

(2013) 05 P&H CK 0226

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 9371 of 2013

Mukhtiar Singh and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: May 2, 2013**Acts Referred:**

- East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 - Section 18, 23A
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 2(g), 2(g)(6), 7

Citation: (2013) 171 PLR 433**Hon'ble Judges:** Rekha Mittal, J; Rajive Bhalla, J**Bench:** Division Bench**Advocate:** Radhe Shyam Sharma, for the Appellant;**Final Decision:** Dismissed

Judgement

Rajive Bhalla, J.

The petitioners pray for issuance of a writ of certiorari for quashing orders dated 31.01.2011 (Annexure P-4), 12.06.2012 (Annexure P-5) and 19.03.2013 (Annexure P-6), passed by the Assistant Collector, Ist Grade, Ratia, the District Collector, Fatehabad and the Commissioner, Hisar Division, Hisar, ordering their eviction and dismissing their appeal and revision, respectively. Counsel for the petitioners submits that father of the petitioners was in cultivating possession of land bearing khasra No. 186/6(3-19), 15(8-0), 16(8-0), 187/11(2-17), total measuring 22 Kanals and 16 Marlas, as "Gair Marusi" under the proprietors/share holders of village Aherwan. After consolidation, the land, in dispute, was recorded as "Jumla Mushtarka Malkan Wa Digar Haqdaran" (for short Jumla Mushtarka Malkan), but the petitioners' father and after him, the petitioners have remained in cultivating possession of the land, in dispute. The land, in dispute, is "Bachat Land" as it was left over after applying a pro-rata cut on the holdings of proprietors and, therefore, does not vest in the Gram Panchayat for any purpose, whatsoever. It is further submitted that

against mutation dated 03.09.1992, sanctioned on the basis of letter issued by the Government of Haryana, on 26.02.1992, the petitioners' father filed Civil Writ Petition No. 15918 of 1993. The letter dated 26.02.1992 has been set aside by a Full Bench of this Court in [Jai Singh and Others Vs. State of Haryana](#). The Gram Panchayat, therefore, has no right to file a petition u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act") as the land, in dispute, is not "Shamilat Deh" and, as per the revenue record, is described as "Jumla Mushtarka Malkan". The Assistant Collector, Ist Grade has dis-regarded these facts and wrongly ordered eviction of the petitioners. The appeal filed by the petitioners before the Collector was dismissed summarily without considering the submissions made on behalf of the petitioners. The revision filed before the Commissioner, Hissar Division, Hissar, was also dismissed without considering that the land, in dispute, does not vest in the Gram Panchayat. We have heard counsel for the petitioners, perused the impugned orders and find no reason to issue the writ as prayed.

2. The land, in dispute, is, admittedly, recorded as "Jumla Mushtarka Malkan", i.e., land created after applying a pro-rata cut on the holdings of the proprietors in accordance with Sections 18, 23-A of the East Punjab Holdings(Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "Consolidation Act") and Rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as the "Consolidation Rules"). A perusal of these statutory provisions reveals that the land, so created and reserved, vests in the Gram Panchayat for management and control. Section 2(g)(6) of the 1961 Act, as applicable to the State of Haryana, (as introduced by Act No. 9 of 1961) provides that land, described as "Jumla Mushtarka Malkan", shall be included in "Shamilat Deh". Section 2(g)(6) of the 1961 Act reads as follows:-

Section 2(g) reads as follows:-

2. Definitions.-

(g) "Shamilat deh" includes-

(1) xx xx xx

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

(6) lands reserved for the common purposes of a village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government u/s 23-A of the aforesaid Act.

3. The validity of Section 2(g)(6) of the 1961 Act came up for consideration before a Full Bench in Jai Singh's case (supra) and it was held that "Jumla Mushtarka Malkan" land shall be included in "Shamilat Deh" in terms of its vesting in a Gram Panchayat, as provided under the Consolidation Act and Rules, thereby clearly holding that "Jumla Mushtarka Malkan" land shall be deemed to be included in "Shamilat Deh", but its management and control, alone, shall vest in a Gram Panchayat.

4. The petitioners are, admittedly, in possession of land described as "Jumla Mushtarka Malkan", which was included in "Shamilat Deh" by Section 2(g)(6) of the 1961 Act. The management and control of such land vests in a Gram Panchayat thereby conferring a right upon the Gram Panchayat to seek eviction of an unauthorised occupant in possession of "Jumla Mushtarka Malkan" by resort to proceedings u/s 7 of the 1961 Act. The petitioners' contention that as his father is recorded as "Gair Marusi" under proprietors/share holders, he cannot be said to be an unauthorised occupant, merits rejection. The words "Gair Marusi" merely refer to an occupant of land and only if it is accompanied by an entry of payment of rent, in the relevant column of the revenue record, would raise inference of a tenancy. The petitioners have not been able to refer to any entry in the column of rent, of the relevant jamabandies, that would raise even a prima-facie inference that the petitioners were paying rent as tenants to proprietors or share holders. Even otherwise, after the land was reserved as "Jumla Mushtarka Malkan", the right of management and control has come to vest in the Gram Panchayat. In view of what has been stated hereinabove, we find no error of law or of jurisdiction in the impugned orders, as would require interference. The writ petition is consequently dismissed.