

In the High Court of Punjab and Haryana at Chandigarh

1. CWP No. 1673 of 1999 (O&M)
Reserved on : 31.8.2023
Date of Decision: 27.9.2023

Mange Ram and others Petitioners

Versus

State of Haryana and others Respondents

2. CWP No. 9974 of 2018 (O&M)

Sunder Lal and others Petitioners

Versus

State of Haryana and others Respondents

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

Argued by: Mr. Shailendra Jain, Senior Advocate with
Mr. Navneet Kaur, Advocate and
Ms. Jaivi Verma, Advocate
for the petitioners (in CWP-1673-1999).

Mr. J.S.Sohal, Advocate for
Mr. Vipin Pal Yadav, Advocate
for the petitioners (in CWP-9974-2018).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana and
Ms. Kushaldeep Kaur, Advocate.

Mr. Kulwant Singh, Advocate
for respondent No. 6 (in CWP-1673-1999).

SURESHWAR THAKUR, J.

1. Since both the writ petitions relate to a common challenge being
made to the resolution dated 15.5.1989 passed by the Gram Panchayat

Dundahera, thus resolving to sell the writ lands to co-respondent No. 2. Moreover, when the approval as became granted thereto on 5.1.1990, thus by the appropriate Government, is also challenged in both the writ petitions. Therefore, both the writ petitions are to be decided through a common order.

2. In CWP No. 1673 of 1999, the apposite resolution, as made by the Gram Panchayat concerned, is assigned Annexure P-3, whereas, Annexure P-5 becomes assigned to the approving thereto order, made on 5.1.1990, by the competent authority concerned.

3. In CWP No. 9974 of 2018, to the apposite resolution of the Gram Panchayat concerned, becomes assigned Annexure P-3, whereas, to the approving thereto order, as made by the competent authority concerned, thus Annexure P-4, is assigned.

4. The resolution (supra), and, also the approval thereto, as became granted by the competent authority concerned, is purportedly made in terms of Rule 12-A of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short '*the Rules of 1964*'), provisions whereof, stand extracted hereinafter.

“12-A. Transfer of land by sale.- (1) Notwithstanding anything contained in these rules, any Panchayat, with the previous approval of the State Government, may transfer the Shamlat Land vested in it by way of sale to any Government Department, Board, Corporation or local authority for their own projects or schemes or for the projects sponsored or aided by the State Government, having not less than fifty percent share in such projects, on such rates as may be determined by the Committee constituted in clause (2) of sub-rule (3-A) of rule 6:

Provided that, -

(i) the State Government and the Gram Panchayat concerned, on the recommendations of the sponsoring

department, are satisfied that such transfer of Shamlat Land or the terms and conditions of such transfer of the said land, is in public interest and is also in the interest of the Gram Panchayat concerned;

- (ii) the sponsoring Department, shall also certify that the land sought to be transferred, shall commensurate with the requirements of the project or scheme, and the same is an essential component for the implementation of such project;*
- (iii) the transferee, shall not use such land for any other purpose, other than those for which it has been transferred. However, if the circumstances warrant that the said land is to be used, for any purpose other than the purpose, for which it was transferred, in that case, permission of the State Government shall be obtained, for such other use of the said land; and*
- (iv) the possession of the land, shall be handed over to the transferee, only after payment of the total sale price to the Gram Panchayat concerned.”*

5. The petitioners in making a challenge to the said annexures, averred in the instant writ petitions, that they, in terms of the writ lands, thus becoming described in the revenue records, as *Shamlat Thok Lamba Hasab Rasad Zamin Kabza Ba Mujaib Jarikar*, and, *Shamlat Thok Noniwal Hasab Rasad Kabza Jameen Kabja Ba Mujaib Jarikar* etc., thus become entitled to a declaration of title being made in their favour.

6. The above asked for declaration is planked upon the provision of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short ‘*the Act of 1961*’), provisions whereof become extracted hereinafer.

“2(g) *"shamilat deh" includes-*

- (1) lands described in the revenue records as shamilat deh excluding abadi deh;*

- (2) *shamilat tikkas;*
- (3) *lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*
- (4) *lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act.]*

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

- (5) *lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;*

² *[----]*

but does not include land which--

- (i) *becomes or has become shamilat deh due to river action or has been reserved as shamilat, in villages subject to river action except shamilat deh entered as pasture, pond, or playground in the revenue records;*

- (ii) *has been allotted on quasi-permanent basis to a displaced person;*

³ *[(ii-a)) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July, 1985 ;]*

- (iii) *has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;*

- (iv) *having been acquired before the 26th January, 1950, by a*

person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recording in the Jamabandi or is supported by a valid deed;

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

[(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act];

(vii) ²[---]

(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; or

(ix) is used as a place of worship or for purposes, subservient thereto.”

Arguments of the learned counsels for the petitioners

7. The learned senior counsel for the petitioners (in CWP-1673-1999) and the learned counsel for the petitioners (in CWP-9974-2018) argue, that since the definition assigned to shamlat deh in Section 2(g) of the Act of 1961, though includes therein those lands, which are entered in the revenue records, as *Thok/Tholas*, but they argue, that since there is prima facie material on record suggestive, that the said lands with the entry (supra), became not used for the benefit of the village proprietary body or a part thereof or for the common purpose of the village. Resultantly, they argue, that since the lands with the above entry in the revenue record, rather for being construable to fall within the definition of shamlat deh, thus required, that they were imminently used for the benefit of the village body or a part thereof or for the common purpose of the village. Consequently, they argue,

that since the above evidence is amiss, thus the petition lands with the

revenue entry (supra), did not become used for the benefit of the village community or a part or for the common purpose of the village, as such the writ lands are outside the realm of the statutory definition assigned to shamlat deh lands in Section 2(g) of the Act of 1961.

8. The further contention, as raised by the learned counsels for the petitioners for making a challenge to the impugned annexures, is planked on the factum, that the alienation, thus in terms of Rules (supra), as made by the approving authority concerned, to co-respondent No. 2, rather is not for the benefit of the entire village proprietary body. Moreover, they argue, that since the writ lands are not shamlat deh lands, which became vested in the panchayat deh concerned, therefore, the dependence made by the competent authority concerned, upon the rule (supra), thus to approve the Gram Panchayat's resolution for sale thereof being made to co-respondent No. 2, rather is defective, and/or is vitiated.

9. The learned counsels also argue, that even if assumingly, the writ lands are shamlat deh lands, and, even if assumingly the approval, as made to the resolution of the Gram Panchayat concerned, rather by the competent authority concerned, thus for sale of the writ lands, being made to co-respondent No. 2, thus does not suffer from any vices of any gross illegality. However, they further submit, that yet the entire village proprietary body would be prejudicely affected, as the sale consideration for which the writ lands became sold, is abysmally low.

Reasons for rejecting the above submissions

10. The prime reason for rejecting the above submissions stems from the factum, that the above declaration, is asked to be made by this Court, and, that too in the exercise of its writ jurisdiction. The espoused declaration, was contrarily required to be asked for, and, was to be made by

the jurisdictionally competent Civil Court concerned, or by the statutory authority concerned. Therefore, if the said declaration of title, as claimed in the instant writ petitions, in respect of the petition lands, is thus not made by the jurisdictionally competent statutory authority concerned, or by the jurisdictionally competent civil Court concerned, thereupon this Court, in the exercise of its writ jurisdiction but cannot make the said declaration, vis-a-vis, the petitioners. The reason being that thereby it would be untenably usurping the jurisdiction of the jurisdictionally competent statutory authority concerned, or of the jurisdictionally competent civil Court concerned, whose accessings prior to the petitioners accessing this Court, thus was imperative, as the said statutory authority, and, or the jurisdictionally competent civil Court, rather did constitute remedies alternative to the writ remedy. Since the writ remedy is not available to be resorted by the litigant, when an alternative thereto remedy is available, whereas, the petitioners accessing the writ remedy, despite availability of alternative thereto remedies, thereby renders their accessing the writ Court to be a grossly misconstituted endeavour.

11. Consequently, the writ petitions on the above score are liable to be dismissed, and that too without delving into or making adjudication upon the validity of the above espousal made before this Court, by the learned counsels for the petitioners.

12. Be that as it may, the resolution (supra) was made in the year 1989, and, the approval thereto became meted, thus on 5.1.1990. Subsequently, the deed of conveyance became executed with co-respondent No. 2, which is but naturally a wing or an agent of the Government of Haryana, and/or is an entity which is owned, and, controlled by the State of

Haryana. Therefore, it becomes an instrumentally or agency of the State,

and, thereby falls within the domain of the relevant provisions, as exist in Rule 12-A of the Rules of 1964. In consequence, the natural corollary thereof, is that, the alienation made to an entity owned, and, controlled by the State of Haryana, thus becomes ably protected with an aura of legality.

13. The further reason for dismissing the instant writ petitions, ensues from the factum, that Civil Suit No. 269 of 1969 became instituted on 10.10.11969, at the instance of the *biswasidars* over the writ lands, impleading therein, the Gram Panchayat concerned, as defendants. The said suit became decreed through a verdict made thereon, on 13.5.1971. A reading of the said verdict reveals, that though in the said suit, a declaration was claimed for annulling, and, setting aside mutation No. 442 of 24.6.1965, whereby the Gram Panchayat concerned, became ordered to be entered, as owner of the disputed suit lands, yet however, a reading of the operative part of the verdict made on the said suit reveals, that the said claimed declaration was granted vis-a-vis the plaintiffs therein.

14. Nonetheless, the said verdict became challenged at the instance of the aggrieved Gram Panchayat concerned, through its rearing thereagainst Appeal No. 215 of 1971, before the learned Appellate Court concerned, and, the latter through a verdict drawn on the said first appeal, on 26.10.1973, thus set aside the verdict, as became drawn on 13.5.1971. Against the said verdict, Regular Second Appeal No. 1864 of 1973 became instituted, before this Court, by the plaintiffs in the civil suit (*supra*), and, through a decision made thereons, on 7.2.1983, this Court annulled the verdict, made on 26.10.1973, by the learned First Appellate Court, whereby, the latter quashed, and, set aside the verdict, drawn by the learned civil Court concerned, on 13.5.1971, whereby the plaintiffs were declared to be the proprietors of the suit lands concerned, which are uncontestedly the very

same lands in the instant writ petitions. However, this Court, through the decision made on RSA (supra), after accepting the said RSA, thus on the premise, that the Civil Court concerned, had no jurisdictional competence, to make a valid decision thereons, ather proceeded to relegate the parties to access the jurisdictionally competent Court/authority.

15. In sequel to the above, two civil suits were respectively filed at the instance of the alleged proprietors over the suit lands, respectively on 1.3.1983, and, on 23.3.1983, whereby they claimed rendition of a declaratory decree of title vis-a-vis them. They also challenged mutation No. 442, whereby the suit land was vested in Gram Panchayat, Dundahera. However, during the pendency of the said suit, an application under Order 1 Rule 10 of the CPC, thus seeking the impleadment of respondent No. 2- Tourism Department, rather was filed in both the suits (supra). However, the said application was dismissed through an order made on 18.8.1992. The said order became challenged before the Commissioner, Gurgaon Division, who through an order made on the relevant lis, on 29.7.1993, though recommended the impleadment of the Tourism Department in the “lis”. However, through a revision order, as made on 14.2.1994, the order drawn on 18.8.1992, whereby the application seeking impleadment of the Tourism Department, became dismissed, rather became affirmed.

16. However, through the institution of Civil Writ Petition No. 5705 of 1994, before this Court, an effort was made to challenge the dismissal order, as made on the application seeking impleadment of the Tourism Department as a party in the lis, but the said challenge failed, as the writ petition was dismissed as infructuous on 10.11.2014. In addition, the above dismissals of both the Civil Suits respectively bearing No. 41/DRO

and 42/DRO, as became instituted by the purported proprietors of the suit

lands, but obviously resulted in the upholding of the order of mutation (supra) whereby the panchayat concerned, rather to become validly entered in the revenue records, as owner of the disputed lands.

17. Since the above dismissal order, as made on the civil suits (supra) appears to become not further challenged, thus before the appellate authority concerned. Therefore, the said dismissal order, as made on the civil suits (supra) by the jurisdictionally competent authority concerned, thus acquires a binding, and, conclusive effect.

18. In sequel, the claim raised in the instant writ petitions, seeking a declaration of title being made vis-a-vis the plaintiffs, thus over the disputed lands, is barred to be raised through the estopping principle engrafted in the statutory norm of *res judicata*.

19. It is relevant to mention here that the alleged proprietors, over the disputed lands also challenged the recording of the mutation in favour of the Tourism Department, thus in pursuance to a deed of conveyance becoming executed vis-a-vis it, thus in pursuance to the approval being meted by the competent authority concerned, to the resolution of the panchayat concerned, whereby, the latter resolved to alienate the writ lands to the Tourism Department.

20. However, the said civil suit bearing No. 880 of 1998/99 became dismissed on 26.9.2005, and, thereafter an appeal, as became raised thereagainst, also became dismissed on 30.9.2008. The said concurrently made dismissal orders, on the civil suit (supra), thus acquire conclusivity, as no Regular Second Appeal, has been instituted before this Court, rather for negating the said dismissal verdict, as became made by the Civil Courts concerned, on the suit (supra).

completely estopped by the estopping principle of *res judicata*, to throw any challenge either to the mutation, as made in favour of co-respondent No. 2, nor they are entitled to seek any declaration, thus nullifying the declaration (*supra*), as made against the petitioners/purported proprietors over the writ lands.

22. The further reason for dismissing the instant writ petitions, is galvanized from the factum, that the apposite resolution, and, the approval thereto, as became granted by the competent authority concerned, was in respect of the alienation, being made to an agency or a wing of the Government of Haryana, inasmuch as, to the Tourism Department, which is owned, and, controlled by the State of Haryana, and, thus but is an instrumentality or agency of the State of Haryana. Resultantly, the said alienation becomes completely clothed with an aura of legality rather within the purview of Rule (*supra*).

23. Though, the learned counsels for the petitioners have argued, that the sale consideration is deficit, and/or even if assumingly, the writ lands are reserved for the benefit of the village proprietary body concerned, thereby, given the deficit size of the sale consideration qua thereof, thus financial detriment is caused to the members of the village proprietary body.

24. Even the above averment was required to be raised in a declaratory suit becoming instituted by the plaintiffs.

25. Though, it appears that the verdict making the mutation vis-a-vis the Tourism Department concerned, became challenged through the institution of civil suit bearing No. 880 of 1998/99, but since for reasons (*supra*), a conclusive, and, binding dismissal verdict became recorded thereons, thereby when the said dismissal order acquires a binding, and,

conclusive effect. Therefore, though the effect of the above, is that, the

declaration of title, as sought from this Court but is a feebly made attempt. Moreover, the larger, and, predominant emergence(s), which ensue from the conclusivity being assigned to the concurrently made unchallenged verdicts of dismissal on civil suits (supra), is that, since in the said suits, the plaintiffs were required to challenge also the factum of the purported inadequacy of sale consideration, as carried in the apposite registered deed of conveyance, thus made in favour of the Toursim Department, whereas, it prima facie emerging that the said averment became not raised therein. Therefore, the non raising of the said averment thereins, and, its becoming raised in the instant petitions, thus thereby attracts against the raising here of the said averment, rather the estopping principle of *res judicata*, as becomes engrafted in Order 2 Rule 2 of the CPC, provisions whereof become extracted hereinafter.

“Suit to include the whole claim.—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

Final Order

26. In summa, this Court does not find any merit in both the petitions, and, is constrained to dismiss them. Accordingly, both the

petitions are dismissed. The impugned annexures are maintained and affirmed. Since both the petitions are frivolously raised petitions, therefore, the same are dismissed with costs of Rs. 50,000/- upon each of the petitioners, to be forthwith deposited by the petitioners with the **‘Himachal Pradesh Aapada Raahat Kosh-2023’** for mitigating the natural disaster in the State concerned.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 27, 2023
Gurpreet

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