

Rishi Pal and Others Vs State of Haryana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 23, 2011

Acts Referred: East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 " Section 14, 18, 20, 23A, 24

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 " Rule 16, 5, 7

Punjab Village Common Lands (Regulation) Act, 1961 " Section 2, 2(1), 2(6)

Citation: (2011) 163 PLR 291

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

This order will dispose of Civil Writ Petition Nos.2177 of 2011 (Rishi Pal and others v. State of Haryana and others)

2977 of 2011 (Prithvi Singh and others v. State of Haryana and others) 4162 of 2011 (Mange Ram and others v. State of Haryana and others)

5699 of 2011 (Iqbal Singh and others v. State of Haryana and others) 3375 of 2011 (Satish Kumar Sharma and another v. State of Haryana and

others) 4443 of 2011 (Cap. Partap Singh and others v. State of Haryana and others) 4609 of 2011 (Rajinder Singh and another v. State of

Haryana and others) 4642 of 2011 (Angraj Singh and another v. State of Haryana and others) 4681 of 2011 (Inderjeet v. State of Haryana and

others) 5001 of 2011 (Udey Singh and another v. State of Haryana and others) 5382 of 2011 (Satbir and another v. State of Haryana and others)

8026 of 2011 (Ram Singh and others v. State of Haryana and others) 7990 of 2011 (Kehar Singh and another v. State of Haryana and others)

8024 of 2011 (Jagjit Singh and others v. State of Haryana and others) 8025 of 2011 (Zile Singh and another v. State of Haryana and others)

8452 of 2011 (Sher Singh and others v. State of Haryana and others) 1768 of 2011 (Pawan Kumar and others v. State of Haryana and others)

6341 of 2011 (Samsher Singh and others v. State of Haryana and others) 3163 of 2011 (Parkash and another v. State of Haryana and others)

6822 of 2011 (Darbara Singh v. State of Haryana and others) 20992 of 2010 (Amarjit Singh and others v. State of Haryana and others) 21664 of

2010 (Amar Singh and others v. State of Haryana and others) 22209 of 2010 (Ram Kumar and another v. State of Haryana and others) and

22355 of 2010 (Bharath Singh v. State of Haryana and others). Challenge in these writ petitions relates to the action taken by the Gram Panchayat

to allot 100 Sq. Yards residential plots to the families of weaker Section of Society out of the land, which is maqbuza charand/Banjar Qadim/civil

panchayat deh. The grievance is that this land would be of the proprietors, who are the petitioners, and other share holders of MC are in actual

physical possession thereof and, thus, use of this land for the purpose of allotment of plots would be illegal, unconstitutional, unjust, unfair, besides

being wrong erroneous, arbitrary, cumbersome, oppressive, vexatious, unwarranted and uncalled for.

2. For disposal of these writ petitions, the facts are being taken from Civil Writ Petition No. 2177 of 2011.

3. The Scheme framed by the State of Haryana for allotment of 100 Sq. Yards residential plots to the families of scheduled castes and those living

below poverty line was framed on 1.2.2008. This policy was challenged through large number of writ petitions and all those writ petitions came to

be decided through a common judgment titled Rajbir Singh Vs. State of Haryana and Others, . The ground of challenge was almost identical as

raised in the present writ petitions as it was urged that by this action the State is going to take away ownership rights of the proprietors in the land,

which was kept separate during consolidation proceedings by imposing pro-rata cut upon the proprietors. Submission also was made that the

Gram Panchayat had only right to manage and control the land and ownership continued to be mat of the proprietors. This challenge was negated

and the policy, as framed, was upheld. The learned Advocate General, appearing in all those petitions, had made a statement before the Court mat

only the land which falls within the definition of shamlat deh land as defined under the provisions of the Punjab Village Common Lands (Regulation)

Act, 1961 (for short, "the Act") shall be utilized to implement the Scheme. The policy, thus, having been upheld should have buried this issue for all

times to come but this has again been racked up in one form or the other through these petitions. Replies have been filed in all these writ petitions.

It is stated that the Gram Panchayat is fully competent to carve out plots out of maqbuza charand. It is stated that despite use of the land for this

purpose, Gram Panchayat has sufficient land for use of common purposes of the village community and even charand land is meant to be used for

common purposes. It is pointed out that the purpose may not have been open to be changed prior to enactment of Act No. 9 of 1992 but this Act

has Vested such land with the Gram Panchayat, as per the provisions of Section 2(g)(6) of the Act. This Court in Rajbir Singh's case (supra) has

considered all these aspects and after analyzing the definition of shamlat deh has held that the petitioners have no cause. The relevant observations

in this regard are as under:

18. Analysis of above said provisions and the statement made by the Advocate General, Haryana, show that the petitioners have no cause

whatsoever to lay challenge to the Scheme for utilization of the land, which is subject matter of Section 2(g) of the Act. The petitioners/proprietors

have no ownership right thereon. The main dispute is with regard to the land, which was reserved during consolidation proceedings for common

purposes by imposing a pro-rata cut on the right holders. In that land, petitioners are claiming right of ownership, whereas to the contrary, it is case

of the respondents that the land vests in the Gram Panchayat. To sort out that controversy, the State of Haryana has added Sub-clause (6) in

Section 2(g) of the Act by effecting an amendment in the year 1992. That amendment came up for consideration before a Full Bench of this court

in Jai Singh's case, (2003-2)134 P.L.R. 658 (F.B.) (supra). Its validity was upheld by the Full Bench by holding as under.

62. In view of the discussion made above, we hold that: (i) Sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act,

1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948;

(ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23-A of the Act of 1948 and Rule

16(ii) of the Rules of 1949 Jai Singh and Others Vs. State of Haryana, cover all such lands which have been specifically earmarked in a

consolidation scheme prepared u/s 14 read with Rules 5 and 7 and confirmed u/s 20, which has been implemented under the provisions of Section

24 and no other lands;

(iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation

proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared u/s 14 read Rules 5 and 7 and

entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat and in the column of possession

with the proprietors, shall not vest the Gram Panchayat or the State Government, as the case may be, on the dint of sub-section (6) of Section 2(g)

and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

(iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the

State Government or the Gram Panchayat, as the case may be, ever though in the column of ownership the entries may be Jumla Mustarka

Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat etc.

19. In view of the facts, mentioned above, apprehension of the petitioners that their valuable right in property will be taken away, if the Scheme is

implemented is mere imaginary and no benefit can be extended to them on that score.

4. The submission that the Gram Panchayats would have no right to allot plots to the members of the weaker section of the society was also

rejected.

5. Learned counsel for the State has rightly referred to some of the judgments i.e. Khushi Puri and others v. The State of Haryana and others

(1978) 80 PLR 78 P&H ; Bishamber Dayal v. State of Haryana and others 1986 Punjab Law Journal 208; Shish Ram v. State of Haryana

(20003-3) 126 P.L.R. 307 (S.C.) and B.L. Wadhera v. Union of India and others (2002-3) 132 P.L.R. 648, which were also noticed by this

Court in Rajbir Singh's case (supra) wherein it has been held that Panchayat has power to change the use of common purpose land, for which it

was reserved during consolidation proceedings. The land, whether utilized or not, has been held to vest in Gram Panchayat and, thus, the

petitioners can not claim to be the owners of the land in dispute or can not agitate the utilization of this land for this laudable purpose.

6. There is, thus, no case made out for interference in the allotment of all these plots and the writ petitions are dismissed without being any merit.