

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 7891 of 1989 (O&M)

Reserved on 18.8.2023

Date of Decision: 22.8.2023

Amar Singh and another

.....Petitioners

Versus

Commissioner, Hisar Division, Hisar and others

....Respondents

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

Argued by: Mr. Robin Dutt, Advocate
for petitioner No. 2.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners claim relief for quashing of the impugned orders dated 8.6.1984 (Annexure P-2), and, dated 29.3.1989 (Annexure P-3).

Factual background

2. The plaintiffs instituted case No. 1/Misc. of 11.5.1981, before the Assistant Collector Ist Grade, Dadri. In the said suit, they challenged the attestation of mutation No. 142, by the revenue officer concerned, whereby right, title and interest over the suit land, became conferred, upon the Gram Panchayat concerned. Moreover, they also claimed a declaratory relief, that they in terms, of the apposite savings clause, as occurs in Section 2(g)(5) (viii) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), were thus through their predecessors-in-interest, hence holding independent cultivating possession of the suit land. Therefore,

the suit land(s) was not amenable for being classified as shamilat deh land(s). Contrarily they pleaded that since in detraction from the applicability of the apposite savings clause to the suit land, the contested mutation No. 142, became attested in favour of the Gram Panchayat concerned, thereby the said contested mutation, is liable to be set aside.

“(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950.”

3. Through a decision made on the lis (supra), on 9.2.1983 (Annexure P-1), the learned Assistant Collector concerned, on the hereinafter extracted issues, as became framed by him, thus made conclusions, that the declaratory relief, as espoused in the plaint (supra), is liable to be granted to the plaintiffs. Therefore, through the order dated 9.2.1983 (Annexure P-1), the plaintiffs’ suit became decreed.

- (1) *Whether the land in dispute is not ‘Shamlat Deh’ as defined in the Village Common Lands Act, if so to what effect ? OPP*
- (2) *Whether the mutation No. 142 is void for the reasons given in para Nos. 3 and 4 of the plaint? OPP (Issue objected to)*
- (3) *Whether the suit is within limitation ? OPP*
- (4) *Whether the suit is not maintainable and the plaintiffs have no locus standi to suit ?OPD*
- (5) *Whether the Nobat Ram has the authority to defend the suit ? If not to what effect ? OPD*
- (6) *Relief.*

4. The aggrieved therefrom i.e. the Gram Panchayat concerned, preferred an appeal thereagainst through its instituting Appeal No. 33-E, before the Collector concerned. The Appellate Authority concerned, through its making a decision thereons, on 8.6.1984 (Annexure P-2), allowed the said statutory appeal, and, thereby annulled the verdict, as carried in Anneuxre P-1.

5. The estate holders concerned, becoming aggrieved from the drawings of Annexure P-2, constituted thereagainst Revision No. 6 of 1983-84, before the Revisional Authority concerned, who through a decision made thereons, on 29.3.1989 (Annexure P-3), after concurring with Annexure P-2, declined the declaratory relief to the estate holders concerned. The above concurrently made verdicts, as respectively carried in Annexure P-2, and, in Annexure P-3, bring grievance to the estate holders concerned-the petitioners herein. Therefore they are led to constitute thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners

6. The learned counsel for the petitioners, has made a vigorous submission before this Court, that the bar of limitation, as was erected against the estate holders concerned, both by the appellate authority concerned, and, thereafter by the revisional authority concerned, inasmuch as, the contentious mutation becoming drawn in the year 1964, whereas, the civil suit being instituted in the year 1981, thereby the same attracted thereagainst, thus the bar of limitation, rather is a fallaciously drawn inference. In making the above address, he submits, that though prima facie the contested mutation No. 142 of 1964, which thus became recorded in favour of the Gram Panchayat concerned, was with the purported consent of the predecessors-in-interest of the petitioners-plaintiffs. However, he submits that no tangible evidence has been brought on record by the Gram Panchayat concerned, to support the above factum.

For the reasons to be assigned hereinafter the above made submissions has no legal worth, and, this Court would lead to reject the said submissions.

7. The conspicuous reason for rejecting the above submission, is planked, upon the factum, that the plaintiffs had instituted a suit claiming the

rendition of a declaratory relief in their favour in respect of the disputed lands. In the said suit, on the pleadings of the parties, one of the issues, which became struck by the Assistant Collector concerned, was issue No. 2, issue whereof is extracted hereinabove, and, is re-extracted hereinafter, and, whose perusal does reveal, that the onus of proving that the attestation of contentious mutation was void on any ground whatsoever, rather became cast upon the plaintiffs.

“(2) Whether the mutation No. 142 is void for the reasons given in para Nos. 3 and 4 of the plaint? OPP (Issue objected to).”

8. If the apposite discharging onus became rested upon the plaintiffs. Therefore, it was imperative for them to adduce evidence, thus exemplificatory, that prima facie, in the making of the said order of mutation, reliance if any, as became placed by the revenue officer concerned, upon the recorded consent, if any, becoming thereto meted by the predecessors-in-interest of the plaintiffs, rather becoming not supported by the proceedings drawn by the revenue officer concerned. Consequently, the best evidence to nullify the effect, if any, of the said mutation being consensually recorded, became comprised in the adduction into evidence, of the entire proceedings, as became drawn by the revenue officer concerned, in his making the said contentious mutation. If from the adduced proceedings, it erupted that no consent to the attestation of the contentious mutation, thus by the estate holders concerned, hence became meted to the revenue officer concerned. Resultantly, in the above event, the plaintiffs could be well concluded to discharge the onus of proving that the said attestation of mutation was void. However, in the above regard, the evidence (supra), remained unadduced. In consequence, it has to be

concluded, that the attestation of mutation (supra), was made with the consent of the predecessors-in-interest of the petitioners-plaintiffs. In consequence, the petitioners are estopped to, for want of the above discharging evidence being adduced qua the onus (supra), thus submit that the said contentious mutation was not consensually drawn.

9. Be that as it may, the further sequel of the above conclusion, is that, when there was open knowledge both to the predecessors-in-interest of the petitioners-plaintiffs, and, on their respective demise(s), of the plaintiffs also about the making of the said contentious mutation. Therefore, the period of limitation for challenging the said attestation of mutation commenced but from the year 1964, and, as ordained by the relevant provisions of the Limitation Act, 1963, lasted as aptly concluded by the authorities below, thus only upto a period of one year thereafter. Nonetheless, the suit became filed much belatedly from the above ordained period of limitation, thus for making a valid challenge to the said order of mutation.

10. Though, there is no bar of limitation to any fraudulently entered mutation or to a vitiated mutation, inasmuch as, in its attestation the revenue officer concerned, not bearing in mind the lawful entries in the revenue records, prior to his proceeding to make the said mutation, or to any validly drawn document of title, which despite revealing that the petitioners were amenable to be granted the benefit of the apposite savings clause (supra), yet his proceeding to make the said contentious mutation.

11. However, in the above regard, thus for ensuring that the bar of limitation, does not get attracted against the belated institution of the civil suit, at the instance of the petitioners-plaintiffs, in the year 1981, especially

given the contentious mutation becoming attested in the year 1964, thus the

petitioners-plaintiffs, were required to place on record, but tangible evidence hence magnifying the trite fact, that despite the revenue entries, as carried in the revenue records, prior to 1950, displaying qua their predecessors-in-interest, in terms of the above savings clause to the definition of shamilat deh lands, rather holding independent cultivating possession of the suit land(s), yet the said mutation becoming attested by the revenue officer concerned.

12. However, upon the above score of the apposite mutation being thus evidently void, thereby hence the bar of limitation, rather would not become attracted to the belated institution of the civil suit at the instance of the petitioners-plaintiffs. In the above regard, the revenue entries prior to the year 1950 does declare the suit land(s) to be banjar kadim.

13. Therefore, when the ingredients, as carried in the above referred apposite clause declare, that the predecessors-in-interest of the petitioners-plaintiffs, were required to be evidently holding independent cultivating possession of the suit land(s), but prior to 1950. Resultantly, the import of the coinage “independent cultivating possession” is none other than the suit land(s), being tilled or being under cultivation”, and, obviously theirs not being barren or banjar kadim lands. Since the lands are declared in the said jamabandi, and, to which a presumption of truth is attached, rather to be banjar kadim or barren lands, and, also when said presumption of truth attaching to the said entries rather remained undislodged by adduction of cogent evidence. Therefore, the said entries acquire a conclusive aura of truth. The sequel thereof, is that, any uncultivated, barren or untilled tract of land, cannot as stated (supra), thus become construed to be in the independent cultivation of the present petitioners hence through their

predecessors-in-interest. In short, the benefit of the apposite savings clause

is not to be assigned to the estate holders concerned.

14. In summa, this Court does not find any merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned orders are maintained and affirmed.

15. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 22, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No