

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP No. 1508 of 2018****Reserved on: 01.08.2023****Date of decision : 07.08.2023**

GRAM PANCHAYAT KANORRAN

-PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. Nakul Sharma, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Harkaran Singh, Advocate
for the respondents No.4 to 9(i), (ii) and (iii).

SURESHWAR THAKUR, J.

1. The private respondents herein, petitioners in Case No.324, as became instituted on 19.09.2013, before the learned Collector concerned, claimed thefrein rendition of a declaratory decree of title from the learned Collector concerned, exercising powers as such under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), thus against the Gram Panchayat of Village Kanaura, Tehsil Kharar, District S.A.S. Nagar. The learned Collector concerned, on the pleadings of the parties, framed the hereinafter extracted issues:-

- “(i) Whether the petitioners are entitled for declaration as owner in possession ? (OPP)
- (ii) Whether the land is under the possession of petitioners before 26.1.1950? (OPP)
- (iii) Whether the suit is maintainable in its present

form? (OPD)

- (iv) Whether the land was reserved or used for common purpose of the village at any point of time? (OPD)
- (v) Whether the suit land vests in Gram Panchayat? (OPD)
- (vi) Is the land, shamlat deh, as described in Section 2(g) of the Punjab Village Common Lands (Reg.) Act, 1961? (OPD)
- (viii) Relief'

2. On an examination of the evidence, as became adduced by the litigants concerned, thus in discharge of the onus, as became cast upon them, on the above struck issues, the learned Collector concerned hence came to a conclusion, that since in the Jamabandis appertaining to the suit lands, as commencing from the year 1894, and lasting upto 2007, there existing in the column of ownership thereof, an entry of "*Hasab Rasad Jar Khewat*", thus thereby the suit lands falling within the ambit of the inclusionary definition of shamlat deh. Resultantly, he decided issue No.3 against the petitioners therein, private respondents herein, and, decided issues No.4 to 7 in favour of the Gram Panchayat concerned, respondent therein. In aftermath, the declaratory relief, as espoused by the petitioners therein, in the case (supra), became declined to them, thus through the drawing of Annexure P-3.

3. The drawing of Annexure P-3 caused grievance to the petitioners therein, which led them to rear thereagainst an appeal bearing No.227 of 2015, before the appellate authority concerned, who however through Annexure P-5, after accepting the appeal (supra), reversed the verdict (Annexure P-3), as made by the learned Collector concerned, whereby the petitioners' case (supra) became dismissed.

4. The verdict (Annexure P-5), as drawn against the Gram

Panchayat concerned, by the appellate authority concerned, has brought grievance to the Gram Panchayat concerned and has led it thus to institute thereagainst the instant writ petition before this Court.

For the reasons to be assigned hereinafter, the appellate authority concerned in concluding, that the names of the predecessor(s)-in-interest of the private respondents herein, are occurring in the ownership column of the Jamabandis (supra), is a conclusion which but is ridden with a grave fallacy.

5. The reason for forming the above inference stems, from the factum, that thereby the appellate authority concerned conferred, upon, the private respondents herein, the benefit of the apposite savings clause, to the inclusionary definition of shamlat deh, savings clause whereof becomes engrafted in Section 2(g)(viii), of the Act of 1961, provisions whereof are extracted hereinafter.

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

XX XX XX

(g) “Shamilat deh” includes

XX XX XX

(viii) was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or

XX XX XX”

6. However, a studied perusal of the Jamabandis (supra), besides of the column of classification, as carried therein, does not satisfy the imperative statutory ingredient, as carried therein. The apt statutory ingredient does require that forthright evidence, has to emerge in vivid display, that the petitioners in the case (supra), private respondents herein, were through their predecessor(s)-in-interest, thus holding independent cultivating possession of the suit lands, and, that such independent cultivating possession over the lands described in the revenue records, as shamlat deh, did commence on or before 26.01.1950.

7. Therefore, if the petitioners in the case (supra), private respondents herein, through their predecessor(s)-in-interest, were as such evidently holding individual cultivating possession of the lands, described in the ownership column as “*Hasab Rasad Jar Khewat*”. Resultantly, the category assigned to the writ lands, in the column of classification, was but to be an arable or cultivable category, rather than the candid speaking qua thereof as made in the classification column of the Jamabandis prior to 1950, which but exemplifies qua, the suit lands becoming described therein as Banjar Qadim lands. Therefore but obviously since Banjar Qadim land, is uncultivable or barren land, and as such, is unfit for cultivation. Consequently, when the statutory ingredient (supra), as engrafted in Section 2(g)(viii) of the Act of 1961, imperatively requires the holding of thus evident cultivating possession of the writ lands, hence commencing on or before 26.01.1950. Resultantly, an uncultivable category of the suit lands, as is evident on a reading of the apposite classification column(s), obviously did not make them cultivable, nor thereby the above statutory imperative necessity can be deemed to have ever become accomplished.

8. In consequence, the reasoning, as meted by the appellate authority concerned, to yet afford to the appellants therein, private respondents herein, the benefit (supra), is in complete derogation of the entries, as made qua the suit lands, thus in the column of classification of the record of rights prior to 1950, besides also has obviously resulted in misapplication of the above exception to the inclusionary definition of shamlat deh, exception whereof becomes engrafted in Section 2(g)(viii) of the Act of 1961.

9. Moreover, the learned Collector concerned, in his making a

declining decision (Annexure P-3), also concluded that there was no forthright evidence, that irrespective of the above non satisfaction of the above imperative statutory ingredient, thus in display qua the private respondents being the successors-in-interest of the persons described in the column of cultivation in the Jamabandis appertaining to the suit lands, and, relating to the period prior to 1950. The best evidence in the above regard became comprised in the adduction into evidence of the pedigree table, thus divulging therein, that the private respondents are the successors-in-interest of the persons named in the column of cultivation of the Jamabandis relating to the suit lands, and, as appertaining to the year prior to 1950. However, since the above best evidence remained unadduced, thus to suggest that the private respondents are the successors-in-interest of the apposite cultivators, thereupon an apt conclusion was made, that the petitioners therein, private respondents herein, are not entitled to derive benefit, if any, from their purported predecessor(s)-in-interest, thus in respect of the suit lands.

10. In sequel, this Court finds merit in the instant writ petition and is constrained to allow it. Therefore, the writ petition is allowed. The impugned order (Annexure P-5) of the appellate authority concerned is quashed and set aside, and, the order (Annexure P-3) of the learned Collector is maintained and affirmed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

07.08.2023
devinder

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