

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 2570 of 1999 (O&M)

Reserved on 08.8.2023

Date of Decision: 17.8.2023

Nand 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. Amit Jain, Senior Advocate with
Mr. Ramandeep, Advocate
for the petitioners.

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

Mr. Shailendra Jain, Senior Advocate with
Mr. Munish Kumar, Advocate and
Ms. Navneet Kaur, Advocate
for respondent No. 5.

SURESHWAR THAKUR, J.

1. The instant petition is preferred for a direction being made for declaring the provision of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), as amended by Haryana Act No. 9 of 1992, as well as the whole of Act 9 of 1992, thus ultra vires the Constitution of India, and, also for declaring the petitioners to be the lawful owners in possession of their share in the shamlat land of village Dobhi, and, besides for quashing the orders, as respectively enclosed in Annexure P-2 and in Annexure P-4.

2. At the outset, the learned senior counsel for the petitioners abandons his challenge to the vires of Section 2(g) of the Act of 1961 amended by the Haryana Act No. 9 of 1992, on the ground, that the

constitutionality and vires of the said provisions, has been upheld by the Hon'ble Apex Court in case titled as ***The State of Haryana versus Jai Singh and others***, reported in ***2022 AIR (SC) 1718***. Therefore, this Court would not either delve into nor would make an adjudication, upon, the said espoused relief in the instant writ petition.

3. The learned senior counsel for the petitioners, has vehemently argued before this Court, that the sanctioning of contentious mutation No. 2841, thus by the authority concerned, is completely flawed, and, is also capricious, besides is arbitrary, as it becomes planked on a general government letter, issued by the State of Punjab. In making the above submissions, he rests them, upon the verdict drawn by this Court in **CWP No. 15980 of 2022** titled as ***Subegh Singh versus State of Punjab and others***, along with connected writ petitions, whereby this Court proceeded to quash, and, set aside, the therein challenged administrative letters, and, executive instructions, whereby untenable retrospectivity was assigned to the apposite amendments made to the **Haryana Act No. 9 of 1992**, and, which became validated in ***Jai Singh's*** case (supra). He also submits, that the recording of the said mutation, thus through any purported obedience to the said amendment, which has been validated by the Hon'ble Supreme Court, in ***Jai Singh's*** case (supra), rather, is in breach of the principles of natural justice, as thereby the petitioners concerned, have been precluded to in a title suit raise all contests, with respect to the disputed lands, thus being covered within the ambit of the apposite exclusionary clause to the definition of shamlat deh land, clause whereof becomes embodied in Section 2(g)(viii) of the Act of 1961, provisions whereof becomes extracted hereinafter. In making the above submissions, he marshalled support from the verdict made by this Court in ***Subegh Singh's*** case (supra).

(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.

4. Furthermore, he also submits, that since the order attesting the mutation has been made only by a revenue officer concerned, thus exercising the powers under the Punjab Revenue Act, 1887, whereas, only after the full contest being raised at the instance of all litigants concerned, thus in a declaratory suit, filed under the relevant provisions of law, either before the Civil Court concerned, or before the authority concerned, that the issue of unamenability. of application of the apposite saving clause (supra) to the inclusionary definition of shamlat deh, and/or otherwise, rather would have become full-fledgedly deliberated upon, and, besides adjudicated upon, by the jurisdictionally competent authority, or by the Civil Court concerned, thus empowered to both try and decide the declaratory suit. Therefore, he submits, that the exercising of jurisdiction by the revenue officer concerned, thus through the mandate enshrined in the Punjab Land Revenue Act, 1887, rather was grossly inapt.

5. On the other hand, the learned senior counsel for respondent No. 5 has submitted that the order sanctioning mutation (supra) is well drawn, as the disputed land never became reserved for the benefit of the village proprietary body, thus in the finalized consolidation scheme, nor when thus after a pro-rata cut being made from the legitimate holdings of the estate holders concerned, the relevant reservations were made, nor when thereby management(s), and, control(s) of the petition lands, thus became assumed by the Gram Panchayat concerned. Therefore, he submits, that in the wake of non-existence of the material (supra), thus there was no lawful authority vested in any of the officers concerned, to re-assign the disputed

lands to the estate holders concerned. Contrarily, he contends, that the

contested mutation was validly recorded in favour of the Gram Panchayat concerned. He also submits that, in the sharat wajib-ul-arj relating to the disputed lands, there is rather a mention that the said lands being meant for the exercisings thereons of grazing cattle, and, that thereby it is grossly impermissible for the petitioners to contend, that thus in terms of the above referred to apposite exclusionary clause, to the inclusionary definition of shamlat deh, that the petitioners were making cultivations of the petition lands, thus prior to 1950.

Reasons for accepting the above submissions of the learned counsel for the petitioners

6. For the reasons to be assigned hereinafter, this Court validates the arguments addressed before this Court by the learned senior counsel for the petitioners, and, is constrained to reject the submissions (supra), as become made before this Court, by the learned senior counsel for the respondent No. 5.

7. The reason for drawing the above conclusion becomes rested upon the factum, that the sanctioning of the contested mutation in favour of the Gram Panchayat concerned, and, to which mutation No. 2841, is assigned, was but recorded by the Assistant Collector Ist Grade, Hisar, who however apparently was not exercising jurisdiction, thus in a declaratory suit, nor thereupon, he was well enabled to make any full fledged or clinching finding qua the applicability or inapplicability of the apposite exclusionary clause hence to the disputed lands. The reason for making the above inference stems from the factum, that he was exercising jurisdiction under the Punjab Land Revenue Act, 1887, which is not parameteria to the exercisings of jurisdiction thus in a declaratory suit, either by the Civil Court concerned, or by the statutorily designated authority under the Act of 1961.

Since the dispute related to the validity of the attestation of mutation No. 2841, and, also when the estate holders concerned, had banked upon the applicability thus of the apposite exclusionary clause (supra), thus to the disputed lands. Therefore, but obviously the said issue was required to be decided only by an empowered officer or by the Civil Court concerned, and, not by an officer exercising jurisdiction under the Act (supra). However, it appears, that the Assistant Collector concerned, who attested the mutation (supra), did yet proceed to record the said mutation, thus whereby he assigned the disputed lands to the Gram Panchayat concerned. The said order was affirmed in Annexure P-2, and, thereafter it became affirmed also by Commissioner, Hisar Division, through his drawing Annexure P-4. It appears that the foundation of Annexure P-2 was grooved in the order drawn on 7.11.1983 by the Collector Ist Grade, Hisar in case No. 1925, to which Annexure P-6, is assigned. The operative part of the verdict (supra), is extracted hereinafter.

“On the basis of the above discussion, I have reached the conclusion that since the land, in dispute, has always been left for the common purposes of the village and the condition of this land continues as such since the bandobast 1909-1910 and in this village, there is no other shamlat land except this land and this land was banjar kadim upto the year 1965. Hence this land is shamlat deh and vests in the Gram Panchayat. Ramji Lal had no authority to sell this land. Hence I reject this mutation. This order has been pronounced today the 7th November, 1983 in open Court.”

8. Apparently, the said lis was inter se Ramji Lal and the Gram Panchayat concerned, and, thereby the questioned authority of Ramji Lal to sell the therein disputed land, rather was held to be invalid. It also appears that in the said lis, the present petitioners were not arrayed as party.

Therefore, obviously they had no opportunity to make a valid protest against the making of the said order, rather thereby they became condemned unheard. Resultantly, since for the reasons (supra), the petitioners herein became condemned unheard, thereby the reliance, as made on the order (supra) by the authority, who drew Annexure P-2, thus was an inapt reliance. Resultantly, on the above ground, prima facie, the foundation of Annexure P-2 becomes foundered.

9. Be that as it may, as unraveled by Annexure P-7, it was drawn on 23.12.1993, thus prior to the drawings respectively of Annexure P-2, and, of Annexure P-4. A reading of discussion, as made in the relevant paragraph of Annexure P-7, para whereof becomes extracted hereinafter, does unfold that the plaintiff suit hence for the rendition of a decree of permanent injunction became dismissed by the Civil Judge, Ist Class, Hisar, on 13.3.1985. The aggrieved therefrom preferred an appeal in the Court of the Additional District Judge, Hisar. However, for want of jurisdiction to hear the appeal, the Additional District Judge declined to make any adjudication thereons, and, rather through an order dated 24.4.1986, the District Judge, Hisar proceeded to uphold the order of the Civil Judge Ist Class, Hisar, and, relegated the parties to appear before the Assistant Collector Ist Grade, thus for enabling him to make a decision qua the disputed lands being covered or not being covered within the inclusionary definition of shamlat deh. Furthermore, it is also apparent on a reading of the said verdict, that mutation No. 2841 was also referred hence for a decision being made in respect of its validity.

“The brief facts of this case are that the plaintiffs filed the above-said Civil Suit for permanent injunction earlier. Regarding the 7833 Kanals and 3 Marlas of land left for the shamlat of the village has been in the litigation between the parties since long in the Civil Courts. Smt. Sneh Iata, Sub-

Judge Ist Class, Hisar, by her order dated 13.3.1985 dismissed the suit of the plaintiffs. Aggrieved by this order, the plaintiffs filed an appeal in the Court of Shri B.L. Gulati, Additional District Judge, Hisar. He did not hear the appeal on account of the same being beyond his jurisdiction and by means of order dated 24.4.86, the District Judge, Hisar upheld the order of the Civil Court below and the case has been sent to the Assistant Collector Ist Grade for deciding whether the land, in dispute, is covered by the definition of shamlat deh or not. If the land is covered by the definition of shamlat deh, then, does it vest in the Panchayat. He has also explained in his order that the findings of the Subordinate Judge Ist Class will not be binding on the Assistant Collector Ist Grade and he will independently decide the issues.

x x x x”

10. The striking aspect of the entire lis appertains to whether the trial entered into the lis by the Assistant Collector Ist Grade, thus in pursuance to the directions, as, made by the District Judge, Hisar, rather was under an ably conferred jurisdictional empowerment, as then became vested, and, or became validly exercised by the Assistant Collector concerned, imperatively in the wake of the lis being numbered as lis No. 19/VCL 1985-86. If this Court comes to a conclusion, that the relegation of the lis by the District Judge, Hisar to the Assistant Collector concerned, was an inapt relegation or was per curiam to the statutory provisions. Resultantly, the decision enclosed in Annexure P-6 wherein also the disputed mutation, thus also became adjudicated upon, besides an adjudication was made in respect of the applicability or non-applicability of the apposite saving clause (supra) to the definition of shamlat deh, rather would lose its jurisdictional value. Consequently, this Court would proceed to annul Annexure P-7, besides would also proceed to annul Annexure P-2 and Annexure P-4, annexures whereof which are otherwise drawn by the revenue officers concerned, and, not by the jurisdictionally empowered Civil Court or by the jurisdictionally empowered statutory authority concerned, thus to make a declaration

whether the contentious mutation, thus was validly attested or not, and/or whether the apposite saving clause is applicable or not applicable to the disputed lands.

11. For determining the above said facet, it is deemed apt to refer to Section 7 of the Haryana Village Common (Lands) Regulation Act, 1961, and, which became inserted as such through Haryana Act of 1992. Obviously, since the decision, upon the apposite lis was made on 23.12.1993, therefore, when the decision qua the applicability or non applicability of the apposite saving clause, to the disputed lands, thus involved a disputed question of title, rather was made by the Assistant Collector concerned. Therefore, in strict conformity with the terms of the proviso thereof, he was required to make discernments from the documents, besides to also make a keen discernment therefrom, about the litigants being engaged in seeking a declaratory relief, in respect of the disputed lands. Paramountly so, when one or the other legal combatant(s) respectively anchored their claim qua the disputed lands, respectively on the applicability or non applicability of the apposite saving clause, to the inclusionary definition of shamlat deh, rather becoming saved from vestment or becoming amenable for vestment, to thus imperatively in the manner contemplated in sub Section 3 of the Act of 1961, to decide the said disputed question of title, as raised before him by the rival combatants, in the manner alike to the trial of a lis by the Civil Court concerned. Therefore, but obviously the learned Collector concerned, was required to not only strike the issues as arose from the contentious pleadings, but was also required to permit the litigants concerned, to adduce their respective evidence thereons. However, a reading of Annexure P-7 discloses, that rather than the Assistant Collector concerned, especially in the wake of Section 7 of the Act of 1961,

being in vogue, at the time when the lis was subjudice before him, and, thereby when the said provisions warranted their application thereto, whereby he was enjoined to try the lis in the manner akin to try the civil suit by the Civil Court, rather in a summary manner made Annexure P-7. The trial of the lis akin to the trial of the civil suit by the Civil Court concerned, but would have happened only when he imperatively strike issues on the contentious pleadings, and, also proceeded to ask for adduction of evidence thereons by the litigants concerned, whereupon whom the discharging onus became cast. Moreover, he was also enjoined to not only refer to the documents as placed before him, but was also to ensure that the tendering of the documents was made in accordance with law, besides was also to ensure that valid exhibition marks were thus made thereons. Since only on the above recourse becoming adopted by the Assistant Collector concerned, that thereby, he could conclude that the said documents were both admissible in law, and, also were relevant to the lis. In addition, when only on an opportunity becoming assigned to the litigants concerned, to adduce evidence, thus purportedly rebutting the presumption of truth, as attaching to the documents, that thereby an able conclusion could be made, that given the said discharging onus, upon rather remaining undischarged, thus the presumption of truth attaching to the apposite documents, rather acquiring a conclusive aura of truth.

12. Be that as it may, without his doing (*supra*), he in a slipshod and arbitrary manner, has rather drawn Annexure P-7. The drawing of Annexure P-7 is in complete derogation of the procedure which was required to be adopted by the Civil Court concerned, while trying a civil suit, and, which procedure was enjoined to be also resorted by the Assistant Collector concerned, prior to his drawing Annexure P-7. Therefore, since the

impugned Annexures are planked upon Annexure P-7, and, which for reasons (supra), is legally infirmly drawn. Resultantly Annexure P-2, and, Annexure P-7, are quashed, and, set aside. Predominantly also, for the reasons (supra), the said annexures are deemed to be made in derogation of the principles of natural justice, as in the apposite lis, the petitioners remained unarrayed therein, thus thereby they became condemned unheard.

13. This Court in **Subegh Singh**'s case (supra), has therein after declaring the apposite amended provisions to be holding only prospective effect, thus has also declared that the relevant letters or notifications rather holding only prospective, and, not retrospective effect. Moreover, this Court has also proceeded to, in judgment (supra), make the hereinafter extracted conclusions:-

(i) *Executive Instructions dated 21.06.2022 and 18.08.2022 issued by the State of Haryana and dated 11.10.2022 issued by the State of Punjab whereby ownership rights of the lands in question are sought to be transferred in favour of the Gram Panchayat/Municipalities, through Executive fiat, are held to be contrary to the very scheme of the Statute and are hereby quashed, particularly in view of the fact that these executive instructions cannot result into arbitrary cancellation of valid title over the properties.*

(ii) *Accordingly, the States of Haryana as well as Punjab shall give effect to the Judgment of the Hon'ble Supreme Court in Jai Singh's case (supra) in the following manner:-*

(a) *Where the lands continue to be shown as reserved for 'common purposes', whether utilized or unutilized, the ownership of such land shall vest in the Gram Panchayat or the Municipalities, as the case may be.*

(b) *However, if the lands which were proposed or shown to be reserved for common purposes have been partitioned, amongst the proprietors or redistributed amongst them, under the Consolidation Scheme, such lands are held to have never come under the management and control of the Gram Panchayats and, thus, ownership in relation thereto does not vest in the Gram*

Panchayats by virtue of the provisions, like Haryana Act 9 of 1992. Conspicuously, also given that the Punjab Act No. 6 of 2007 as relates to the 1948 Act, rather has only prospective effect, and, it does not erode the validly made orders either by the jurisdictionally competent Courts, and, or by the empowered revenue authorities whereby partitions and re-distribution of lands are made, may be even from the common pool.

- (c) *The Gram Panchayat or the Municipality shall be at liberty to approach the competent Court of law for vesting of ownership rights in them in respect of the lands where there is serious dispute as to whether the same had been reserved for common purposes and/or were never distributed/ returned amongst the proprietors through an order of a competent court or of any competent statutory authority.*
- (d) *where there is no dispute in respect of lands reserved for common purposes and the management and control whereof had been transferred to the Gram Panchayat under Section 23-A of the 1948 Act, ownership of such lands shall vest in the Gram Panchayat/Municipality in view of the fact that provisions like Haryana Act 9 of 1992 have been declared intra vires by the Hon'ble Supreme Court in Jai Singh's Case;*
- (e) *In the case of lands which at one point of time were shown or proposed to be reserved for common purposes but have been returned/ re-distributed amongst the proprietors under the orders of the Revenue Court/ Consolidation Officer and when 'management' or 'control' of lands was never transferred to the Gram Panchayats under Section 23-A of the 1948 Act, such lands also can not be automatically presumed to have vested in Gram Panchayats or Municipalities;*
- (f) *Where lands falling in the categories as illustrated in direction No.(b) and (e) above, have been sold/re-sold to bonafide purchasers after due diligence and for valuable consideration, the title or possessory rights of such bona-fide purchasers shall remain unaffected, save and except, when the sale deeds in their favour are set aside by the courts of competent jurisdiction."*

the verdict drawn by this Court in **Subegh Singh**'s case (supra) thereby impugning of the contentious mutations at the instance of the petitioners, thus falls in alignment with the above made conclusions. Therefore, in terms thereof, this Court also akin thereto, thus makes the hereinafter directions upon the litigants concerned.

15. In consequence, after setting aside Annexure P-7, and, also after setting aside the impugned annexures, this Court makes an order of remand of the lis to the Assistant Collector concerned. The said order of remand becomes spurred from the dire necessity of enabling the litigants concerned, to canvass before him, their competing claims, as appertain to the respective applicability or inapplicability of the savings clause (supra), to the definition of shamlat deh, thus to the disputed lands. Moreover, in the remandee authority trying the lis, he shall adhere to the provisions relating to the trial of a lis by the Civil Court concerned. In addition, the Assistant Collector concerned, shall decide the remanded lis within six months from today, but after hearing all the affected persons concerned.

16. With the afore observations, the instant petition is disposed of.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 17, 2023
Gurpreet/Ithlesh

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