

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

CWP No.12201 of 2010

Decided on: 30.04.2012

Gurnam Singh

. . . .Petitioner

Versus

Director, Rural Development & Panchayats Punjab and others

. . . .Respondents

**CORAM: HON'BLE MR.JUSTICE RAJIVE BHALLA
HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**

Present: - Mr.Sarjit Singh, Sr. Advocate, with
Mr.Amit Kashyap, Advocate,
for the petitioner.

Mr.Manohar Lall, Addl. A.G., Punjab.

Ms. Monika Jalota, Advocate,
for respondent No.3.

RAKESH KUMAR JAIN, J.

The petitioner has prayed for a writ in the nature of certiorari for quashing of order dated 5.2.2010 (Annexure P-8) passed by the Director, Rural Development & Panchayats, Punjab, exercising the powers of Commissioner, by which application filed by the petitioner under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act'), for declaring him to be the owner of land comprising in Khewat/Khatoni No.37/103, Khasra No.4//25(4-5) situated at Village Mohidpur, Tehsil and District Patiala, has been dismissed.

The case set up by the petitioner is that the land in dispute was carved out during the consolidation by applying a pro-rata cut. It remained in the common pool after utilization of land for common purposes and was recorded as Mushtarka Malkan. The petitioner filed an application under Section 11 of the 1961 Act, wherein he had also alleged that he has constructed a house on some portion of the land in dispute. The Collector, vide his order dated 1.3.2005, disposed of the petition by observing that *“even though the land in dispute is Shamlat deh and the applicant is in illegal possession of the land but to demolish the house of the applicant on the land in dispute is not in public interest. Therefore, the price of the land is fixed as per the rates fixed by Collector. Therefore, the BDPO is being ordered that he will get the costs of the land assessed from the Collector and the applicant is being ordered that he will deposit the cost of land within three months. If the applicant will not deposit the amount within prescribed period then this order shall deemed to be cancelled.”*

Undisputedly, the petitioner did not challenge the order passed by the Collector dated 1.3.2005, whereby the land in question is held to be Shamlat deh and the possession of the petitioner illegal, rather he was satisfied with the order. However, an appeal was filed by the Gram Panchayat, which was allowed with the following observations:

“It is clear that the land was in possession of Nagar Panchayat according to Jamabandi 1957-58, 1958-59. However, the possession of Jeet Singh son of Sunder Singh, Mewa

Singh s/o Roop Singh was shown in 1961-62. In Jamabandis 1976-77, 1982-83, 1987-88 Nagar Panchayat Deh has been shown as the owner of the land in dispute and the possession of Gurnam Singh s/o Bakhtawar Singh has been shown as unauthorized since 1976-77. The respondent has not been able to show his old possession nor he has been able to prove that this land was carved out by applying pro-rata cut from his land. In fact this land is owned by Gram Panchayat. There is force in this appeal. The Collector cannot direct for the sale of land on Collector's rate. The appeal is, therefore, accepted and the impugned order is set aside. Order announced."

The petitioner then filed a review application before the Commissioner, which was dismissed on 13.10.2006. Thereafter, he filed CWP No.579 of 2007, which was disposed of by this Court on 25.1.2007 with the following order:

"On 28.7.2006, the appeal filed by the Gram Panchayat, Mohaddipur, was accepted and the impugned order of the Collector dated 1.3.2005 in favour of

Gurnam Singh – petitioner was set aside.

A perusal of the order of the Commissioner (Annexure P-5) reveals that the order was passed ex parte Gurnam Singh. Thereafter, Gurnam Singh filed an application on 9.9.2006 for having the ex parte proceedings set aside and for hearing of the appeal on merits, this application was dismissed on 13.10.2006 holding that the Commissioner had no power to review the order passed by him either under Section 11 or any other provision of the Punjab Village Common Lands (Regulation) Act, 1961. This order is Annexure A-6.

As a matter of fact, Gurnam Singh had filed the application for having the ex parte proceedings set aside but that application was apparently treated as a review petition and dismissed as such.

The order of the Commissioner dated 13.10.2006 (Annexure P-6) is hereby set aside and the Commissioner is directed to first decide the application filed by

Gurnam Singh on 9.9.2006, which has been annexed herewith as Annexure P-7 and, thereafter, proceed in accordance with law.”

In view of the above, the appeal was again heard by the Commissioner and the order dated 28.7.2006 was maintained.

Counsel for the petitioner has submitted that the land in dispute does not vest in the Gram Panchayat as it is Mushtarka Malkan, which was not reserved or used for common purposes.

We have heard counsel for the petitioner in detail and perused the record.

Admittedly, the Collector has recorded a finding that the land in dispute is Shamlat deh and the petitioner is in illegal possession but allowed the petitioner to purchase the house, which is allegedly constructed on some portion of the land in dispute. The petitioner did not challenge these findings. The appeal filed by the Gram Panchayat was allowed by holding that the Collector has no jurisdiction to order sale of the Panchayat land. We are unable to find any fault with the impugned order, whether in law or fact. The finding recorded by the Collector was not challenged by the petitioner in appeal and therefore, cannot be impugned in the writ petition. The judgment in **“Jai Singh and others Vs. State of Haryana” 2003(2) PLR 658** does not apply to the present case.

In view of the aforesaid facts and circumstances, we do not find any merit in the present writ petition and as such the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(RAJIVE BHALLA)
JUDGE

30.04.2012

Vivek