

**Civil Writ Petition No. 22723 of 2011 Vs. Civil Writ Petition No. 22723 of 2011**

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**Court :** Punjab and Haryana

**Decided On :** Nov-21-2012

**Appellant :** Civil Writ Petition No. 22723 of 2011

**Respondent :** Civil Writ Petition No. 22723 of 2011

**Judgement :**

Civil Writ Petition No.22723 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH -- Civil Writ Petition No.22723 of 2011 Date of decision:

21. 11.2012 Balwant Singh .....Petitioner Versus Director, Land Records, Punjab, Jalandhar and others .....Respondent(s) Coram: Hon'ble Mr.Justice Rajive Bhalla Hon'ble MRS.Justice Rekha Mittal -.- Present: Mr.G S Nagra, Advocate for the petitioner Mr.Rajinder Goyal, Addl.

A G, Punjab for respondent No.1 Mr.Amit Jain, Advocate for respondent No.2 Mr.V K Sandhir, Advocate for respondent No.3 -.- 1.

Whether Reporters of local papers may be allowed to see the judgment?.

2. To be referred to the Reporter or not?.

3. Whether the judgment should be reported in the Digest?.

**Rajive Bhalla, J.**

(Oral) The petitioner prays for issuance of a writ of certiorari quashing order dated 02.08.2011 passed by the Director, Land Records, Punjab, Jalandhar.

The short point that arises for adjudication is, whether the Director, Land Records, Punjab, Jalandhar, could have ordered transfer/exchange of the Gram Panchayat Property and, if so empowered, could pass the impugned order without impleading the Gram Panchayat.

Pritam Singh-respondent No.2 filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred as 'the Consolidation Act') Civil Writ Petition No.22723 o

2. praying that land, in dispute, should be transferred to him as no path was allotted during consolidation.

However, he did not implead the Gram Panchayat but, instead, impleaded Balwant Singh son of Rattan Singh, the petitioner, as a respondent.

The petitioner alleged that as the land, is in his possession and is his ownership, it should not be allotted to Pritam Singh.

The Director, Land Records, Punjab, Jalandhar, allowed the petition and allotted the land to respondent No.2.

Counsel for the petitioner submits that neither the possessory not proprietary rights of the petitioner have been considered.

The impugned order has been passed, without impleading Gram Panchayat.

The impugned order records an exchange of land between respondent No.2 and the Gram Panchayat.

The Director, Land Records, Punjab, Jalandhar has no jurisdiction to order exchange of land, much less of land belonging to the Gram Panchayat.

Counsel for respondent No.2 submits that the land, in dispute, is in illegal possession of the petitioner and proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (in short, 'the 1961 Act') are pending against him.

A petition, filed under Section 11 of the 1961 Act, to claim ownership of the land, in dispute, has been decided against the petitioner on 25.05.2012.

It is also submitted that as Pritam Singh-respondent No.2 was not provided a path during consolidation, the impugned order providing path to him is legal and valid.

Counsel for respondent No.3-Gram Panchayat submits that the land, in dispute, belongs to Gram Panchayat but as the Gram Panchayat was not impleaded as a party/respondent, the impugned order may be set aside.

We have heard counsel for the parties, perused the impugned Civil Writ Petition No.22723 o

3. order and do not hesitate, even for a moment, in setting aside the impugned order, as the Director, Land Records, Punjab, Jalandhar had no jurisdiction to pass the impugned order.

The land, in dispute, is clearly recorded as 'shamilat taraf mahmed hasab rasad' and, therefore, vests in the Gram Panchayat.

The Director, Land Records, Punjab, was aware of this fact but chose to ignore it and proceeded to transfer the land, in dispute, to respondent No.2.

This apart, the impugned order is in the nature of an exchange.

The power to effect an exchange of its property, lies with the Gram Panchayat, under Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 (in short, 'the 1964 Rules') and then also with prior approval of the State.

In addition, the Director, Land Records, Punjab, entertained the petition after a delay of 50 years. In view of what has been discussed here-in-above, the writ petition is allowed, the impugned order is set aside and the matter is remitted to

the Director, Land Records, Punjab, Jalandhar, to consider the petitioner's prayer, for grant of passage, in accordance with law.

It is also made clear that the Director, Land Records, Punjab, Jalandhar, shall not, whether by making any correction or otherwise transfer land belonging to the Gram Panchayat either to respondent No.2 or to other Parties are directed to appear before the Director, Land Records, Punjab, Jalandhar, on 15.01.2013.

(Rajive Bhalla) Judge (Rekha Mittal) Judge 21.11.2012 moham

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