

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 3611 of 1995 (O&M)

Reserved on : 28.11.2023

Date of Decision: 16.12.2023

Sohan Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. M.L.Saini, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Munish Gupta, Advocate
for respondents No. 2 and 3.

Mr. J.S.Brar, Advocate
for respondents No. 4 and 5.

SURESHWAR THAKUR, J.

1. The present petitioner through the instant petition, thus pray for quashing of orders dated 18.11.1991 (Annexure P-3), dated 12.2.1993 (Annexure P-4), and, order dated 20.1.1995 (Annexure P-6).

Facts of the case

2. It is averred in the petition, that the consolidation proceedings in the revenue estate concerned, were concluded in the year 1989-90. However, prior to the completion of the finalized consolidation scheme, thus in the year (supra), a draft consolidation scheme was prepared vide item No. 23, and, it was provided, that in case some estate holder, had purchased/mortgaged the land, from the previous owner, thereby he will be given possession of the land, in the tak of the original owner, hence as gair

marusi under him.

3. It is further averred in the petition, that it was in the year 1961, when the petitioner was a minor, that Teja Singh, father of respondents No. 2 to 5, exchanged land with Jangir Singh, father of respondents No. 6 and 7. Copy of the said exchange deed is appended as Annexure P-1 with the instant petition. In the said exchange deed, it is specifically mentioned, that the disputed land, is given to the petitioner, and, to the said Teja Singh along with rights in shamlat deh. Furthermore, mutation of the exchange was also entered, and, the petitioner took possession of the shamlat deh land, thus along with Teja Singh. However, during the course of consolidation proceedings, whereby partition of the shamlat deh land took place, thus therein, the share of the petitioner was kept joint with Teja Singh, and, with the father of respondents No. 6 and 7-Jangir Singh. It is further averred in the petition, that Jangir Singh became not entitled to any share in shamlat deh land, as he had exchanged the land with the petitioner and with Teja Singh, hence along with his share in shamlat deh khewat. Subsequently, the petitioner avers, that he had also purchased the land holdings of Teja Singh along with the share of said Teja Singh, thus in the shamlat deh land, thereby it is averred, that the petitioner, was in possession of the total share in the shamlat deh land, which otherwise accrued jointly to him, to the said Teja Singh and Jangir Singh. In short, the petitioner averred, that both Teja Singh and Jangir Singh, thereby held no right, title and interest in the shamlat deh lands or in their respective properties, nor thereby there was any requirement of any allotments of land being made to them, in the finalized consolidation scheme.

4. Nonetheless, the petitioner contends, that the missal hiquiat became wrongly prepared, and, since therein allotments were made in favour

of Jangir Singh and Teja Singh, thus the above respondents filed, a petition before the Additional Director Consolidation rather for separation of their shares, in the joint shamlat khewat, or in other words they filed a petition for partition of their shares in the joint shamlat/shamlat khewat. The said petition was allowed, leading the petitioner to institute CWP No. 5627/1990 before this Court, and, thereons, on 11.9.1990, the hereinafter extracted order was passed.

“During the course of hearing, the learned counsel for the private respondents No. 2 to 5 states that since the impugned orders Annexures P-3 and P-5 have been passed without affording an opportunity to the petitioner, the same be set aside and the case be sent back to the concerned authority for decision afresh in accordance with law. The learned counsel for the petitioner is also agreeable to this approach. We, therefore, set aside the impugned orders, Annexures P-3 and P-5, dated 20.10.1989 and 20.2.1990, respectively and send the case back to the Additional Director/Director for decision afresh in accordance with law.

The writ petition is disposed of as indicated as above.”

5. The challenge, as made to the impugned annexures, is grounded on the factum, that they have been rendered in gross violation of Annexure P-2, therefore, it is necessary to extract the directions, as are incorporated in Annexure P-2, as such, the said directions are *ad verbatim* extracted hereinafter.

“This petition has been preferred against re-partition. The petitioner contends that he has purchased this land vide sale deed. But Consolidation Staff has not given to him share in shamlat. The same be allotted to me. I perused the sale deed on which it is written “SALE”. So this case is hereby remanded to the Consolidation Officer with the direction that the case be decided afresh on merits after perusal of the record and scheme

and according to law. The parties are directed to appear before the Consolidation Officer on 19.8.1991. The order pronounced in the open Court. The file be consigned to record room, after compliance.”

6. Though, a perusal of the above extracted directions, as embodied in Annexure P-2, reveals, that therein unfoldings occur, that the remandee Court was required to bear in mind the sale deed, yet the consequent thereto made annexures, appear to, either pretextually, and/or, for cryptically recorded reasons, thus overlook the said sale deed, but merely on the ground, that it may not pertain to the suit lands or to the writ lands. Conspicuously, a reading of Annexure P-2 reveals, that therein no relevance became assigned to the sale deed, but on the ground that it may not appertain to the suit khasra numbers.

7. Be that as it may, since the purchase, as was made by the petitioner, was during the pendency of the consolidation operations, being underway in the mohal concerned, thereby when at that stage, the subject lands rather were thrown into a common hotch-potch, thereby when no specific khasra numbers became assigned thereto, whereas, the assignment of khasra number to the lands, which are the subject matter of consolidation, rather prima facie occurs, but post the completion of consolidation operations, rather in the revenue estate concerned. Consequently, it appears that a more deeper, and, closest scrutiny of the sale deed rather was required, so as to enable the petitioner to establish that Annexure P-1, as a matter of fact, relates to the alienations, as made to him by one Teja Singh viz-a-viz his shares in the apposite shamlat khewat, and, in his private estates, besides to ensure that thereby one Jangir Singh, thus had also completely alienated his shares in the shamlat deh land, and, his privately held properties, rather

deed has not been made, but only on a pretextual reason rather founded, upon, of no compatibility emerging *inter se* the khasra numbers, thus with the suit khasra numbers mentioned therein, which otherwise for the above reasons, may have been overcome, thus on a studied perusal of the post consolidation records, hence becoming made, that thereby the apposite sale deed has been overlooked, thereby causing gross injustice to the present petitioner.

8. In sequel, after quashing the impugned orders, the matter is remanded to the authority concerned, to after, giving an opportunity to all concerned, to adduce all the apposite evidence, for thereafter, the Remandee Court, thus making a studied and deep perusal of all the deeds, whereby right, title and, interest in the suit lands, of the previous owners in the shamlat deh lands, and/or of their respectively owned private properties, thus become bestowed, upon, the present petitioner, thus make a fresh decision on the relevant lis, but within six months from today, and, after hearing all the affected persons concerned.

9. Accordingly, the instant petition is allowed. The impugned orders are quashed and set aside.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 16, 2023
Gurpreet

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