delivered by the Punjab and Haryana High Court at Chandigarh is under challenge in this Court in which an order status quo has been passed. Apart from that, our attention has also been drawn to the decision of the Full Bench of the Punjab and Haryana High Court in **Parkash Singh v. Joint Development Commissioner [(2014) 3 PLR 543]**. In that decision, it was held that Jumla land is not subject to the Act and in fact only the civil court will have jurisdiction in respect of Jumla land. We are told*

that the decision of the Full Bench is also under challenge in this Court at the instance of some land owner. However, that petition is not being prosecuted and it has perhaps been dismissed since the defects raised by the Registry have not been cured by the petitioners therein. In any event, we are told that neither the State Government has challenged the decision of the Full Bench nor the Gram Panchayat has challenged the decision of the Full Bench. That being the position, since the Revenue Authorities have no jurisdiction over the land, as held by the Full Bench of the High Court, it is only the civil courts that have jurisdiction over Jumla land.

18. Under these circumstances, the judgment and order passed by the High Court deserves to be quashed in as much as it is held that the decision of the Revenue Authorities will bind the appellants. The findings of the High Court are contrary to the decision of the Full Bench.

19. That apart, Section 42A of the 1948 Act will not apply to the facts of this case since there is nothing on record to suggest that the land in question was being used for common purposes. In fact it has been specifically noted in the decision rendered in the civil suit filed by the Gram Panchayat that there is no evidence on the file that the land is being used by the Gram Panchayat for the benefit of the proprietors of the village and no evidence has been led by the Gram Panchayat that the land is being used for common purposes or the income derived from that land is being used for common purposes. In that view of the matter even if it is held that Section 42A of the 1948 Act is ultra vires and that it has retrospective effect as sought to be contended by the learned counsel for the Gram Panchayat, it will not be of any assistance, particularly

since there is nothing to suggest, on facts, that the land in question was being used for common purposes...

[Emphasis supplied]"

6.3 Learned Joint Development Commissioner, Punjab (Respondent No. 1), vide impugned order dated 11.09.2024 (Annexure P-13) has allowed the appeal filed by respondent No.3 by holding as under:-

"5. After hearing the arguments of Ld. Counsel for both the parties, perusal of written arguments and record on the file, it has been found that at the time of initiating the proceedings to get the possession at the spot, as per the report of Tehsildar-2, Jalandhar the amount of compensation was to be paid to the appellant, but the Gram Panchayat while appearing before this court has not produced any such evidence from the perusal of the same, it can be proved that the amount of compensation has been paid to the appellant. Although, the receipt produced by the Gram Panchayat having no concern with the making of payment on account of compensation to the appellant. As per the arguments raised by the appellant that apart from the name of the appellant, there are names of so many persons have been mentioned in the jamabandi for the year 2016-17, but the Gram Panchayat has filed the petition against the appellant only due to personal grudge. The Gram Panchayat has not raised any argument that, if the land in dispute is Mushtarka Malkan as per the jamabandi, then apart from the appellant the proceedings are initiated against the remaining persons. No doubt the Gram Panchayat has produced on record the receipts with regard to leasing out the land in dispute by the Gram Panchayat, but in the column of ownership of the jamabandi the name of the persons have been entered. Gram Panchayat has not challenged any mutation in favour of the private persons of the Mushtarka Malkan

Land. In such a manner all the facts in the order passed by the Collector are not clear. On the basis of these facts, the order dated 06.06.2023 passed by the Collector is hereby set aside and while remanding back the case to the Court of Collector directed that the points came into the notice of the court be taken into consideration and while granting proper opportunity to the parties to produce evidence in spot of their case be ensured that the order be passed within six months. On the land in dispute the order of status qua be maintained till the order of Collector.”

6.4 A perusal of the above extracted order dated 11.09.2024 (Annexure P-13) would show that learned Joint Development Commissioner, Punjab, has held the Collector's order as non-speaking; accordingly, the eviction order dated 06.06.2023 (Annexure P-5) has been set aside and the matter has been remanded to the learned Collector for fresh decision after affording proper opportunity to the parties to produce evidence.

6.5 It is noticeable that "Public premises" have been defined in sub-section (e) of Section 2 of the 1973 Act. Under Section 4 of the 1973 Act, if any person is found in an unauthorised occupation of any public premises, a show cause notice before passing the eviction order, is required to be given. Under Section 5 of the 1973 Act, the concerned Collector is authorised to pass an eviction order in case he is satisfied that the public premises are in unauthorised occupation.

6.6. A combined reading of the provisions contained in Section 2(e), 4, and 5 of the 1973 Act makes it precise that the 1973 Act authorises the concerned Collector to take an action against the person found in unauthorised occupation of the public premises, and before taking any action against the person alleged and found to have been in unauthorised

occupation of the public premises, it is incumbent upon the concerned Collector to satisfy himself whether the property in question is proved to be a 'public premises'.

6.7 In my considered view, the learned Joint Development Commissioner, Punjab has rightly remanded the matter to learned Collector for fresh decision after setting aside the eviction order dated 06.06.2023 (Annexure P-5) being non-speaking.

7. In view of the aforementioned facts and circumstances, there is no scope of any interference in order dated 11.09.2024 (Annexure P-13) passed by learned Joint Development Commissioner, Punjab, resultantly, the instant writ petition fails and the same is accordingly dismissed.

8. All pending applications (if any) shall also stand closed.

October 21, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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