

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-2290-2021 (O&M)
Date of decision : 02.05.2023

GURCHARAN SINGH AND OTHERS

....PETITIONERS

VERSUS**JOINT DEVELOPMENT COMMISSIONER, PUNJAB AND ANOTHER**

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.K. Garg, Advocate for
Mr. J.S. Bhandohal, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. V.K. Sandhir, Advocate
for the respondent No.4.

KULDEEP TIWARI, J.**FACTUAL BACKGROUND**

1. Through a petition instituted before the Id. Collector concerned, under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, (hereinafter referred to as the 'Act of 1973'), the respondent No.2- Gram Panchayat, sought eviction of the petitioners from the petition land(s). The petition (supra) was accepted by the Id. Collector concerned, vide its order dated 05.09.2019, thereby ordering for the eviction of the petitioners from the petition land(s).

2. Feeling aggrieved by the eviction order (supra), the petitioners threw a challenge thereto, by filing a statutory appeal before the learned statutory authority, i.e. respondent No.1. However, the appeal so preferred by

the petitioners was also dismissed vide order dated 16.12.2020.

3. Consequently, the petitioners, through the instant writ petition, challenge the concurrently made orders against them by the statutory authorities below.

SUBMISSIONS BY COUNSELS FOR THE PARTIES

4. The learned counsel appearing for the petitioners has submitted that the petition land(s) has been recorded as “*Gair Mumkin Abadi*” in the revenue record, thus the petition land(s) is excluded from the definition of “*Shamlat Deh*”, as defined in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the ‘Act of 1961’). Therefore, he argues against the maintainability of petition (supra), whereon, the impugned order(s) was passed. Rather, he argues that a lawful eviction petition was to be filed by invoking the provisions of Section 7 of the Act of 1961, instead of a petition being instituted under Sections 4 and 5 of the Act of 1973. Apparently, in the ownership column of the Jamabandi drawn in respect of the petition land(s), for the years 2012-2013, the petition land(s) is entered therein as “*Jumla Mushtarka Malkan va Digar Haqdaran Arazi Deh Hasab Rasad Raqba Khewatdar*”, in the column of possession, the petition land(s) is described as “*Maqbuja Malkan*”, besides, is recorded as “*Gair Mumkin Abadi*” in the column of nature of land thereof.

5. On the basis of the above entry occurring in the column of ownership, in the Jamabandis relating to the petition land(s), the learned counsel for the petitioners further argues that in terms of Rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as the ‘Rules of 1949’), the said assigned revenue

term to the petition land(s), in the column of ownership makes the Gram Panchayat concerned to become vested with rights of management and control only, however, the ownership in respect of the above designated land(s), does not vest in the Gram Panchayat concerned, rather it continues to vest in the village proprietary body concerned. Therefore an argument is posed before this Court, by the learned counsel for the petitioners, that since the Gram Panchayat is not the owner of the petition land(s), therefore it was incapacitated to institute a petition even by invoking the provisions of Section 7 of the Act of 1961. The provisions of Rule 16(ii) of the Rules of 1949 stand extracted hereinafter:-

[Rule 16(ii)-- In an estate or estates where during Consolidation proceedings there is no Shamlat Deh land or such land is considered inadequate, land shall be reserved for the village Panchayat and for other common purposes, under section 18(c) of the Act, out of the common pool of the village [at the scale given in the schedule to these rules]. Proprietary rights in respect of land so reserved (except the area reserved for the extension of abadi of the proprietors and non-proprietors) shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of records rights as (Jumla Malkan wa Digar Haqdarana Arzi Hasab Rasad Raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefit of the estate or estates concerned.]

ANALYSIS

6. The initially made submission, before this Court, by the learned

counsel for the petitioners, that “*abadi deh*” land(s) fall outside the definition of “*shamlat deh*” land(s), is a well made argument, as it is well rested upon the provisions of Section 2(g) of the Act of 1961, which are reproduced hereunder.

“2. Definition- In this Act, unless the context otherwise requires.

xx xx xx

(g) “*Shamlat deh*” includes

(1) Land described in the revenue records as *Shamlat deh* excluding *abadi deh*.

xx xx xx

[(4a) vacant land or plot situated in *abadi deh* or *gorah deh* not owned by any person; and]

xx xx xx”

7. Therefore, when in respect of the “*abadi deh*” land(s), corresponding thereto entries exist in the revenue record(s), it becomes open to the *abadi* owners concerned, to raise their houses within the land(s) described in the revenue record(s) as “*abadi deh*”, but such houses are to be existing only within the dimensions of the old *abadis* thereon. If, in respect of land(s) described in the revenue records as “*abadi deh*” land(s), the Gram Panchayat has no ownership, as “*abadi deh*” land(s), in view of the above extracted provisions, falls outside the realm of “*shamlat deh*” land(s), except the vacant/open land, as described in Section 2(g)(4a) of the Act of 1961, therefore, if any dispute, at all, with regard to “*abadi deh*” land arises, the co-*abadi* owners can seek the relief of permanent prohibitory injunction, or, mandatory injunction, not through recourse being made through the statutory authorities, contemplated in the Act of 1961, but through recourse being made

to the civil court concerned. Leaving aside the above, this Court is also of the view that the above conclusion, that in respect of the land(s) recorded in the revenue record(s) as “*abadi deh*”, does not make such land(s) to fall within the ambit of “*shamlat deh*” land(s), nor the Panchayat has any right, title or interest over said land(s), except “*shamlat deh*” land(s).

8. A reading of the revenue entry relating to the petition land(s), discloses that the petition land(s) is described not as “*Abadi Deh*”, but, as “*Gair Mumkin Abadi*”. The import of “*Gair Mumkin Abadi*”, and, of “*Abadi Deh*” is completely contradistinct, and/or, both carry different significations. Thus, necessarily both do not require applications thereon, of the above exclusionary clause, to the definition of “*shamlat deh*” land(s).

9. The reason for making the above conclusion originates from the factum that there has to be specific entry in the revenue record(s) that the land(s) concerned is “*abadi deh*”, and thereupon alone, the above exclusionary clause would be applicable to such recorded entry. The legal incidence of any land(s) entered in the revenue record(s) as “*abadi deh*” is that the abadi owners can raise their abadis on the land(s) described in the revenue record(s) as “*abadi deh*” (The land which is not cultivable because of inhabitation over it). Contrarily, any land(s) entered in the revenue record(s) as “*Gair Mumkin Abadi*” does not carry a co-equal legal incidence, as is impartible to land(s), described in the revenue record(s), as “*abadi deh*” land(s).

10. Further, if, in the column of ownership, the land(s) is recorded as “*Jumla Mushtarka Malkan*”, and, in the column of possession as “*Maqbuja Malkan*”, therefore, as stated above, in respect of such land(s), in terms of Rule 16(ii) of the Rules of 1949, the Gram Panchayat is only vested with

management and control thereof, but ownership in respect thereof, continues to vest in the village proprietary body concerned. However, in the wake of the above, though the petition land(s) is entered in the relevant column to be “*Gair Mumkin Abadi*”, but, in the column of ownership, as stated above, there is no entry of “*abadi deh*”. Therefore, the lack of the above entry of “*abadi deh*” existing in the ownership column and with its holding the above incidence, thus makes this Court to conclude that the Gram Panchayat concerned, when did not hold absolute ownership over the land(s) carrying the above descriptions in the column of ownership, the legal sequel thereof is that when otherwise the land(s) is required to be owned by the Gram Panchayat, for its being well enabled to institute a lawful motion under Section 7 of the Act of 1961, whereas, the petition land(s) never became owned by the Gram Panchayat. Therefore, the institution of an eviction petition, under Sections 4 and 5 of the Act of 1973, is a valid motion. In drawing the above conclusion, this Court draws fortification from a judgment made by a Full Bench of this Court, in ***CWP-2318-2002***, titled “***Prakash Singh & others V/s Joint Development Commissioner, Punjab & others***”, and, the relevant paragraph whereof are extracted hereinafter.

“The 1961 Act was enacted, so as to consolidate, amend the law regulating rights in “Shamilat Deh” and “Abadi Deh”. The 1961 Act is confined to rights in “Shamilat Deh” and “Abadi Deh”. Section 2(g) of the 1961 Act defines “Shamilat Deh” by including land described in Section 2(g)(1 to 5) and excluding land described in Section 2(g)(i) to (ix) in “Shamilat Deh”. Section 2(g) of the 1961 Act (reproduced in the earlier part of the judgment) does not declare that land reserved for common purposes, during consolidation by a Consolidation Officer, after applying a pro-rata cut , i.e.,

"Jumla Mushtarka Malkan" shall also be included in "Shamilat Deh".

11. Though, at this stage, the learned counsel for the petitioners argues that since the State of Punjab, through the Punjab Village Common Lands (Regulation) Amendment Act, 2022, has now included land(s) designated as "*Jumla Mushtarka Malkan*" within the ambit of the definition of "*shamlat deh*", as defined in Section 2(g) of the Act of 1961, therefore, it is argued that the principle of law (supra), as becomes enunciated in ***Parkash Singh's case*** (supra) becomes completely whittled down. Furthermore, it is also argued that the eviction petition, as cast under Sections 4 and 5 of the Act of 1973, was misconstituted, however, the above argument is completely misplaced, not only on the grounds as carried in the case of ***Subegh Singh Vs State of Punjab***, in ***CWP-27471-2022***, to be holding prospective effect, but also on the ground that since obviously the principle of law (supra), relating to maintainability of a petition under the Act of 1973, also when the issue of maintainability of petition has been answered in favour of the Gram Panchayat concerned. Therefore, since the principle of law (supra), as enunciated in ***Parkash Singh's case*** (supra) has not been established to be quashed or set aside by the Hon'ble Supreme Court, resultantly, irrespective of the above amendment being made, which is prospective for the above reasons, also does not invest in the petitioners to argue that the Gram Panchayat was to enforce the remedy as contemplated in Section 7 of the Act of 1961.

12. Though this Court finds, that the above argument made before this Court, by the learned counsel for the petitioners, relating to the maintainability of a petition under Sections 4 and 5 of the Act of 1973 is not a

well made argument and also for the further reason that when in respect of the above revenue terms being assigned to the petition land(s), and which were assigned to them, by the Consolidation Officer concerned, in his preparing the finalized consolidation scheme, though may have well capacitated the petitioners to challenge the said designations, as made in the consolidation scheme, to the petition land(s). However, the said challenge was not made. Contrarily, they have chosen to invalidate the impugned orders, merely on the premise of the maintainability of the petition, before the learned Collector, under the Act of 1973. Therefore, the petitioners are estopped to now make a declaratory suit challenging the creation of the said descriptions, by the Consolidation Officer, in his drawing the finalized consolidation scheme. The further reason for effecting the above bar against the petitioners become aroused from the factum that the common purposes, for which the Consolidation Officer can, in the “*Jumla Mushtarka Malkan*” land(s), make contemplations are the ones enumerated in Section 2(bb) of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, provisions whereof are extracted hereunder:-

Section 2. Interpretation.-- In this Act, unless there is anything repugnant in the subject or context-

(a) XX XX XX

(b) XX XX XX

[(bb) “ common purpose” means any purpose in relation to Village and includes the following purpose: -

(i) extension of the village abadi

(ii) providing income for the Panchayat of the village concerned for the benefit of the village community.

(iii) village roads and paths; village drains, village wells,

ponds or tanks, village watercourses or water-channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar, grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and

(iv) schools and play-grounds, dispensaries, hospitals and institutions of like nature; water works or tube-wells, whether such schools, playgrounds, dispensaries, hospitals, institutions, waterworks or tube-wells may be managed and controlled by

the State Government or not.

(C) XX XX XX”

13. The sum of the common purposes, as envisaged therein, relates to the extension of the village abadi. Thus, obviously an entry was required to be made, after conclusion of the consolidation scheme, that apart from the land(s) already entered as “*abadi deh*” land(s) in the revenue record(s), the petition land(s) is also required to be entered as “*abadi deh*” land(s) in the revenue record(s). However, there is no record establishing the factum that in the finalized consolidation scheme, the consolidation officer concerned had proposed that the petition land(s) be entered as “*abadi deh*” land(s), in the revenue record(s). Contrarily, the petition land(s) is entered as “*Gair Mumkin Abadi*” and in the column of ownership, the entry of “*Jumla Mushtarka Malkan va Digar Haqdaran Arazi Deh Hasab Rasad Raqba Khewatdar*” exists. Since in respect of the above entry, the Gram Panchayat has management and control only, therefore, in the said capacity, when any of the person(s) concerned, raises a “*Gair Mumkin Makan*” on the land(s) described in the ownership column with above description, it becomes enabled to seek

his eviction therefrom, as a “*Gair Mumkin Makan*” raised on land(s) described in the ownership column, is for the above reason, not a common purpose, for which the land(s) was reserved in the finalized consolidation scheme, unless there was a proposal in the consolidation scheme, and, resulted in an entry of “abadi deh” being made. Since, as above stated, the entry does not exist.

CONCLUSION

14. As a sequel to the above made discussions, we do not find any merit in the instant writ petition and the same is accordingly **dismissed**.

(SURESHWAR THAKUR)

JUDGE

02.05.2023

devinder

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No