

In the High Court of Punjab and Haryana at Chandigarh

1. **CWP No. 17464 of 2006 (O&M)**
Reserved on : 11.9.2023
Date of Decision: 19.9.2023

Maha Nand and others Petitioners

Versus

State of Haryana and others Respondents

2. **CWP No. 6766 of 2006 (O&M)**

Onkar Singh (since deceased) through LRs Petitioners
and others

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 assisted by
Mr. Chetan Salathia, Advocate
for petitioners No. 3 to 6 and 8 and 9 (in CWP-6766-2006).

Ms. Sharmila Sharma, Advocate and
Ms. Neha, Advocate
for the petitioners (in CWP-17464-2006).

Mr. Ravi Malik, Advocate
for the applicants in CM-12395-CWP-2019.

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

SURESHWAR THAKUR, J.

1. Since both the above petitions arise from common verdicts, as,
made by statutory authorities below, thus both are amenable for a common
verdict being made thereons.

2. Through the instant petition, the petitioners challenge

Annexure P-5, made on 17.8.1999, Annexure P-6 drawn on 27.3.2002, and, Annexure P-7 drawn on 20.12.2005. Moreover, a challenge is also made to the attestation of mutation recorded on 15.9.1955 (Annexure P-3).

3. The Gram Panchayat concerned, was declared to be the owner of the suit land. The above orders were made on a petition cast, under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961) (as applicable to Haryana). The learned Collector concerned, after considering the entire documentary evidence, as became adduced before him, declined the espoused declaratory decree, to the plaintiffs, the petitioners herein.

4. The Collector concerned, who drew Annexure P-5, dispelled the argument, as became raised before him by the learned counsel for the plaintiffs, qua in terms of Section 2(g)(5) of the Act of 1961, provision whereof stands extracted hereinafter, the plaintiffs claim, that irrespective of a part of the suit land, becoming entered in the revenue records, as banjar kadim, yet when no further evidence became adduced, that the said lands were either used for the benefit of the village proprietary body, whereby thus the petitioners may save the suit lands from vestment in the shamlat deh. Consequently, the said argument became rejected.

“lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records”

5. Though, the learned counsels for the petitioners argue, that the rejection of the said argument, is lacking in any vigour. However, for canvassing the said argument, they have been unable to place on record any document suggestive, that the lands entered with the said classification in the revenue records, and, which appear to become reserved for the benefit of the village proprietary body, and/or were reserved for the user of the

village proprietary body, thus never became used as such, by the entire village proprietary body concerned. Since the adduction of the above evidence was of extreme or of dire importance rather to dispel the vigour of the said conclusion, as drawn by the learned Collector concerned. However, with the said evidence remaining unadduced. Therefore, the above argument raised before this Court, requires to be rejected.

6. In consequence, since some portion of the disputed lands were entered in the revenue records, as banjar kadim, thereby the said tracts of suit lands, thus are deemed to become construed to be the shamlat deh lands, and, in respect thereof, no valid claim for rendition of a declaratory decree, thus making the plaintiffs to be the owners in possession of the said parcel of the suit lands, rather could become passed.

7. Furthermore, there are detailed discussions in the order, as comprised in Annexure P-5, that in respect of the disputed lands, the Gram Panchayat concerned, had proceeded to make auctions thereof, and, which resulted in the said lands being assigned to the successful bidders, but on leases being granted to them. The above auction of a part of the disputed lands, never became challenged at the stage, when such lands were put to auction. Therefore, the omission of a prompt challenge being made to the auction proceedings, as became drawn in respect of some part of the disputed lands, thereby begets a sequel, that the plaintiffs acquiesced to the legitimacy of the conduct of such leases of some portion of the disputed lands. Resultantly the petitioners are estopped from claiming that the leases, as were made of some portion of the disputed lands rather were unlawful, thus on the premise that they were the lawful owners of the disputed lands.

8. The Collector concerned, on making a keen evaluation of the

documentary evidence adduced before him, made a conclusion, that qua khewat No. 349, the plaintiffs are entitled to the beneficent grace of the saving clause, to the definition of shamlat deh, and, as becomes engrafted in Section 2(g)(viii) of the Act of 1961. However, he concluded that in respect of the suit claim laid with respect to khewat No. 350, the documentary evidence, does not support the said claim, as the plaintiffs were unable to bringforth forthright evidence, that in the cultivation column appertaining to the relevant revenue records, prior to 1950, they were holding independent cultivating possession of the lands comprised in khewat No. 350.

9. Since the relevant documentary evidence (supra) thus relating to the claim raised qua khewat No. 349 remained unadduced, whereas, firm evidence in support of a declaratory claim of ownership, as raised by the plaintiffs, thus became adduced only in respect of khewat No. 350. Resultantly since all the relevant records were keenly examined by the learned Collector concerned. Therefore, when evidently there was suppression of documentary evidence relating to khewat No. 349, thus led the learned Collector concerned, to draw a conclusion that the plaintiffs are suppressing the material fact/evidence (supra), thus for seeking the rendition of a declaratory decree qua khewat No. 349. Moreover, he was also led to draw a further conclusion, that despite the plaintiffs holding lawful ownership over khasra No. 349, yet theirs unlawfully asserting right, title and, interest over khewat No. 350. It appears that the said inference is valid, as in the garb of suppression (supra), the plaintiffs intended to claim, that they were even entitled to receive, thus vis-a-vis khewat No. 349, the beneficent grace of the saving clause (supra), to the definition of shamlat deh land. Therefore, theirs omitting to come to the Court with clean hands, leads

to a conclusion, that they were tenably ordered to thus not being entitled to the rendition of a declaratory decree of title qua khewat No. 350.

10. The aggrieved from Annexure P-5 made an appeal thereagainst before the learned Appellate Authority concerned. However, through a decision drawn on 27.3.2002 (Annexure P-6), on the said statutory appeal bearing No. 12 of 15.10.1999, the learned Appellate Authority concerned, dismissed the appeal (supra).

11. The plaintiffs became yet aggrieved from the drawing of Annexure P-6, and, preferred a revision petition thereagainst, before the learned Financial Commissioner, Haryana. The learned Financial Commissioner, Haryana, through a decision made thereon, on 20.12.2005 (Annexure P-7), concurred with the decisions enclosed respectively in Annexure P-5 and Annexure P-6. As stated supra, the well reasoned verdict (Annexure P-5), as drawn by the Collector concerned, especially when the said conclusion is planked upon a worthy appraisal of the documentary evidence, besides is rested upon an apt application of laws thereons. Resultantly, this Court finds that affirmation of Annexure P-5, respectively by the competent appellate authority concerned, and, also by the revisional authority concerned, is required not to be undone.

Final Order

12. 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.

13. Since the petitioners are in unlawful possession of the disputed lands, therefore, the mesne profits, as assessed against them, and, which

have been deposited in the shape of solvent securities by them, thus be ensured to be recovered from the solvent securities, thus by the learned Executing Court concerned, on the latter receiving an execution petition, thus for enforcing the verdicts (supra), as become also affirmed by this Court.

14. No order as to costs.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 19th, 2023
Gurpreet

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