



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

1. **RSA-3434-1997 (O&M)**
Reserved on :-11.11.2025
Date of Pronouncement:-18.11.2025
Date uploaded on:-19.11.2025

Atma Ram (Since Deceased) through his LR's and others

... Appellants

Versus

Municipal Committee, Hoshiarpur and others

... Respondents

2. **CWP-2548-1997 (O&M)**

Municipal Committee, Hoshiarpur through its Executive Officer

... Appellant

Versus

The Additional Director, Consolidation of Holdings, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate and
Ms. Manleen Kaur, Advocates
for the appellants in **RSA-3434-1997** and
for respondents No. 4 to 8 in **CWP-2548-1997**.

Mr. K.S. Dadwal, Advocate for
respondent No. 1 in **RSA-3434-1997**.

Mr. I.S. Kingra, Sr. DAG, Punjab.



VIRINDER AGGARWAL, J.

1. Through this unified and consolidated judgment, this Court proceeds to adjudicate both the Regular Second Appeal (for short to be referred as ‘RSA’) and the Civil Writ Petition (for short to be referred as ‘CWP’), each emanating from a common factual substratum and raising cognate questions of law. The matters are being disposed of together in order to obviate unnecessary repetition, promote judicial economy, and secure the expeditious administration of justice.

1.1. The appellants-plaintiffs have instituted the present RSA challenging the concurrent findings recorded by the learned Sub-Judge II Class, Hoshiarpur vide judgment dated 24.12.1993, and affirmed by the learned Additional District Judge, Hoshiarpur vide judgment dated 28.08.1997, whereby the suit for permanent injunction filed by the appellants-plaintiffs was dismissed.

1.2. Simultaneously, the respondent-Municipal Committee has filed a CWP impugning the order dated 09.03.1995 passed by the Consolidation Officer, Hoshiarpur, by which a portion of the property forming the subject-matter of the present civil suit was allocated to certain objectors, namely Balwant Singh, Harbans Singh, Avtar Singh, Kulwant Singh, Daljit Singh and Resham Kaur. The said order has been challenged on the grounds that it was passed *ex-parte*, without affording the petitioner an opportunity of hearing, that it suffers from inherent lack of jurisdiction, and that it was issued during the pendency of the civil proceedings, thereby rendering it legally unsustainable.



2. Briefly stated, the appellants–plaintiffs instituted a suit for permanent injunction seeking to restrain the defendant–Municipal Committee from interfering with the ownership and proprietary rights of the plaintiff and other co-sharers over the suit land, the full particulars of which are set out in the head-note of the plaint. It was averred that the appellant–plaintiffs are proprietors of village Khawaspur, Had Bast No. 246, Tehsil and District Hoshiarpur. It was further pleaded that several other proprietors, who presently reside outside the village, also have an interest in the suit property, and the action has been filed for their benefit as well, with liberty to them to join as plaintiffs at any stage.

2.1. According to the plaintiffs, the suit land had been reserved as ‘*Mushtarka Malkan, Hasab Rasad, Khewat*’ during the consolidation operations, and continues to vest in the proprietary body of the village. While certain parcels of land were entrusted to the Gram Panchayat merely for management and administration for the benefit of the village proprietors, the agricultural portion of the land remained in the possession of tenants under the proprietors.

2.2. It is further stated that the revenue estate of village Khawaspur has since been merged into the Municipal Committee, Hoshiarpur. The defendant–Committee, however, claims ownership of the suit land on the premise that it previously vested in the Gram Panchayat, and, upon merger, the Municipal Committee has assumed ownership thereof. Despite repeated requests by the appellants–plaintiffs to acknowledge their proprietary rights, the defendant failed to do so, thereby necessitating the filing of the present suit.



3. Upon service of notice, the respondent–defendant Municipal Committee entered appearance and contested the suit, primarily raising objections to its maintainability. It was pleaded that the Civil Court lacked jurisdiction to entertain the matter in view of the express bar contained in Section 131 of the Punjab Village Commons Lands Act. The defendant further asserted that a suit for permanent injunction, as framed, was not maintainable in law. It was additionally contended that the suit land vests in the Municipal Committee, which has, in any event, acquired ownership thereof by way of adverse possession.

3.1. On the factual matrix, the respondent–defendant expressly denied that the proprietary body of the village ever owned the suit land or that the land had been entrusted to the Gram Panchayat merely for purposes of management or for utilization in the interest of the village proprietors. It was further denied that the plaintiffs or their alleged tenants were in possession of the suit property.

3.2. Conversely, the respondent pleaded that the suit land had consistently been utilized by the Gram Panchayat for the benefit of the village inhabitants. It was averred that the Panchayat, in the past, regularly conducted auctions of the suit land, and the proceeds were duly credited to the Gram Panchayat fund and employed for the welfare and developmental needs of the village community. Following the extension of the territorial limits of the Municipal Committee to include village Khawaspur, the Municipal Committee thereafter assumed this function and has been conducting auctions of the suit land.

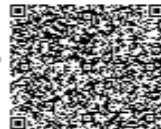


3.3. It was further asserted that the suit land vested in the Gram Panchayat upon the enforcement of the Punjab Village Common Lands (Regulation) Act, and, upon such vesting, the Gram Panchayat became the lawful owner thereof. Subsequently, with the expansion of municipal limits, all rights, title and interest of the Gram Panchayat in the suit land devolved upon and were succeeded by the respondent–Municipal Committee.

4. The appellants–plaintiffs filed a replication, specifically traversing the assertions set forth in the written statement and reaffirming the pleadings contained in the plaint. Upon a comprehensive examination of the pleadings and the rival contentions raised by the parties, the Court was pleased to frame the following issues for adjudication, so as to facilitate a precise, orderly, and legally coherent determination of the matters in controversy:-

1. Whether the land in question is ownership of Mushtarka Malkan of the village and plaintiffs being Mushtarka Malkan are owners in possession of the suit lands OPP
2. Whether the plaintiffs are entitled to injunction prayed for? OPP
3. Whether defendant-committee is owner of the land by adverse possession or otherwise entitled to manage the property and the plaintiffs have no case? OPD
4. Relief.

5. Both parties were afforded ample and adequate opportunity to lead evidence in support of their respective claims and defence. Upon the conclusion of the evidentiary proceedings and after hearing the learned counsel for the parties at considerable length, the learned Sub-Judge II Class, Hoshiarpur dismissed the suit. The learned First Appellate Court-cum-



learned Additional District Judge, Hoshiarpur, upon reappraisal of the record and submissions, likewise affirmed the findings and dismissed the appeal.

5.1. Aggrieved by the concurrent judgments and decrees rendered by the Courts below, the appellants have preferred the present RSA.

6. During the pendency of the first appeal, the Consolidation Officer, Hoshiarpur, passed an order dated 09.03.1995 whereby a portion of the suit land was mutated in favour of Balwant Singh, Harbans Singh, Avtar Singh, Kulwant Singh, Daljit Singh and Resham Kaur. Aggrieved by the said order, the respondent–Municipal Committee instituted CWP-2548-1997, challenging the same on the ground that the Consolidation Officer lacked jurisdiction to adjudicate upon or effect any alteration in respect of the property in question.

6.1. It was further asserted that despite several communications addressed to the Consolidation Officer requesting that the respondent-petitioner be afforded an opportunity of hearing prior to the passing of any order, the impugned order was nonetheless issued *ex-parte*, in complete violation of the principles of natural justice. The respondent-Committee contended that the order was passed during the subsistence and pendency of civil proceedings before competent Courts, and that the Consolidation Officer failed to appreciate that the suit land vested in the respondent-petitioner, rendering the impugned mutation order legally unsustainable.

7. The appellants have instituted the present RSA, assailing the concurrent judgments and decrees passed by the learned Courts below. In parallel, the respondent–Municipal Committee has filed a CWP challenging the order dated 09.03.1995 passed by the Consolidation Officer, Hoshiarpur.



Both matters were duly admitted to regular hearing, and notices were issued to the respondents, who entered appearance and contested the proceedings.

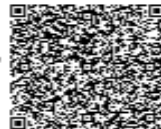
7.2. Subsequently, the entire record of the Courts below was requisitioned to enable a thorough, informed, and comprehensive adjudication of the issues arising in the appeal as well as in the connected writ petition.

8. I have heard learned counsel for the parties at considerable length and have bestowed my thoughtful and anxious consideration upon their respective submissions, keeping in view the pleadings, the evidentiary record, and the concurrent findings returned by the Courts below. The entire record has been meticulously scrutinized to determine *‘whether the impugned judgments and decrees, as well as the order dated 09.03.1995 passed by the Consolidation Officer, Hoshiarpur, are vitiated by any jurisdictional error, perversity, or legal infirmity warranting interference in appellate jurisdiction’?*

9. The appeal gives rise to the following *“quaestio juris substantialis”* for determination by this Court:-

- i. Whether the suit land vested in respondent-Municipal Committee after issuance of Notification Ex.D8?*
- ii. Whether Civil Court has no jurisdiction to entertain and decide the present suit?*
- iii. Whether suit for permanent injunction is not maintainable?*
- iv. Whether the Consolidation Officer, Hoshiarpur was incompetent to pass order dated 09.03.1995?*

10. **Whether the suit land vested in respondent-Municipal Committee after issuance of Notification Ex.D8:-** Learned counsel



appearing for the respondent–defendant Municipal Committee contended that the suit land vests in the respondent–Committee by virtue of Notification dated 27.01.1989 (Ex. D-8), through which all assets and liabilities of the Gram Panchayat of village Khawaspur were transferred to and vested in the Municipal Committee, Hoshiarpur. He further submitted that prior to such vesting, the suit land already stood vested in the Gram Panchayat, as it was admittedly in the Panchayat’s possession and was being periodically auctioned by it, with the proceeds being credited to the Panchayat fund and utilized for the welfare of the village community. It was argued that, in terms of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961, the suit property had vested in the Gram Panchayat; and, consequently, upon the extension of municipal limits and the takeover of the Panchayat area by the Municipal Committee, the suit land automatically vested in the Committee. Thus, according to learned counsel, the appellant–plaintiffs have no surviving right, title, or interest in the property in dispute.

10.1. Conversely, learned counsel for the appellant–plaintiffs asserted that the suit land forms part of the proprietary estate of the village and never vested in the Gram Panchayat. The revenue record consistently describes the land as “*Jumla Mushtarka Malkan Mualqa Hasab Rasad Khewat*”, signifying that it belongs to the village proprietary body. It was urged that the land constitutes *bachat* land carved out during consolidation proceedings by imposing a pro-rata cut on the holdings of the proprietors, and the Gram Panchayat merely managed the land for the benefit of the proprietary body without ever acquiring ownership. Consequently, no question arises of the



ownership of the suit land being transferred to the Municipal Committee pursuant to Notification Ex. D-8.

10.2. It is undisputed that the revenue entries classify the suit property as “*Jumla Mushtarka Malkan Mualqa Hasab Rasad Khewat.*” The Full Bench of this Court, in ‘**Suraj Bhan and others v. State of Haryana and another, 2017 (2) PLR 605**’, has authoritatively held that land recorded in such a manner vests in the village proprietary body, and not in the Gram Panchayat. The Full Bench further held that entries in the revenue record carry a statutory presumption of correctness, which can be rebutted only by demonstrating that the entries are founded on erroneous material, or are vitiated by fraud or manipulation a circumstance not pleaded or established in the present case. The relevant observations of the Full Bench appear in paragraph 218, sub-paragraphs (g), (h), and (i), which are reproduced here-in-below:-

- (g) The entries in the revenue records carry a presumption of truth, which, however, are rebuttable and can be shown to be wrong by other material (s) on record. The entries, however, in case based on fraud or manipulation of revenue records, the same would not confer any right or title on the person so entered as owner in the records;
- (h) The 'Jumla Mushtarka Malkan' lands are distinct and separate from the 'shamlat deh' lands. The ownership and title of the 'Jumla Mushtarka Malkan' lands or the lands recorded as 'Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba' vest in the proprietary body of the village and not in the Panchayat; however, the management and control of these lands vest in the Panchayats in view of Section 2 (bb) and Section 23A of the



Consolidation Act 1948; besides, Rule 16 (ii) of the Consolidation Rules 1949 as also the judgment of the Five Judge Bench of the Supreme Court in Ajit Singh's case (supra);

- (i) The Jumla Mushtarka Malkan' or 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba' lands have been carved out in consolidation proceedings and operations carried out in accordance with the Consolidation Act 1948 and the Consolidation Rules 1949 by imposing a pro rata cut on the lands of the proprietors. The cut that has been made is clearly identifiable and discernible as it is so mentioned in the 'Missal Haqiyat' (document of ownership), 'Naksha Haqdarani' (document of share of the proprietors), 'Khatauni Pamaish' (measurement of total land on the basis of its valuation) and 'Khatauni Istemal' (first jamabandi after consolidation which mentions the old khasra numbers and the new khasra numbers). Therefore, where the shares of the proprietors in the 'Jumla Mushtarka Malkan' or 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba' lands are identifiable and the land vests in the municipality, then the proprietors would be entitled for compensation to the extent of their share as they are admittedly owners of the same. In Ajit Singh's case (supra), it has specifically been held that the ownership of such land vests in the proprietary body of the village to the extent of its share in the holdings in the village;

10.3 This legal position now stands further crystallized by the Hon'ble Supreme Court in **The State of Haryana v. Jai Singh and Others, 2025 INSC 1122**, wherein the Apex Court drew a clear and categorical distinction between:-



- (i) land reserved for common purposes under Section 18-C of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, and
- (ii) land contributed by proprietors on a pro-rata basis, which is not reserved or earmarked for any specific purpose under the Consolidation Scheme.

10.4. In the present case, the respondent–defendant has failed to demonstrate that the suit land was ever earmarked or reserved for common purposes during the formulation of the Consolidation Scheme. On the contrary, the revenue description “*Jumla Mushtarka Malkan Mualqa Hasab Rasad Khewat,*” which remains unrebutted, clearly indicates that the land was carved out by imposing a pro-rata cut on the holdings of the proprietors and forms part of the proprietary pool not land reserved for common purposes of the Scheme.

10.5. The Hon’ble Supreme Court, in **Jai Singh’s** case (*supra*), has authoritatively held that land of this nature continues to vest in the village proprietary body and does not vest in the Gram Panchayat under Article 31-A of the Constitution of India. The Court expressly approved the principles laid down in **Bhagat Ram and Others v. State of Punjab and Others**, AIR 1967 SC 927, wherein it was held that if the Consolidation Officer, after imposing a pro-rata cut, reserves land to generate income for the Panchayat, such action violates the second proviso to Article 31-A and defeats its constitutional mandate. The Apex Court observed that reserving proprietary land to augment Panchayat revenue is ultra vires and contrary to the constitutional scheme.



10.6. In the present case, although the respondent–Committee asserts that the land was previously being auctioned by the Gram Panchayat and the income was utilized for village welfare, it is an admitted position that **no Consolidation Scheme ever reserved this land for generating Panchayat income**. Thus, the present matter stands on an even stronger footing than the factual matrix in **Bhagat Ram’s case (supra)**, where such reservation was expressly disapproved by the Supreme Court.

10.7. The pertinent findings of the Hon’ble Supreme Court in **The State of Haryana v. Jai Singh’s case (supra)** are reproduced here-in-below:-

52. The Full Bench of the High Court in the impugned judgment and final order attempted to draw a distinction between the land reserved for common purposes under Section 18(c) of the Consolidation Act of 1948 which might become part and parcel of a Scheme framed under Section 14, for the areas reserved for common purposes, though they have actually not been put to any common use and may be put to common use in a later point of time on one hand and the lands which might have been contributed by the proprietors on pro-rata basis but have not been reserved or earmarked for common purposes in the Scheme. It will be relevant to refer to the following observations of the Full Bench of the High Court:

The land reserved for common purposes under Section 18(c), which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, vests with the Government or Gram Panchayat, as the case may be, and the proprietors are left with no right or interest in such lands meant for common purposes under the scheme. There is nothing



at all mentioned either in the Act or the rules or the scheme, that came to be framed, that the proprietors will lose right only with regard to land which was actually put to any use and not the land which may be put to common use later in point of time. In none of the sections or Rules, which have been referred to by us in the earlier part of scheme envisages only such lands which have been utilized. That apart, in all the relevant sections and the rules, words mentioned are 'reserved or assigned'. Reference in this connection may be made to sub-section (3) of Section 18 and Section 23-A. The provisions of the statute, as referred to above, would, thus, further fortify that reference is to land reserved or assigned for common use, whether utilized or not.

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The lands which, however, might have been contributed by the proprietors on pro-rata basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the proprietors of the village in the same proportion in which they contribute the land owned by them. The Bachat land, which is not used for common purposes under the scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the significant differences is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common purposes as per the scheme.

We might have gone into this issue in all its details but in as much as the point in issue is not res-integra and in fact stands



clinched by string of judicial pronouncements of this Court as well as Hon'ble Supreme Court, there is no necessity at all to interpret the provisions of the Act and the rules any further on this issue.

The Hon'ble Supreme Court in **Bhagat Ram and ors. Vs. State of Punjab and ors. AIR 1967 Supreme Court 927**, dealt with reservation of certain area in the consolidation scheme for income of the Panchayat. Brief facts of the case aforesaid would reveal that a scheme made in respect of consolidation of village Dolike Sunderpur was questioned on the ground that in as much as it makes reservation of land for income of the Gram Panchayat, it is hit by second proviso to Article 31-A of the Constitution of India. The scheme in question reserved lands for phirni, paths, agricultural paths, manure pits, cremation grounds etc. and also reserved an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. It was held as under:-

"The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(bb) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines "common purpose" to include the following purposes:

"... providing income for the Panchayat of the village concerned for the benefit of the village community."

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the



Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly.

The ratio of the judgment aforesaid would clearly suggest that it is the land reserved for common purposes under the scheme which would be saved, which, otherwise, would be hit by second proviso to Article 31-A of the Constitution of India. Surely, if the land, which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the one which is still left out after providing the land in scheme for common purposes, if it is to vest with the State or Gram Panchayat, the same would be nothing but compulsory acquisition within the ceiling limit of an individual without payment of compensation and would offend second proviso to Article 31-A of the Constitution of India.

53. We have therefore no hesitation in holding that no error Vcould be noticed in the impugned judgment and final order of the Full Bench of the High Court to the extent that it holds that the lands which have not been earmarked for any specific purpose do not vest in the Gram Panchayat or the State.”

11. The Hon’ble Apex Court has now conclusively settled the legal position that lands which have not been specifically earmarked or reserved for any purpose do not vest in the Gram Panchayat or the State. Applying this authoritative principle to the facts of the present case, it stands established on the record that the suit land was never reserved for any defined common purpose under the consolidation scheme. Consequently, the land could not



have vested in the Gram Panchayat, nor could it thereafter devolve upon the respondent–Municipal Committee by virtue of Notification Ex. D-8. Only such lands as were legally vested in the Gram Panchayat of village Khawaspur could be succeeded to by the Municipal Committee, Hoshiarpur under the said notification. Since the evidence unequivocally demonstrates that the suit land never vested in the Gram Panchayat, no title or interest therein could pass to the respondent-Committee.

11.1. Accordingly, this issue is answered against the respondent-Municipal Committee. It stands proved that the suit land continued to vest in the proprietary body of village Khawaspur, and the respondent–Committee is devoid of any lawful claim of ownership over the same.

12. **Whether Civil Court has no jurisdiction to entertain and decide the present suit:-** Learned counsel for the appellant–plaintiffs submitted that the Civil Court is fully competent to entertain and adjudicate the present suit, inasmuch as the evidence on record unequivocally establishes that the suit land forms part of the proprietary estate of the village and does not constitute *Shamlat Deh*, nor does it vest in the Gram Panchayat.

13. Conversely, learned counsel for the respondent–Municipal Committee contended that the Civil Court is divested of jurisdiction to try the suit, asserting that the land stands vested in the Gram Panchayat and, therefore, the bar under Section 13 of the Punjab Village Common Lands (Regulation) Act squarely applies. It was argued that only the Collector is competent to adjudicate upon the question whether the suit land constitutes *Shamlat Deh* and whether it vests in the Gram Panchayat.



14. It is, however, significant to note that the respondent–Committee has not been able to prove a case that the Gram Panchayat was the owner of the suit land. Furthermore in the present case Gram Panchayat is not party to suit. The stand of the respondent is confined to asserting that the suit land vested in the Gram Panchayat merely for purposes of management and that its income was being utilized for the welfare of the village community. Once it stands established on record that the title to the suit property does not vest in the Gram Panchayat and that ownership continues to rest with the village proprietary body, the bar of jurisdiction under Section 13 of the Punjab Village Common Lands (Regulation) Act is not attracted.

15. The issue relating to the jurisdiction of the Civil Court came up for authoritative consideration before the Full Bench of this Court in **Parkash Singh and others v. Joint Development Commissioner, Punjab and others, 2014 (3) PLR 543**. In that case, the plea that the land was not ‘*Jumla Mushtarka Malkan*’ was raised, and the Full Bench held that the Civil Court indeed retains jurisdiction to adjudicate such disputes. Paragraphs 63 and 64 of the said judgment, which lucidly articulate the legal position, are reproduced here-in-below:-

“63. The question that now remains is to identify the forum, a person who raises a plea that the land is not "Jumla Mushtarka Malkan" or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44



of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. Section 44, however, cannot be read to prohibit Civil Courts from deciding a question of title relating to "Jumla Mushtarka Malkan" as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding "Jumla Mushtarka Malkan" is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, Le., a Civil Court.

64. Thus, where a party seeks to raise a plea that the land is not "Jumla Mushtarka Malkan" etc., he shall be obliged to approach a Civil Court, exercising jurisdiction in accordance with Section 9 of the Code of Civil Procedure till such time as the State does not provide an appropriate forum. The first question is answered accordingly.”

15.1. Accordingly, it is held that the Civil Court is vested with the jurisdiction to entertain and adjudicate upon the present suit.

16. **Whether suit for permanent injunction is not maintainable:-**

Learned counsel for the respondent–Committee submitted that the Courts below have rightly concluded that the suit for permanent injunction is not maintainable, as the evidence on record clearly establishes that none of the plaintiffs was in possession of the suit land and that the actual possession



remained with the respondent–defendant. It was further pointed out that, during the pendency of the suit, the plaintiffs moved an application seeking amendment of the plaint to claim possession of suit land, which came to be adjudicated upon by the learned Sub-Judge II Class, Hoshiarpur and was declined.

17. Learned counsel for the appellant–plaintiffs submitted that, in an appeal, the appellate Court is empowered to examine the correctness, legality, and propriety of all orders passed by the Courts below, including interlocutory orders. It was argued that the learned Sub-Judge II Class, Hoshiarpur committed a manifest illegality in declining the plaintiffs’ prayer for amendment of the plaint. In support of this contention, reliance was placed upon the judgment of this Court in **Amar Singh (since deceased) through his LRs v. Mukhtiar Singh and others, 2018 (3) PLR 121.**

18. Upon a meticulous examination of the record, it stands undisputed that the plaintiffs are not in possession of the suit land. It is equally undisputed that, during the pendency of the suit, the plaintiffs moved an application seeking amendment of the plaint so as to incorporate the relief of possession. The said application was declined by the learned Sub-Judge II Class, Hoshiarpur. By way of the proposed amendment, the plaintiffs sought merely to convert the existing prayer for injunction into an appropriate and complete relief by adding the relief of possession of the suit property.

18.1. This Court, in **Amar Singh’s** case (*supra*), has categorically held as under:-

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“10. Answer to Question No.4 It has been found by the learned First Appellate Court that an application under Section 12 was filed



before the learned trial Court, which was dismissed. While filing an appeal, all interim orders passed by the Court can be challenged and are subject to scrutiny of the learned Appellate Court. No fresh application was required to be filed. In any case, now Sona Singh has already compromised with the plaintiff-appellant. Even before the learned First Appellate Court, Sona Singh and Malkiat Singh had filed an application for allowing the appeal with respect to the share of Sona Singh on the basis of compromise. However, learned First Appellate Court committed an error in rejecting the aforesaid application on the ground that since Sona Singh was minor on the day of agreement to sell and there is an opinion of the expert that thumb impression of Sona Singh on the agreement to sell does not match with the standard thumb impression, therefore, there cannot be any compromise.

11. In view of the what has been discussed above, question No.4 is also answered in favour of the appellant.”

19. During the pendency of the present appeal, the respondent–Committee placed on record certain documents demonstrating that the suit land has been utilized for the installation of the town’s sewerage infrastructure, and that a sewage treatment plant has been established upon the said land. In these circumstances, restoration of possession to the appellants is neither feasible nor equitable, as such an order would result in substantial loss to the respondent–Committee and lead to the wasteful destruction of valuable public resources and infrastructure created for the benefit of the community.

19.1. Having regard to the fact that a sewage treatment plant has now been established upon the suit land, it would neither be feasible nor desirable to direct delivery of possession to the plaintiffs. Moreover, the plaintiffs



constitute only a minuscule fraction of the village proprietary body whose members number in the thousands and, therefore, possession of the entirety of the suit land cannot be handed over to a few proprietors to the exclusion and prejudice of the remaining co-sharers.

19.2. It consequently stands established that, the plaintiffs being admittedly out of possession, are not entitled to the relief of injunction as prayed for. However, the utilization of the suit land by the respondent—Municipal Committee for the purpose of laying a sewage system and establishing a sewage treatment plant, without initiating any lawful process of acquisition or without payment of compensation to the appellants, constitutes a clear infraction of Article 300-A of the Constitution of India. The proprietary rights of the landowners cannot be extinguished by unilateral appropriation of land, nor can the Committee be presumed to have lawfully acquired title without compensating the true owners.

19.3. At the same time, the nature of the present proceedings does not permit this Court to undertake the detailed and extensive inquiry necessary to determine the quantum of compensation or the individualized entitlement of each proprietor based on the precise extent of land contributed by them. Such questions fall outside the scope of the present suit. The appellant-plaintiffs are, however, granted liberty to pursue their remedy for compensation and other consequential reliefs before the appropriate forum in accordance with law.

19.4. Support for the above proposition is found in the decision of the Hon'ble Supreme Court in **Rajiv Sarin v. State of Uttarakhand, (2011) 8 SCC 708**, which has been approvingly relied upon by the Full Bench of this



Court in **Suraj Bhan and others v. State of Haryana and another, (2017)**

2 PLR 605. The relevant extract from the Full Bench judgment reads as follows:-

“180. **In Rajiv Sarin v. State of Uttarakhand, 2011(3) RCR (Civil) 946: (2011) 8 SCC 708**, a Five Judge Bench of Hon'ble the Supreme Court considered the effect of deprivation of property and the entitlement for compensation to those deprived of the property. The appellants in the said case in 1945 acquired proprietary rights as intermediaries in a forest estate in Uttarakhand. The UP Zamindari Abolition and Land Reforms Act, 1950 (UPZALR Act) intended to abolish the zamindari and intermediaries and vest these lands in the State. The said UPZALR Act was applicable to the entire State of U.P. except the areas of Kumaun and Uttarakhand. Subsequently, the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (KUZALR Act) was enacted on 02.08.1960. The said KUZALR Act introduced land reforms in the State of U.P. in respect of Kumaun and Uttarakhand. The original KUZALR Act as applicable in Kumaun and Uttarakhand did not provide for vesting of private forests, and the definition of the word "land" in Section 3 (1) thereof excluded forest.

181. After the commencement of the Constitution (Forty-second Amendment) Act, 1976 which came into effect from 03.01.1977 the subject "forests" was included in Schedule VII List III of the Constitution as Entry 17-A. The U.P. Zamindari Abolition Laws (Amendment) Act, 1978 was passed on 30.11.1977 whereby the KUZALR Act was amended. The original KUZALR Act had received the President's assent on 10.09.1960 and the amendment had also received the President's assent on 26.04.1976. By a



Gazette Notification dated 21.12.1977 under Section 4-A KUZALR Act, as amended by U.P. Act 15 of 1978, the rights, title and interest of every intermediary in respect of forest land situated in the specified areas ceased w.e.f. 01.01.1978 and the same vested in the State Government.

182. The appellants in the said case were served with a notice under Rule 2 of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965 intimating them of the said vesting of their lands in the State w.e.f. 01.01.1978. The notice also invited objections and statement, if any, relating to the compensation qua the property in question. The appellants challenged the said notice and validity of the KUZALR Act, as amended by U.P. Act 15 of 1978. The appellants also challenged the order of the High Court which had been passed on the basis of Sections 18 (1) (cc) and 19 (1) (b) KUZALR Act, and it had been held that they were not entitled to any compensation as they had not derived any income from the forests.

183. Partly allowing the appeal, Hon'ble the Supreme Court inter alia held that any law which deprived a person of his private property for private interest would be amenable to judicial review. Though the concept of public purpose had been given quite a wide interpretation, nevertheless, "public purpose remained the most important condition in order to invoke Article 300A of the Constitution. Besides, the right to property being no more a fundamental right, a legislation enacted under the authority of law as provided in Article 300A of the Constitution is not amenable to judicial review merely for alleged violation of Part III of the Constitution. However, the laws added to Schedule IX to the Constitution, by violating the Constitutional amendment after 24.12.1973, would be amenable to judicial review on a



ground like violation of the basic structure of the Constitution. It was further held that right to property is no longer a fundamental right. In view of the aforesaid position, the entire concept of right to property had to be viewed with a different mindset than the mindset which was prevalent during the period when the concept of eminent domain was the embodied provision of fundamental rights. But even now as provided under Article 300A of the Constitution the State could proceed to acquire land for specified use but by enacting a law through State Legislature or by Parliament and in the manner having force of law.

184. With regard to claiming compensation, it was observed that all modern constitutions which are invariably of democratic character provide for payment of compensation as the condition to exercise the right of expropriation. Acquisition of land and thereby deprivation of property was possible and permissible in accordance with the statutory framework enacted and when the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision was generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It was observed that it must be understood in this context that the acquisition of the property by the State in furtherance of the directive principles of State policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount



are part of the same scheme and they cannot be separated. It was considered as true that the adequacy of compensation could not be questioned in a court of law, but at the same time the compensation could not be illusory. A distinction and difference had been drawn between the concept of "no compensation" and the concept of "nil compensation". As mandated by Article 300A, a person could be deprived of his property but in a just fair and reasonable manner. In an appropriate case the Court may find "nil compensation" also justified and fair if it was found that the State had undertaken to take over the hability and also had assured to compensate in a just and fair 'manner. But the situation would be totally different if it was a case of "no compensation" at all. A law seeking to acquire private property for public purpose cannot say that "no compensation" would be paid.

185. The case before Hon'ble the Supreme Court was a case of payment of "no compensation" at all. In the said case, the forest land which had vested in the State by operation of law, it was observed, could not be said to be non-productive or unproductive by any stretch of imagination. The property in question was definitely a productive asset. That being so, the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring forests on the date of vesting. Even otherwise, it was observed, that the revenue authority could always make an estimation of possible income on the date of vesting if the property in question had been exploited by the appellants therein and then calculate compensation on the basis thereof in terms of Section 18 (1) (cc) and 19 (1) (b) of the KUZALR Act.



186. Awarding no compensation, it was held, attracted the vice of illegal deprivation of property even in the light of the provisions of the Act and was, therefore, amenable to writ jurisdiction. That being so, the omission of Section 39 (1) (e) (ii) of the UPZALR Act, 1950, as amended in 1978 was held to be of no consequence since the UPZALR Act left no choice to the State other than to pay compensation for the private forests acquired by it in accordance with the mandate of the law. Therefore, while upholding the validity of the KUZALR Act and particularly Sections 4-A, 18 (1) (cc) and 19 (1) (b) thereof, the Assistant Collector was directed to determine and award compensation to the appellants therein by following a reasonable and intelligible criterion evolved on the aforesaid guidelines provided and in the light of aforesaid law as has been enunciated. The appellants were also held entitled to interest at 6% per annum on the compensation amount from the date of dispossession till the date of payment provided possession of the forest was handed and taken over formally by the respondent physically and provided that the appellants were totally deprived of physical possession of the forest. In case the physical/actual possession had not been handed over by the appellants to the State Government or had been handed over at some subsequent date, i.e. after the date of vesting, the interest on the compensation amount, it was ordered, would be payable only from the date of actual/physical possession of the property in question and not from the date of vesting.
187. Therefore, it is quite evident that payment of compensation when a person is deprived of his property is a necessary consequence of the acquisition except of course where the acquisition has been made for agrarian reforms in which case also in view of the



second proviso to Article 31-A, compensation is payable in terms thereof.”

20. **Whether the Consolidation Officer, Hoshiarpur was incompetent to pass order dated 09.03.1995:-** Learned counsel for the Municipal Committee, Hoshiarpur submitted that the Consolidation Officer, Hoshiarpur wholly lacked jurisdiction to allot or apportion any portion of the suit land, particularly when the question of title to the property was *sub judice* before the competent Civil Court. It was argued that the matter squarely fell within the exclusive domain of the Civil Court, and therefore, any exercise of authority by the Consolidation Officer over the disputed land was without lawful competence.

20.1. It was further contended that the impugned order stands vitiated for having been passed in complete violation of the fundamental principles of natural justice, especially the rule of ‘*audi alteram partem*’, inasmuch as no opportunity of hearing was afforded to the petitioner–Committee despite repeated communications addressed to the Consolidation Officer requesting that an opportunity be granted prior to the issuance of any such order. Learned counsel emphasized that the Officer had been duly apprised of the fact that the suit land was subject to pending adjudication before the Civil Court, wherein the petitioner’s claim of title and rights over the property was already under consideration. Notwithstanding such explicit intimation, the Consolidation Officer proceeded to pass the order *ex parte*, thereby rendering it legally unsustainable and void.

21. Conversely, learned counsel appearing on behalf of respondents No. 4 to 8 submitted that the impugned order suffers from no illegality, irrationality, or procedural infirmity warranting interference in the exercise of



writ jurisdiction. It was argued that the order has been passed by the competent statutory authority in the lawful exercise of jurisdiction, after due consideration of the material placed before it, and thus the writ petition merits outright dismissal.

21.1. With respect to the issue concerning the jurisdiction of the Consolidation Officer, learned counsel placed reliance upon the authoritative pronouncement of the Full Bench of this Court in **Parkash Singh and others v. Joint Development Commissioner, Punjab and others, 2014 (3) PLR 543**, wherein the legal position governing the jurisdiction of consolidation authorities particularly in matters involving questions of title has been comprehensively delineated and reaffirmed. The Full Bench has enunciated the governing principles in the following terms:-

“63. The question that now remains is to identify the forum, a person who raises a plea that the land is not "Jumla Mushtarka Malkan" or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. Section 44, however, cannot be read to prohibit Civil Courts from deciding a question of title relating to "Jumla Mushtarka Malkan" as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered



by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding "Jumla Mushtarka Malkan" is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, Le., a Civil Court.

64. Thus, where a party seeks to raise a plea that the land is not "Jumla Mushtarka Malkan" etc., he shall be obliged to approach a Civil Court, exercising jurisdiction in accordance with Section 9 of the Code of Civil Procedure till such time as the State does not provide an appropriate forum. The first question is answered accordingly.”

22. In the present matter, the Civil Court was already seized of the controversy, and the Consolidation Officer had been duly apprised of this fact through communication dated 14.10.1994 (Annexure P-2). The said communication expressly informed the Officer that the entire revenue estate of the village stood included within the jurisdiction of the Municipal Committee, Hoshiarpur, pursuant to Punjab Government Notification No. 632/3.R/88 dated 27.01.1989; that Mutation No. 12594 had been sanctioned in favour of the Municipal Committee in respect of the entire land of the erstwhile Gram Panchayat; and that a civil suit filed by certain inhabitants concerning village land had already been decreed in favour of the Municipal Committee on 23.12.1993. It was, therefore, specifically requested that no alteration in the revenue record be effected without obtaining the consent of the Municipal Committee.

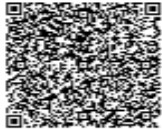


22.1. Despite this explicit intimation, the Consolidation Officer proceeded to pass the impugned order (Annexure P-4) without issuing any notice to the petitioner–Municipal Committee. Such action is manifestly violative of the fundamental principles of natural justice particularly the doctrine of ‘*audi alteram partem*’ for the Officer was fully aware that the petitioner was asserting rights, title, and interest in the land sought to be allocated. It was incumbent upon the Consolidation Officer to afford the petitioner an opportunity of hearing before passing any order adverse to its interest.

22.2. Furthermore, the Officer was cognizant, by virtue of Annexure P-2, that the matter regarding title and vesting of the suit land was sub-judice before the competent Civil Court. In these circumstances, judicial propriety demanded that the Consolidation Officer refrain from entertaining or adjudicating upon any contentious issue relating to the land. Additionally, once it had been brought to his notice that the land in question had fallen within the notified urban area, it was obligatory upon him to examine whether he retained any jurisdiction to deal with the property. The impugned order discloses no such consideration.

22.3. Accordingly, it is evident that the order in question stands vitiated not only for breach of the principles of natural justice but also for having been passed in disregard of the pending civil proceedings and without determining the limits of his own jurisdiction.

22.4. In view of the above, as the appellants–plaintiffs were admittedly not in possession of the suit land at the time of the institution of the suit, the relief of permanent injunction was rightly declined, and the



appeal filed by the appellants is, therefore, dismissed. Conversely, the Civil Writ Petition filed by the petitioner–Municipal Committee merits acceptance, and the impugned order passed by the Consolidation Officer is hereby set aside on the ground of being violative of the principles of natural justice and without jurisdiction.

23. Since the principal matters in the present proceedings have been adjudicated upon and stand conclusively disposed of, all pending miscellaneous applications, if any, shall also stand disposed of accordingly, as no further orders are required to be passed thereon.

24. A photocopy of this order shall be placed on the connected case file for purposes of compliance, if required, and for ready reference in the afore-captioned proceedings.

18.11.2025
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No