

**(2011) 01 P&H CK 0462**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 9476 of 1987

|                             |            |
|-----------------------------|------------|
| Budhi                       | APPELLANT  |
| Vs                          |            |
| Commission (Appeals) Ambala | RESPONDENT |
| Division and others         |            |

**Date of Decision:** Jan. 18, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 13, 13A, 13B(2)

**Citation:** (2012) 166 PLR 684

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Advocate:** C.B. Goel, for the Appellant; S.S. Sahu, A.A.G., Punjab, for Respondent Nos. 1 to 4. and Mr. M.L. Sarin with Mr. Nitin Sarin, for Respondent Nos. 5 to 11, for the Respondent

**Final Decision:** Dismissed

**Judgement**

K. Kannan, J.

The writ petition challenges the order passed by the Commissioner Appeals in a revision filed by the petitioner u/s 13B(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act"). The revision was a culmination of proceedings which were initiated before the Assistant Collector, 1st Grade where the petitioner had sought for declaration and for permanent injunction in respect of property in Khewat and khasra No. 70/103, Rect. No. 2, Killia No. 16(8-0); 17(9-5); 18(9-5); 24 (8-0) and 25(8-0) total land measuring 42 kanals 12 marlas situated in village Ghigraka. The petitioner had originally filed a suit before the Civil Court and on an objection from Panchayat on the maintainability of the suit before the Civil Court the matter had been transferred to the Assistant Collector for disposal. The Assistant Collector had upheld the petitioners claim and granted the relief, holding that the property had been owned by the petitioner as Jumla Malkan and upheld the land under the cultivation of the petitioner. It found that the

Panchayat had not filed any proof of its ownership or it had dealt with the property at any time. In appeal by the Gram Panchayat the District Collector held that the Gram Panchayat had a power to manage the property in view of the property having been allowed to be in the management of the Panchayat in East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and the management of the property having been vested with the Panchayat, the action for injunction against the Panchayat was itself not maintainable. It was also contended that the Revenue Courts themselves had no jurisdiction to entertain the case otherwise than by resort to procedure u/s 13 of the Act, 1961 when the dispute involved whether the land vested in the Panchayat or not. The Collector held that the Panchayat was empowered to have the management of the property although it was still not the owner who had claimed its management u/s 13A of the Act. The District Collector held that the case ought not to have been transferred to the Revenue Court since the property did not fall under the provisions of the Act. The Commissioner also upheld the same finding but reiterated that the land being managed by the Panchayat under Rule 16(2) read with Section 18 of the Act, the revision itself could not have been filed and the Revenue Court would have not jurisdiction to hear. Learned counsel for the petitioner would contend that if the Revenue Court did not have jurisdiction, the issue of rejection of the petitioner's claim on merit does not arise. I am prepared to accept the contention of the petitioner that if any authority held that he did not have jurisdiction, the issue of entering upon the merit does not arise. Counsel for the petitioner therefore seeks for remitting the matter for a fresh consideration before the Civil Court for the relief. The case is of the year 1987 and this Court any way is a Court of jurisdiction both in its revisional jurisdiction under Article 227 against every decision of a Court which is subordinate to it as well as a Court of jurisdiction under Article 226 against every decision of an administration or a quasi judicial authority. A case need not be sent to a Court for merely a repeat consideration of what the petitioner claims in the suit If the property had been treated as a common land and set up act for a common purpose but allowed to be in the hands of the owners for cultivation then the management of the property would still vest with the Panchayat and it would have the power to realize its revenue as well. This is seen through Section 18 of the Act of 1948 which refers to a property reserved for common purpose.

18. Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct-

- (a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;
- (b) that any land under the bed of a stream or torrent flowing through or from the Siwalik mountain range within the 2[State] shall be assigned for any common purpose;

(c) that if any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose.

In relation to any property reserved for a common purpose it shall also have a power to manage and the extent of such power is spelt out in Rule 16. The mere fact that the petitioner was one of the proprietors cannot allow for such a person to maintain an action for injunction against the Panchayat which has the power to manage it in terms of the consolidation proceedings that allow for the property to be used for such purpose spelt out. An injunction relief against the person entitled to manage the property also is impermissible. The ultimate decision of the Commissioner in denying to the petitioner the relief of declaration and injunction was justified, although I would not support the view taken by the Commissioner that after holding that he had no jurisdiction he could not have pronounced on the merits of the case. The denial of the petitioner's relief is on admitted pleadings relating to the classification of the property and the treatment of the property as falling under the management of the Panchayat under the Act. The writ petition is therefore dismissed and the order impugned is confirmed although on different legal terms.