

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 20577 of 2014
Reserved on 16.2.2023
Date of Decision: 22.2.2023**

Radhey Shaym 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. Vikram Singh, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J.

1. The petitioners instituted a suit before the learned Collector concerned. In the said suit, they claimed a declaratory decree, that they be declared as owners in possession of the suit land. Through a decision, made on 13.9.2006, on the said suit, the learned Collector concerned, declined the espoused relief to the plaintiffs-petitioners. The reasons, as became assigned by the Collector concerned, to decline the espoused declaratory relief to the petitioners, became rooted in the factum, that in the jamabandi for the year 1952, the suit land is reflected to be owned by Shamlat Deh, and, that in the subsequent thereto jamabandis, appertaining to the years 1955-56 onwards, the Nagar Panchayat deh, has been entered to own the suit lands.

2. The aggrieved therefrom the plaintiffs-petitioners, preferred a statutory appeal bearing No. EA 055/2006-2007 of 12.1.2007, before the competent appellate authority concerned. Through a decision made on 15.4.2011, on the said statutory appeal, the statutory appellate authority

concerned, after affirming the verdict, as recorded by the learned Collector concerned, proceeded to dismiss the said statutory appeal. Subsequently, the aggrieved therefrom petitioner, reared a revision petition bearing ROR No. 768 of 2010-11, before the Revisional Court concerned. The Revisional Court concerned, through a decision made, on 29.1.2014, on the above revision, made a verdict of dismissal of the said revision petition.

3. Therefore, the petitioners become aggrieved from the concurrently made verdicts of dismissal, upon the suit (supra), rather by all the statutory authorities below. Thus, they are led to institute thereagainst the instant writ petition before this Court.

4. The above referred jamabandi, though as aptly concluded by the authorities below, did forthrightly reveal in its column of ownership, that the suit lands are owned by Shamlat Deh. Thus, the conclusion, as became rested thereons, that the relief of declaration, as claimed by the plaintiffs, that they be declared as lawful owners in possession of the suit land, was but obviously lawfully declinable to them, but is reiteratedly a tenably drawn conclusion.

5. Be that as it may, the petitioners had claimed, that they pointedly succeeded to the suit land from their predecessors-in-interest one Prabhati widow of Nancha caste Maali. However, the above reared claim was not rebutted by the respondents concerned, through theirs placing on record, the relevant pedigree table, and, its disclosing, that the petitioners are not the valid successors-in-interest of the above Prabhati. Therefore, the petitioners are to be concluded to be the lawful successors-in-interest of one Prabhati, who has been recorded in the apt column of cultivation, of the relevant jamabandi, to hold cultivation of the suit lands, but in the capacity

of hers being a gair marusi thereons.

**Conclusions from the saving provisions carried in Section 4(3)(ii) of the
Punjab Village Common Lands (Regulation) Act, 1961**

6. Though, normally any non-occupancy tenant or a gair marusi under the Panchayat, is amenable for being evicted from the suit lands, but if in the column of rent, there is no entry qua reflecting qua a recorded gair marusi tendering rent in cash or kind, to the Nambardar of the Halqa concerned. Thus, any revenue entry in the column of possession, in the jamabandi appertaining to the suit lands, whereby, the predecessor-in-interest of the petitioners, one Prabhati, is reflected to be a gair marusi on the petition land, and, but yet when in the column of rent she is not revealed to be tendering rent in cash and kind to the Nambardar of the Halqa concerned, does obviously attract thereto, the relevant provisions of Section 4(3)(ii) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), provisions whereof stand extracted hereinafter.

(ii) rights of persons in cultivating possession of Shamilat deh, for more than twelve years [immediately preceding the commencement of this Act] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

7. Since a reading of the above extracted relevant statutory provisions reveals, that in case the suit land becomes described in the revenue record, as Shamlat Deh, but when the suit land is, also recorded therein to be in the cultivating possession of a gair marusi for more than 12 years preceding the commencement of the Act of 1961. Moreover, when an incisive reading of the above provisions, also reveals, that when such recorded capacity of a cultivator, is without payment of rent in cash or kind, or is without payment of any charges not exceeding the land revenue,

thereupon irrespective of the said lands, being described to be owned by Shamlat Deh, the rights of cultivating possession(s) of a gair marusi on such lands, yet becoming statutorily saved from being completely vested in the panchayat deh or in shamlat deh concerned.

8. Necessarily the effect of the above discussion, is that, when there is a vivid disclosure in the previous jamabandis, that the predecessor-in-interest of the petitioners, was a non-occupancy tenant or a gair marusi, upon the suit land, but yet when such reflected therein capacity, of the predecessor-in-interest of the petitioners, is but hers tendering rent in cash or in kind to the Nambardar of the Halqa concerned. Resultantly, the predecessor-in-interest of the petitioners, became statutorily capacitated to save the suit lands, as became cultivated by her, as a gair marusi, but without payment of rent, rather from their vestment(s) in the panchayat deh or in the shamlat deh. Moreover also, when the petitioners are the lawful successors-in-interest of the above Prabhati, they are also ably capacitated to save the suit land from their becoming completely vested in the panchayat deh or shamlat deh. Contrarily the vesting of the suit lands in the shamlat deh, was subject to encumbrances thereons, of the recorded gair marusi, but without payment of rent, inasmuch the said gair marusi, during her lifetime nor subsequent to her demise, her lawful successors-in-interest becoming unamenable for becoming evicted from the suit land.

9. It appears, that all the authorities below have remained unmindful to the legal import of the above entry(ies), as exist(s) in the jamabandi, appertaining to the suit land, and, as became prepared in the year 1951-52. Moreover, since a presumption of truth, is attachable to the revenue entries, as become carried in the record of rights, unless the truth

assigned to the said entries, is successfully rebutted. However, when no cogent evidence became adduced by the respondents concerned, to rebut the presumption of truth assignable to the above entries, as, existing in the records of rights. Thus, immense evidentiary vigour is enjoyed by such recorded entries concerned, and, but with a concomitant effect that, as above stated, the petitioners through their lawful predecessor-in-interest, were fully enabled to cultivate the suit lands, irrespective of the said lands, being owned by the shamlat deh.

Final order

10. In view of the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it.

11. Consequently, the instant petition is, with the above observations, partly allowed. The impugned orders, dated 13.9.2006 (Annexure P-2), dated 15.4.2011 (Annexure P-3), and, dated 29.1.2014 (Annexure P-4) as made by all the statutory authorities below, are with the above observations, hence partly quashed, and, set aside.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 22, 2023
Gurpreet

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