

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-18994-2016****Date of decision : 30.05.2023**

HARJIT SINGH AND ORS.

-PETITIONERS

VERSUS

STATE OF PUNJAB AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. A.S. Manaise, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Dheeraj Mahajan, Advocate
for the respondents No.4 to 7.

KULDEEP TIWARI, J.

1. Through the instant writ petition, the petitioners have assailed the validity of the concurrently made orders of eviction, drawn on 10.05.2012 (Annexure P-6) and 14.12.2015 (Annexure P-14), respectively by the learned Collector concerned and by the learned Commissioner concerned. The challenge to the orders (supra) is premised on the ground that the petition land(s) is recorded, in the relevant revenue record, as “abadi deh”, therefore, by dint of provision of Section 2(g)(1) and Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the ‘Act of 1961’), the petition land(s) does not vest with the Gram Panchayat concerned.
2. Before proceeding to examine the validity of the concurrently made eviction orders (supra), it would be apt to first deal with the factual

backdrop of the present matter, as the case at hand bears a checkered history.

FACTUAL BACKGROUND

3. The Gram Panchayat Attari, Block Kalanaur, Tehsil and District Gurdaspur, through its Sarpanch, instituted a petition under Section 7 of the Act of 1961, before the learned Collector concerned, thereby seeking the eviction of the present petitioners from the petition land(s). The eviction of the present petitioners was sought on the ground that, during consolidation, the petition land(s) was left for common purposes of the village proprietary body, however, the petitioners had illegally occupied this land.

4. The present petitioners controverted the eviction petition (supra), inter alia, on the ground that, as per the relevant revenue record, the petition land(s) falls within the ambit of “abadi deh”, therefore, the petition (supra) was not maintainable. It was further asserted that the father of the petitioners, namely, Inderjit Singh, along with one Rachhpal Singh, had purchased land measuring 137 Kanals 6 Marlas, which comprised of constructed and residential area, situated at Village Attari, vide a registered sale deed dated 08.08.1950, from one Baba Barkat Singh Bedi, who belonged to Bedi community. The Bedi community had its separate abadi near the abadi deh of Village Attari, and, the petition land(s), which was earlier in the form of “theh/mound”, was under the occupation and possession of the Bedi community. After purchase of the petition land(s), vide the sale deed (supra), the predecessor-in-interest of the petitioners assumed its lawful possession.

5. Upon scrutinizing the relevant revenue record, the learned Collector concerned, vide impugned order dated 10.05.2012, concluded that since the petition land(s) is recorded as “abadi deh” in the column of

ownership and was left, during consolidation, for common purposes of the village proprietary body and qua which the petitioners are, in the column of cultivation, recorded as “Gair Dakhildar”, therefore, its control and management vests with the Gram Panchayat concerned and consequently, he ordered for the eviction of the petitioners from the petition land(s).

6. Fetching grievance from the eviction order (supra), the present petitioners, without availing the statutory remedy of filing appeal against it before the competent appellate authority, straightaway approached this Court by filing CWP-17786-2012. However, this Court, vide order dated 11.09.2012, relegated the petitioners to avail the statutory remedy of appeal before the competent appellate authority concerned.

7. Upon an appeal being filed against the eviction order (supra), in terms of the order (supra) passed by this Court, the appellate authority concerned ultimately dismissed the appeal vide order dated 08.05.2013 (Annexure P-9).

8. The rejection of the appeal led the petitioners to again approach this Court, by filing CWP-23211-2013, thereby challenging the concurrently made eviction orders (supra). While adjudicating the writ petition (supra), this Court, vide order dated 16.12.2013 (Annexure P-11), set aside the order dated 08.05.2013 (Annexure P-9) and remanded the matter to the learned Commissioner concerned, with directions to decide the lis, specifically on the following issues:-

- (i) To look into the authenticity of the sale deed dated 9.8.1950;
- (ii) To look into the record whether the land was under

occupation of the family members of Baba Barkat Singh Bedi, from whom the petitioners have purchased the land;

- (iii) Whether there was construction when the land was sold to the petitioners/their predecessor-in-interest;
- (iv) To ascertain, by making reference to the consolidation record, as to for what purpose and to whom, the land was allotted during consolidation proceedings.

9. Upon remand of the matter, the present petitioners placed on record some additional documents. However, the learned Commissioner concerned, while deciding the matter afresh, in pursuance to the directions of this Court, again dismissed the appeal vide impugned order dated 14.12.2015 (Annexure P-14), with the observations that there is absolute dearth of any record(s) to depict that the land allegedly purchased by the predecessor-in-interest of the petitioners was under the occupation of Baba Barkat Singh Bedi, or, that the said land was allotted during consolidation operations. It was further observed that the present petitioners even failed to produce any record(s) qua the old and new khasra numbers of the petition land(s). Ultimately, since an entry of “abadi deh” and an entry of “Chahi” occurred in the relevant Jamabandi, and, since the petition land(s) was used for common purposes of the village proprietary body, therefore, the learned Commissioner concerned held the petition land(s) to be vesting with the Gram Panchayat concerned. Therefore, now the instant petition has been filed challenging the impugned verdicts of eviction.

SUBMISSIONS BY COUNSELS FOR THE PARTIES

10. The learned counsel appearing for the petitioners has

vociferously argued that since an entry of “abadi deh” exists in the relevant revenue record(s) pertaining to the petition land(s), therefore the petition land(s) does not vest with the Gram Panchayat concerned, by dint of Section 2(g)(1) of the Act of 1961. He further argued that the Gram Panchayat has failed to produce any documentary evidence, inasmuch as, the consolidation scheme, to corroborate its claim qua use and reservation of the petition land(s) for the common purposes of the village proprietary body. Furthermore, by drawing attention of this Court towards the sale deed (Annexure P-5), wherein the petition land(s) is described as “Abo Amarat” and “Ahata”, he argued that although no specific numbers have been mentioned in the sale deed (supra), however the expressions “Abo Amarat” and “Ahata” denotes “abadi deh” land(s).

11. Per contra, the learned State counsel and the learned counsel appearing for the Gram Panchayat concerned, have argued that though the petition land(s) is recorded as “abadi deh” in the relevant revenue record(s), however, an entry of “Chahi” also exists in the column of “nature of land”, which explicates that the petition land(s) is irrigated land and they further argued that earlier the petition land(s) was used for diverting sullage and dirty water of the village concerned, however, the petitioners forcibly possessed this land. To buttress this argument, they placed reliance upon a decision, drawn on 20.03.2014, by the learned civil court concerned, upon Civil Suit No.307 of 2009, which was a suit for permanent injunction filed by the present petitioners themselves for restraining the Gram Panchayat concerned and some other private persons from diverting the sullage and dirty water on to the petition land(s). Ultimately, it was argued that since the petition land(s) was

used for common purposes of the village proprietary body, therefore by dint of provisions of Section 2(g)(4) read with Section 4 of the Act of 1961, the petition land(s) vest with the Gram Panchayat concerned.

ANALYSIS OF THE RELEVANT STATUTORY PROVISIONS OF THE ACT OF 1961

12. Before progressing further with the case in hand, let us first deal with some of the statutory provisions of the Act of 1961, which are vital for the adjudication of the present writ petition.

13. Section 2(g) of the Act of 1961 defines “shamlat deh” land, and, sub-clause (1) thereof, stipulates that any land described in the revenue record as “shamlat deh”, falls within the ambit of “shamlat deh”, however, it excludes “abadi deh” land from its domain.

Section 2(g)(4) of the Act of 1961 expands the scope of “shamlat deh”, according to which, lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds, within “abadi deh” or “gorah deh” shall be included into “shamlat deh” lands (**emphasize specifically**).

It would be further apt to deal with one more sub-clause of Section 2(g) of the ibid Act, i.e. sub-clause (4a) of clause (g) of Section 2, which was inserted by Punjab Act No.16 of 2021, and was brought into effect w.e.f. 07.04.2021. This sub-clause further expands the scope of “shamlat deh” and according to it, any vacant land or plot situated within “abadi deh” or “gorah deh” not owned by any person, shall be included within the ambit of “shamlat deh”. The above discussed sub-clauses of Section 2(g) of the Act of 1961 are reproduced as under:-

“2. Definition- In this Act, unless the context otherwise requires.

xx xx xx

(g) “Shamilat deh” includes

(1) Land described in the revenue records as Shamilat deh excluding abadi deh.

xx xx xx

(4) Lands used or reserved for the benefit of the village, community including, streets, lanes, playgrounds, schools, drinking wells, or ponds within abadi deh or gora deh and

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

xx xx xx”

14. Section 4 of the *ibid* Act further prescribes the vesting of rights regarding “shamlat land” in the Panchayat and non proprietors, according to which, all rights, title and interests in the land, which is included in the “shamlat deh” and which have not vested in Panchayat under the “shamlat law” shall, at the commencement of this Act, vest in Panchayat deh. It further provides that the land, which is situated within or outside the “abadi deh” of a village and which is under the house owned by a non-proprietor, shall, on the commencement of “shamlat law”, be deemed to have been vested in such non-proprietor.

The definition of the term “shamlat law” is carried in Section 2(h) of the Act of 1961. The provisions of the Section 4 and Section 2(h) of the Act of 1961 are extracted as under:-

“4. Vesting of rights in Panchayats and non-proprietors.--

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interests whatever in the land,--

(a) which is included in the shamilat deh of any village and which has not vested in a Panchayat under the shamilat law shall, at the commencement of this Act, vest in a Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall, on the commencement of shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the:-

(i) existing rights, title or interests of persons, who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

(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;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

XX

XX

XX

“2(h) “Shamilat Law” means:-

(i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in State of Punjab, the Punjab Village Common Lands

(Regulation) Act, 1953, or

(ii) in relation to land situated in territory immediately before the 1st, November, 1956, was comprised in State of Patiala and East Punjab States Union; the Pepsu Village Common Lands Regulation Act, 1954;”

15. A conjoint reading of the above extracted Sections 2(g), 2(h) and Section 4 of the Act of 1961, makes it abundantly clear that the land, which falls within the ambit of the inclusionary clause of “shamlat deh”, as defined under Section 2(g) of the Act of 1961, shall, by virtue of Section 4 of the Act of 1961, vest with the Gram Panchayat.

ANALYSIS OF THE PRESENT SUBJECT MATTER

16. In view of the above discussed factual backdrop as well as the legal propositions, the following questions arise and warrant adjudication by this Court:-

- (i) Whether the petition land(s), which is recorded as “abadi deh” in the column of ownership and as “chahi” (cultivation through tube-well) in the column of “nature of land”, in the relevant revenue record(s), falls within the inclusionary clause of “shamlat deh” or not ?
- (ii) Whether the petitioners, who are recorded as “Gair Dakhildar” (non occupant tenant) in the column of possession, can acquire the status and right of Marusi and claim ownership ?
- (iii) Whether by virtue of sale deed (Annexure P-5), the predecessor-in-interest of the petitioners had validly purchased the petition land(s) from one Baba Barkat Singh Bedi and whether the said vendor was allotted this land during consolidation operations ?

17. Insofar as the first issue is concerned, as already discussed above, the land which is recorded as “abadi deh” in the relevant revenue record(s) is, by virtue of Section 2(g)(1) of the Act of 1961, excluded from the ambit of “shamlat deh”. Section 2(g)(4) of the Act of 1961 expands the scope of the definition of “shamlat deh” and provides that the land, which is reserved or used for the benefit of the village community, within “abadi deh”, is included within the inclusionary clause of “shamlat deh”.

18. The petitioners have placed reliance upon the Jamabandi for the year 1976-1977 pertaining to the petition land(s), wherein, in the column of ownership, the land is recorded as “abadi deh” and in the column of cultivation, an entry of “Gair Dakhildar” exists, while in the column of source of irrigation, “tube-well” is recorded, and, in the column relating to “area and type of land”, an entry of “Chahi” (land irrigated through tube-well) exists. The above recorded entries travelled intact in the subsequent Jamabandis also, i.e. Jamabandis for the years 1981-1982, 1991-1992, 1996-1997, 2001-2002, 2006-2007 and 2011-2012, which are enclosed with the present petition as Annexure P-15 (Colly.). A perusal of the above enumerated revenue record explicates that the petition land(s) does fall within the “abadi deh”, however, it is an open land, which is used for the purpose of cultivation. Furthermore, the Gram Panchayat concerned, in the eviction petition filed before the learned Collector concerned, examined one Ranjit Kaur Sarpanch as AW1, and, one Bakshish Singh as AW2, who deposed qua release of dirty water of the village houses on to the petition land(s) and also deposed qua use of this land for common purposes of the village proprietary body, which subsequently happened to be encroached upon by the present petitioners. The above

deposition of the witnesses gathers ample corroboration from the judgment and decree dated 20.03.2014, rendered by the learned civil court concerned, upon a civil suit filed by the present petitioners for restraining the respondents therein from diverting the sullage and dirty water of the village on to the petition land(s). Without diving deep into the issue of title, the learned civil court concerned, granted the asked for injunction in favour of the present petitioners and against the Gram Panchayat concerned. Therefore, the filing of the civil suit (supra) tantamount to an admission on the part of the present petitioners that the petition land(s) was being used for discharge of sullage and dirty water of the village houses. An admission is the best piece of evidence, therefore, in view of such an admission, we can safely conclude that the petition land(s) is “abadi deh”, which was indeed being used for common purposes of the village community. Therefore, by dint of Section 2(g)(4) read with Section 4 of the Act of 1961, the petition land(s) clearly vests with the Gram Panchayat concerned.

19. Furthermore, since the petition land(s) is an open land within the “abadi deh”, which is being used for cultivation purposes, and there is no house or any other construction existing over it, therefore by virtue of Section 2(g)(4a) of the Act of 1961, the vacant land existing within the “abadi deh” vests with the Gram Panchayat.

Although, the provision (supra) came into force w.e.f. 07.04.2021, however, it has never been the case of the petitioners that they have raised any construction over the petition land(s), rather as recorded above, it is an open land(s), which was earlier used for common purposes of the village concerned and now, the petitioners are using it for agricultural

purposes. The present petition is nothing but a continuance of the earlier lis, therefore, upon insertion of sub-clause (4a) in Section 2(g) of the Act of 1961, any vacant land falling within “abadi deh” and not owned by any person, comes to vest with the Gram Panchayat concerned. Although the term “abadi deh” does not find defined either in the Pepsu Village Common Lands (Regulation) Act, 1954, or, in the Act of 1961, but generally an “abadi deh” means and include an area, which is recorded as abadi deh in the record of rights. As a general rule, revenue authority assigns a single khewat/khatoni/khata number to the land of the “abadi deh”, and, generally the land falling within the “Lal Lakir” is called “abadi deh”. However, the term “*Abadi Deh*”, as defined in Section 2(a) of The Punjab Abadi Deh (Record of Rights) Act, 2021, reads as under:-

2. *In this Act, unless the context otherwise requires, -*
 (a) “*Abadi deh*” means the site recorded as such in the Record of Rights prepared and maintained under the Revenue Act, which is not assessed to land revenue and includes such land in a municipal area;

XX XX XX XX”

In view of the above, since the petition land(s) is recorded as “abadi deh” in the relevant revenue record(s) and is also an open land, therefore by dint of provisions of sub-clause (4a) of Section 2(g) of the Act of 1961, it does fall within the inclusionary clause of “shamlat deh”.

20. Now, heading towards the second issue, which relates to acquisition of status and right of Marusi by a person recorded as “Gair Dakhildar” in the revenue record(s), it is a well established law that a non occupant tenant cannot acquire the status and right of Marusi and claim

ownership. As quoted hereinabove, the petitioners have been evidently recorded as “Gair Dakildar” in the relevant revenue record(s), right from the very inception, i.e. Jamabandi for the year 1976-77. The above conclusion gathers support from a judgment passed by this Court, in **CWP No.20563 of 2008**, titled **“Jaleb Khan and others V/s Commissioner, Gurgaon Division, Gurugaon and others”** decided on 20.7.2009, wherein it has been held as under:-

“After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. The Gram Panchayat, Agon (respondent No.3) filed a petition under Section 7 of the Act seeking eviction of the petitioners. As per Jamabandis for the years 1962-63, 1967-68 and 1997-98 (Annexures P-7, P-8 and P9) respectively the ownership of the land in question is recorded in the name of Gram Panchayat. In the column of cultivation, Kallu son of Kale Khan son of Chhota Khan is recorded as 'Gair Marusi' in the three afore-referred Jamabandis. Therefore, the predecessor-in-interest of the petitioners having been recorded as 'Gair Marusi' he cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) as contended by the learned counsel for the petitioners. The fact that the petitioners acquired rights of ownership being an occupancy tenant is clearly misconceived.”

21. Therefore, as a corollary of the above, it can be safely concluded that the petitioners cannot acquire the status and right of Marusi and consequently claim ownership. Accordingly, the second issue is answered in negative.

22. Now, insofar as the third issue is concerned, which relates to validity of the sale deed (Annexure P-5) allegedly pertaining to petition land(s) and the allotment of the petition land(s) during consolidation operations, we have minutely examined the record. The petitioners have

placed reliance upon the sale deed (Annexure P-5) to aver that their predecessor-in-interest had validly purchased the petition land(s) from one Baba Barkat Singh Bedi. A perusal of the sale deed (supra) though reveals descriptions of the land, which was sold to the predecessor-in-interest of the petitioners, however, the descriptions of the petition land(s) do not find any mention therein. The learned counsel for the petitioners has further vigorously argued that the words “Abo Amarat” and “Ahata”, as exist in the sale deed (supra), denotes “abadi deh” land(s), therefore the said vendor has, along with the land mentioned in the sale deed (supra), also sold his share in the “abadi deh”, to the predecessor-in-interest of the petitioners. However, we are unable to accept this argument, not for one, but for several hereinafter assigned reasons.

23. First of all, when the petition land(s) carries specific khasra and killa numbers, assigned to it by the revenue authorities concerned during consolidation operations, therefore the omission of such specific khasra numbers in the sale deed (supra), casts suspicion over the validity of the sale deed (supra) executed allegedly in respect of petition land(s). Had the vendor, i.e. Baba Barkat Singh Bedi, any intention to sell the “abadi deh” land, he must have ensured the recording of accurate descriptions of the land(s) in the sale deed, whereas, nothing of this sort has evidently happened.

Secondly, the words “Abo Amarat” and “Ahata”, as exist in the sale deed (supra), can, by no far stretch of imagination, be linked with the petition land(s).

Thirdly, the petitioners have not placed on record any documentary evidence, which may unveil that Baba Barkat Singh Bedi was, at

any point of time, owner of the petition land(s), or, which may establish that the petition land(s) was allotted to him during consolidation operations. Furthermore, there is also no evidence regarding Baba Barkat Singh Bedi being a proprietor of the village, or, regarding his holding any share in the “shamlat deh” or in the “abadi deh”. In the absence of any cogent documentary evidence, the response to this issue is also returned in negative.

FINAL ORDER

24. As a sequel to the above discussions, we do not find any illegality or perversity in the eviction orders, drawn by the learned Collector concerned and by the learned Commissioner concerned, respectively on 10.05.2012 (Annexure P-6) and on 14.12.2015 (Annexure P-14). Therefore, the instant writ petition is **dismissed** being bereft of merits and the impugned orders (supra) are affirmed and maintained.

(SURESHWAR THAKUR)
JUDGE
30.05.2023
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No