

**Before Augustine George Masih & Ashok Kumar Verma, JJ.**

**SHER SINGH AND ANOTHER—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No.17883 of 2021**

September 10, 2021

***Constitution of India, 1950—Arts.226 and 227—Punjab Land Revenue Act, 1887—S.13—No automatic stay of judgment/order on filing of appeal—Mutation sanctioned against Petitioners—Gram Panchayat declared owner of land—Appeal preferred by Petitioners U/s 13 of Act pending—Held, writ petition not maintainable—Further held, mere pendency of appeal or application of stay would not make impugned judgment inoperative—Statute does not provide for automatic stay on filing of appeal—Petitioner dismissed.***

*Held that*, mere pendency of the appeal or the application for stay would not make the judgment dated 24.09.2019 inoperative since the Statute does not provide for automatic stay of the order on mere filing of the appeal, the said plea, thus, cannot be accepted.

(Para 11)

*Further held that*, as regards the contention of the learned counsel for the petitioners that the suit for declaration of the petitioners preferred by them under Section 11 (1) of the 1961 Act, is still pending consideration before the Assistant Collector, 1st Grade, Kharar and, therefore, the mutation could not have been sanctioned, is again misplaced.

(Para 12)

Pankaj Bhardwaj, Advocate, *for the petitioners.*

**AUGUSTINE GEORGE MASIH, J.**

(1) These two petitioners have approached this Court praying for quashing of the order dated 17.05.2021 (Annexure P-8) passed by the Assistant Collector, 1<sup>st</sup> Grade, Kharar, Mohali-respondent No. 5 accepting the application of the Gram Panchayat, Mullanpur Garibdas for sanctioning mutation in its favour on the basis of the judgment dated 24.09.2019 (Annexure P-2) passed by The Additional Deputy Commissioner (Development)-respondent No. 3 exercising the powers of Collector, SAS Nagar under Section 11 (1) of the Punjab Village

Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'), whereby the claim of about 400 Khewatdars of Village Mullanpur Garibdas for declaration to the effect that they were owners of the land measuring 2321 Bighas 03 Biswas is a subject matter of challenge in appeal.

(2) It is the submission of the learned counsel for the petitioners that Mutation No. 8568 entered in favour of Gram Panchayat, Mullanpur Garibdas-respondent No. 6 vide order dated 24.09.2019 (Annexure P-2) is not sustainable in the light of the fact that about 400 petitions preferred under Section 11 (1) of the 1961 Act by the proprietors of the village have been decided by The Additional Deputy Commissioner (Development)- respondent No. 3 vide judgment dated 24.09.2019 (Annexure P-2) but the same do not have any effect on the rights of the petitioners as their claim under Section 11 (1) of the 1961 Act along with about 67 other proprietors of the village are pending consideration without any decision, where either the orders have been reserved or the evidence is being recorded. His contention is that in the absence of any finalization with regard to the title of the land in question qua all proprietors, the mutation could not have been entered and thus, the impugned order cannot sustain.

(3) Another argument, which has been raised by the learned counsel for the petitioners, is that against the order dated 17.05.2021 (Annexure P-8) sanctioning Mutation No. 8568 by the Assistant Collector 1<sup>st</sup> Grade, Kharar, Mohali, appeal under Section 13 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as 'the 1887 Act') has been preferred by the proprietors of the village before the District Collector, SAS Nagar, Mohali titled as Naib Singh and others vs. Gram Panchayat, Mullanpur Garibdas, which is listed for hearing on 30.09.2021 and, therefore, the impugned order sanctioning mutation cannot be sustained and deserves to be set aside as the impugned order is not final as yet.

(4) It is the further submission of the learned counsel for the petitioners that even if the judgment dated 24.09.2019 (Annexure P-2) is still in operation as no stay, as of now, has been granted by the Appellate Authority where application for staying the operation of the said judgment is pending consideration, the petitioners cannot be bound by the said judgment when their matters are pending consideration before the competent authority especially in pursuance to the order passed by the Hon'ble Supreme Court in Special Leave Petition No. 8333 of 2011 decided on 28.09.2011. He contends that

these petitions under Section 11 (1) of the 1961 Act have been preferred by the proprietors of the village in accordance with and as per the decision of the Hon'ble Supreme Court and, therefore, unless all the petitions are decided, the mutation, as sanctioned vide the impugned order dated 17.05.2021 (Annexure P-8) by the Assistant Collector, 1<sup>st</sup> Grade, Kharar, Mohali-respondent No.5, cannot sustain. He, therefore, contends that the writ petition deserves to be allowed.

(5) We have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the pleadings and records of the case.

(6) The brief facts, which need to be mentioned as per the pleadings, are that the proprietors of Village Mullanpur Garibdas formed a society under the name of Choe Reclamation Society (hereinafter referred to as 'the Society') for the purpose of maintaining and managing the land, as detailed in para-2 of the writ petition. It is asserted that the Society after registration on 07.02.1939 proceeded to make the land cultivable from the river action and from that time onwards, the possession of the proprietors is reflected in the revenue records. The land in dispute, according to the petitioners, was never reserved nor used for any common purpose of the village community and, thus, is not covered under the definition of 'Shamlat Deh' as laid down in Section 2(g) of the 1961 Act. This land was not reserved in any consolidation proceedings for any common purposes. According to the Jambandi of the year 1945-46, in the column of ownership, it was entered as 'Shamlat Deh Hasab Rasad Zar Khewat' and in the column of cultivation, the entry was 'Makbooja Malkan'. The same position continued in the year 1953-54 Jamabandi. It is asserted that through an executive instruction, Mutation No. 2341 on the basis of Letter No. 4999/568/RHC No. 54 dated 20.04.1954 was entered, whereby the ownership was mutated from Shamlat Deh Hasab Rasad Zar Khewat to Nagar Panchayat Deh. However, the column of cultivation remained same as proprietors of the village were in possession of the land in dispute. This was challenged by the proprietors of the village through the Society and vide Mutation No. 2901 dated 05.04.1963, the ownership was changed and shown to be 'Burdi Bramadgi'.

(7) Gram Panchayat, Mullanpur Garibdas filed an application under Section 7 (1) of the 1961 Act for the ejectment of the Society from the land in dispute on 30.10.1981. The District Development and Panchayat Officer exercising the powers of Collector, Roop Nagar

dismissed the application of the Gram Panchayat, against which, an appeal was preferred in the Court of Additional Director, Panchayat exercising the powers of Commissioner, which was accepted vide order dated 12.08.1992. This order came to be challenged by the Society by filing CWP No. 5270 of 1994, which was allowed by the learned Single Judge of this Court vide order dated 05.11.2011 while setting aside the order dated 12.08.1992 passed by the Appellate Authority, the original order of the Collector, Roop Nagar dated 31.03.1989 was upheld. The Gram Panchayat challenged the same before the Division Bench by filing LPA No. 972 of 2002 which was dismissed on 15.07.2008. The said order was challenged by the Gram Panchayat before the Hon'ble Supreme Court by filing Special Leave Petition No. 8333 of 2011, which was decided on 28.09.2011, whereby the proprietors of the village were called upon to file petitions under Section 11 (1) of the 1961 Act for deciding the title of the land in dispute.

(8) In the light of the observations of the Hon'ble Supreme Court in the above order dated 28.09.2011, the proprietors of the village including the petitioners filed a large number of petitions under Section 11 (1) of the 1961 Act before The Additional Deputy Commissioner (Development) exercising the powers of Collector, SAS Nagar, Mohali, out of which, 400 petitions have been decided vide a common judgment dated 24.09.2019 (Annexure P-2) while the title claim pertaining to 69 proprietors including that of the petitioners are still pending consideration. This common judgment dated 24.09.2019 (Annexure P-2) stands challenged by the proprietors of the village by filing appeals before the Joint Development Commissioner (Panchayats) Punjab at Mohali exercising the powers of the Commissioner under the 1961 Act. Applications for stay of the impugned judgment have also been preferred which are still pending before the Appellate Authority without any decision.

(9) The Gram Panchayat, despite there being an appeal pending consideration before the Appellate Authority against the judgment dated 24.09.2019, approached the Court of Sub-Divisional Magistrate-cum- Assistant Collector (AC) Ist Grade, Kharar for sanctioning mutation in favour of the Gram Panchayat in pursuance to the said judgment.

Upon notice having been issued, objections have been filed by the proprietors taking various pleas including the one that the appeal against the said judgment dated 24.09.2019, which is the basis for

moving the application for sanctioning mutation, is still pending along with the application for stay but still the Assistant Collector, 1<sup>st</sup> Grade, Kharar has proceeded to sanction Mutation No. 8568 of Shamlat Land of Village Mullanpur Garibdas, Block and Tehsil Kharar, District SAS Nagar, Mohali in favour of Gram Panchayat vide order dated 17.05.2021 (Annexure P-8). It has been stated that against this sanctioning of mutation dated 17.05.2021, an appeal under Section 13 of the 1887 Act before the District Collector, SAS Nagar, Mohali titled as Naib Singh and others vs. Gram Panchayat, Mullanpur Garibdas has been preferred which is still pending consideration.

Petitioners, through this writ petition, are challenging Mutation No. 8568 sanctioned in favour of the Gram Panchayat, Mullanpur Garibdas- respondent No. 6 vide order dated 17.05.2021 (Annexure P-8) passed by the Assistant Collector, 1<sup>st</sup> Grade, Kharar, Mohali-respondent No. 5.

(10) The basic plea, which has been raised by the petitioners, is that their petitions under Section 11 (1) of the 1961 Act are still pending consideration before the competent Court for declaration of the title of the land in dispute and, therefore, the mutation could not have been sanctioned. Another plea, which has been raised, is that an appeal has been preferred against the judgment dated 24.09.2019 (Annexure P-2) passed by The Additional Deputy Commissioner (Development)-respondent No. 3 exercising the powers of Collector, SAS Nagar under the 1961 Act, which is pending consideration along with an application for stay and during the pendency of the appeal, such sanction of mutation is illegal and not sustainable.

(11) None of the above grounds, which have been taken by the learned counsel for the petitioners, can be accepted in the light of the fact that the mutation, which has been sanctioned vide the impugned order dated 17.05.2021, is based upon the judgment dated 24.09.2019 (Annexure P-2), whereby the claim of the proprietors of the village for declaring them the owners of the land in question stands decided against them and their claim has been rejected. The Gram Panchayat, therefore, is the owner of the land in question.

Mere pendency of the appeal or the application for stay would not make the judgment dated 24.09.2019 inoperative since the Statute does not provide for automatic stay of the order on mere filing of the appeal, the said plea, thus, cannot be accepted.

(12) As regards the contention of the learned counsel for the

petitioners that the suit for declaration of the petitioners preferred by them under Section 11 (1) of the 1961 Act, is still pending consideration before the Assistant Collector, 1<sup>st</sup> Grade, Kharar and, therefore, the mutation could not have been sanctioned, is again misplaced. As and when a decision is taken and the suit filed by them under Section 11 (1) of the 1961 Act is accepted declaring the petitioners the owner of the land in question, the necessary corrections/amendments in the mutation can be claimed and carried out.

(13) That apart, it needs to be pointed out here that against the order dated 17.05.2021, whereby Mutation No. 8568 has been sanctioned in favour of the Gram Panchayat, Mullanpur Garibdas-respondent No. 6, appeal under Section 13 of the 1887 Act before the District Collector, SAS Nagar, Mohali stands preferred which is pending for 30.09.2021. The statutory remedy against the said order, which is impugned in the present writ petition, having been availed, the present writ petition would not be maintainable and on this ground alone, the writ petition deserves dismissal.

(14) Leaving all these aspects apart, it is a settled proposition of law by now in various judgments which have been passed by the Hon'ble Supreme Court starting from *Gurbaksh Singh versus Nikka Singh*<sup>1</sup> followed by *Smt. Sawarni versus Smt. Inder Kaur*<sup>2</sup>, *Balwant Singh versus Daulat Singh (dead) by LRs*<sup>3</sup>, *Suraj Bhan versus Financial Commissioner*<sup>4</sup> as also in the judgment of the Supreme Court in *Smt. Bhimabai Mahadeo Kambekar (D) through LR versus Arthur Import and Export Company and others*<sup>5</sup>, Special Leave to Appeal (C) No. 5743 of 2020 titled as *The Commissioner Bruhath Bangalore Mahanagara Palike and another versus Faraula Khan and another*, decided on 25.01.2021 and Special Leave to Appeal (C) No. 13146 of 2021 titled as *Jitendra Singh vs. The State of Madhya Pradesh and others*, decided on 06.09.2021, wherein it has been held that mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose and the rights of the parties can

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<sup>1</sup> 1963 Suppl. (1) SCR 55

<sup>2</sup> 1996 (7) JT SC 580

<sup>3</sup> (1997) 7 SCC 137

<sup>4</sup> (2007) 6 SCC 186

<sup>5</sup> (2019) 3 SCC 191

only be crystalized on the basis of the decision before the competent Court of jurisdiction.

(15) So far as the title of the property is concerned, it stands concluded by various judgments that it can only be decided by a competent Civil Court. This view has been expressed in *Jattu Ram versus Hakam Singh and others*<sup>6</sup>, *Suman Verma versus Union of India*<sup>7</sup>; *Fagruddin versus Tajuddin*<sup>8</sup>; *Rajinder Singh versus State of J&K*<sup>9</sup>; *Municipal Corporation, Aurangabad versus State of Maharashtra*<sup>10</sup>; *T.Ravi versus B. Chinna Narasimha*<sup>11</sup>; *Prahlad Pradhan versus Sonu Kumhar*<sup>12</sup>; and *Ajit Kaur versus Darshan Singh*<sup>13</sup>.

(16) The rights of the petitioners having not been affected by the impugned order dated 17.05.2021, as stated above, we do not find any illegality in the same calling for intervention of this Court in the exercise of its writ jurisdiction especially when there is an alternative effective statutory remedy of appeal available under Section 13 of the Punjab Land Revenue Act, 1887 which remedy also stands invoked and is pending.

(17) For the foregoing reasons, we do not find any ground to interfere in the matter and dismiss the writ petition.

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*Dr. Sumati Jund*

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<sup>6</sup> AIR 1994 SC 1653

<sup>7</sup> (2004) 12 SCC 58

<sup>8</sup> (2008) 8 SCC 12

<sup>9</sup> (2008) 9 SCC 368

<sup>10</sup> (2015) 16 SCC 689

<sup>11</sup> (2017) 7 SCC 342

<sup>12</sup> (2019) 10 SCC 259

<sup>13</sup> (2019) 13 SCC 70