

(2003) 01 P&H CK 0038

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 943 of 2003

Gurnam Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Jan. 21, 2003**Acts Referred:**

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 11

Citation: (2003) 3 LLJ 324 : (2003) 134 PLR 52 : (2003) 1 RCR(Civil) 806**Hon'ble Judges:** S.S. Nijjar, J; Hemant Gupta, J**Bench:** Division Bench**Advocate:** Rajiv Atma Ram and G. Atma Ram, for the Appellant; H.S. Sran, Addl. A.G., for the Respondent**Final Decision:** Allowed

Judgement

S.S. Nijjar, J.

The petitioner at the relevant time was working as Tehsildar and was posed at Jalandhar. Certain proceedings were pending in the Revenue Courts with regard to some land wherein the controversy related to the vesting of the land. It was a moot point as to whether the land vested in the Panchayat or in the Proprietors of the Village. The matter was ultimately taken to the Supreme Court by the Gram Panchayat of Village Mand Chakoki, Tehsil and district Kapurthala (hereinafter referred to as "the Gram Panchayat"), On 6.8.1999, the Supreme Court disposed of the Special Leave Petition, after noticing the submissions made by the counsel for the Gram Panchayat to the effect that under the relevant statutes application to Punjab, the land in question vests in the Gram Panchayat. He had further submitted that the Gram Panchayat may be permitted to raise the aforesaid plea before the Consolidation Officer. The SLP was disposed of with a direction that the Gram Panchayat shall be at liberty to raise all such pleas as are available to them before the Consolidation Officer, including the plea that the land vests in Gram Panchayat and therefore, the authorities under the Act have no jurisdiction to deal with the

matter. On remand, the petitioner passed a quasi judicial order and held that the land did not vest in the Gram Panchayat. Against the aforesaid order, an appeal has been filed before the Settlement Officer, Kapurthala by order dated 7.8.2002 has held that the land does not vest in the Gram Panchayat. A categorical finding has been given that the Gram Panchayat has not been able to give any evidence regarding the ownership of the Gram Panchayat. A charge-sheet was issued to the petitioner on 23.11.2001 on the ground that the decision of the petitioner was against the instructions issued by the Government of Punjab dated 27.11.1996, 27.6.1997 and 22.7.1997. After a departmental enquiry, the petitioner has been punished by imposing a major penalty i.e. stoppage of five increments with cumulative effect. This order has been passed by the Financial Commissioner on 5.12.2002. Mr. Rajiv Atma Ram has submitted that the impugned order is liable to be quashed on the short ground that it is not a speaking order.

2. In view of the above, notice of motion. Mr. H.S. Sran, Additional A.G., Punjab accepts notice on the asking of this Court.

3. A number of submissions have been made by Mr. Rajiv Atma Ram which may be briefly noticed. He has submitted; (i) that it was incumbent on the Financial Commissioner to consider the reply to the show cause notice dated 24.7.2002 whilst passing the impugned order, (ii) That the charge-sheet is wholly without jurisdiction as the petitioner has passed a quasi judicial order. The order being appealable, no disciplinary action could have been initiated against the petitioner, (iii) That the impugned order does not even take into consideration the order passed by the Collector, Kapurthala who after considering the entire matter u/s 11 of the Punjab Village Common Land Regulations Act, 1961, has come to the conclusion that the land does not vest in the Gram Panchayat. (iv) That the order of punishment could not have been passed without granting an opportunity of hearing to the petitioner, (v) That the Supreme Court had directed that on the plea of ownership being raised by the Panchayat, the same shall be decided by the Consolidation Officer. Therefore, the petitioner had only done that was expected of him by the Supreme Court, (vi) That no allegations have been made by any party that the petitioner has acted either mala fide or that the order, which is quasi-judicial, has been passed for extraneous considerations. Therefore, no departmental proceedings could have been initiated against the petitioner.

4. We are of the considered opinion that the aforesaid submissions made by the learned counsel for the petitioner ought to have been duly considered by the Financial Commissioner before passing an order of punishment. A perusal of the order, Annexure P-9 shows that it is wholly non-speaking.

5. Consequently, the writ petition is allowed. The impugned order, Annexure P-9 is quashed and set aside. The matter is remanded back to the Financial Commissioner. He is directed to pass speaking order after giving due opportunity of hearing to the petitioner. Let the order be passed within a period of two months of the receipt of a

certified copy of this order. Mr. Sran is directed to communicate the order passed by this Court to the respondents for necessary action.

Copy of this order be given dasti under the signature of Special Secretary of this Court.