

In the High Court of Punjab and Haryana at Chandigarh

1. **CWP No. 19317 of 2017 (O&M)**
Reserved on 23.1.2023
Date of Decision: 03.2.2023

Guhia and others Petitioners

Versus

Joint Development Commissioner (I.R.D.), ...Respondents
Punjab and others

2. **CWP No. 5851 of 2018 (O&M)**

Gram Panchayat, Bair Majra Petitioner

Versus

Joint Development Commissioner (I.R.D.), ...Respondents
Punjab and others

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. J.S.Maani pur, Advocate
for the petitioners (in CWP-19317-2017) and
for respondents No. 2 to 4 (in CWP-5851-2018).

Mr. J.S.Bhandohal, Advocate
for the petitioner (in CWP-5851-2018) and
for respondent No. 3 (in CWP-19317-2017).

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since both the writ petitions (supra) arise from a common order, made on 13.7.2016, upon Appeal No. 220 of 2012, by the learned Appellate Court concerned, therefore, both the writ petitions are amenable for being decided through a common verdict.

2. Before proceeding to make an analysis of the respective submissions, as become addressed before this Court by the learned counsels

appearing for the litigants concerned, in the writ petitions (supra), it is deemed imperative to extract the operative part of the impugned verdict (supra), the relevant portion whereof is extracted hereinafter.

“After hearing the arguments of counsels for both the parties and perusal of the record brought on the file I reached to the conclusion that it is also clear from the affidavits duly attested given by Paramjit Singh Ex Sarpanch, Village Bair Majra and Jaswant Singh Ex-Sarpanch, Village Bair Majra that the petitioners have inherited the disputed land. Earlier to the petitioners their fathers/ grandfathers were in possession and on the disputed land, houses of the petitioners are constructed. From the electricity meter's bill it is clear that houses are constructed. From the jamabandi of 1945-46 the petitioners are owners in possession of this land. Apart from this, from the revenue department record produced by the appellants the possession of the appellants is established even prior to 26.01.1950. Therefore, keeping in view the justice I partly accept the appeal of the appellants, set aside the order of lower court and direct the appellants to declare owners of the constructed houses and land in front of the same and for the remaining disputed land, Gram Panchayat to take possession thereof in accordance with law. Appellants will use the streets-drains and for making entry/mutation in the revenue department, and taking action in that behalf the revenue department's officers/ officials are authorized authority and for that the appellants can avail their remedy for taking action. In this manner the appeal stands disposed of.”

3. A reading of the above extracted operative part of the impugned verdict, as became drawn by the learned Appellate Court concerned, does bringforth the apparent fact, that the learned appellate Court concerned, though partly accepted appeal No. 220 of 2012, as became constituted before it, by the aggrieved from a verdict of dismissal, as, made on 16.5.2012, inasmuch as, the learned Commissioner concerned, declared the petitioners herein to be the owners in possession of the houses constructed on the panchayat land, but insofar as the other vacant lands, as, occurring within the lands concerned, the Gram Panchayat concerned, rather became declared as owner in possession. Therefore, but obviously the petitioners are aggrieved from the above made verdict, as also the Gram

Panchayat concerned, is aggrieved from the verdict (supra), where through in respect of the houses raised by the petitioners herein, upon the Panchayat land, the persons became declared to be lawful owners in possession.

Factual background

4. The aggrieved constituted a petition under Section 11 of the Punjab Village Common Land (Regulation) Act, 1961 (for short 'the Act'), before the Collector concerned. Therein they also for a declaration, that they be declared as owners in possession of the land comprised in Khewat No. 79, Khatauni No. 130, Khasra No. 794/1(4-3), as per jamabandi for the year 2006-2007, situated at village Bair Majra, Tehsil Derabassi, District SAS Nagar. The learned Collector concerned, after making an analysis of the documentary evidence, as became adduced before him, made a conclusion, that though an entry exists in the revenue records, especially in the jamabandi drawn for the year 1953-54, revenue entries whereof though describe them, as Shamlat Deh Hasab Rasad Jar Khewat, and, though thereons one Nanak, the predecessor-in-interest of the petitioners, is shown in the column of cultivator, but, also in column No. 9 thereof, an entry of chakotedar is rather existing. However, in the jamabandi for the year 1956-57, though in the column of ownership, there an entry of Nagar Panchayat Mazkoor, and, in the column of cultivator thereof, one Nanak son of Attra became entered, and, such entries became followed in the jamabandi drawn for the year 1957-58 qua the disputed land. Moreover, since in the jamabandi drawn for the year 1961-62, an entry in the name of Nagar Panchayat was shown in the column of ownership, and, one Nanak Singh son of Attra, was shown in the column of cultivator, but in column No. 5 thereof, he was shown as cultivating the land, as chakotedar. In addition, in

the jamabandi drawn for the year respectively of 1966-67, 1976-77, 1981-82, 1986-87, and, for the year 1991-92, in the column of ownership though, an entry of Shamlat Deh Hasab Rasad Raqba Khewat exists, and, in the column of cultivator thereof, the name of one Nanak occurs.

5. Be that as it may, the learned Collector concerned, drew a conclusion, that since the predecessor-in-interest of the petitioners, was shown as a chakotedar in the jamabandis drawn for the years 1953-54, and, 1961-62. Therefore, a conclusion was made that the said capacity of the predecessor-in-interest of the petitioners over the suit khasra numbers, did not well capacitate his successors, who are the petitioners to claim any valid right, title or interest over said land.

6. In an appeal, being reared thereagainst before the learned appellate authority concerned, as above stated, the above extracted final order was made thereons.

Submissions of the learned counsel for the petitioners
(in CWP-19317-2017)

7. The learned counsel for the purported cultivators of the suit land, has submitted with much vigour before this Court, that since a declaratory suit was cast, for the making of a declaration, qua the petitioners being owners in possession of the land comprised in Khewat No. 79, Khatauni No. 130, Khasra No. 794/1(4-3), as became reflected in the jamabandi drawn for the year 2006-07. Therefore, the learned counsel contends, that since in the previous thereto jamabandi, which became prepared for the year 1966-67, the predecessor-in-interest of the petitioners, has been shown to be holding cultivating possession of the suit land.

Moreover, also when the suit land is described as *taraf*, and, is not demonstrated by any cogent evidence to be used for the benefit of the

village community nor when a part thereof, has been ably established to be used for the common purposes of the village proprietary body. Therefore, he contends, that the mentioning of the suit land, rather as “taraf” in the jamabandi concerned, did well enable the petitioners to claim, that they are entitled to the benefit of Section 2(g)(v) of the Act, provisions whereof become extracted hereinafter.

“but does not include land which--

x x x x x

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village”

8. Since the above stated benefit has not been assigned to the petitioners, rather the Courts below apparently referred to only those documents, wherein, the predecessor-in-interest of the petitioners, was reflected as chakotedar, whereas, such documents prima facie, did not carry khasra numbers, as mentioned in the petition. Therefore, a contention, is made before this Court, that any reference to such documentary evidence, yet did not relate them to the suit khasra number(s), and, also reliances, if any, upon the occurrences therein of an entry, displaying the predecessor-in-interest of the petitioners, as a chakotedar, rather was completely inapt, and, has resulted in erroneous findings being made.

Submissions of the learned counsel for the Gram Panchayat

9. The learned counsel appearing for the Gram Panchayat concerned, has submitted with much vigour before this Court, that the reasons(supra), as became assigned by the learned Collector below, are meritworthy, and, are based upon a sound appreciation of the documentary evidence, which do relate them to the suit khasra number, and, that no interference was required to be made by the learned Appellate Court.

Analysis of the submissions of the learned counsel for the petitioners

10. Though, the learned counsel for the petitioners, in making a submission, that the suit khasra number, to which khasra No. 794/1 is assigned, hence in the jamabandi for the year 1981-82, rather become echoed, to be “taraf”, and, also when in the column of ownership thereof, an entry of Shamlat Deh Hasab Rasad Raqba Khewat, hence exists, besides when the predecessor-in-interest of the petitioners is shown there to be holding cultivating possession thereof. In addition, since the said land has been described to be barani. Furthermore when in the remarks column, it has been shown to be Bashra Malkan Kabja Malak. Therefore, though on the above plank, he may prima facie become well capacitated to contend, that the predecessor-in-interest of the petitioners, was purportedly in consonance to his share in the land, as, carried in khasra No. 794/1, also holding lands outside the suit khasra numbers. Thus, he may also well argue, that the petitioners who are the successors-in-interest of the above Nanak, may become entitled to receive the asked for declaratory decree, besides may also make a sound argument, that since he was not amenable to pay any land revenue to the government, in respect of some tracts of the land, nor when any land revenue has been assessed against him. Thus, the asked for declaratory decree was renderable qua the petitioners. Therefore, he may also contend, that prima facie on the basis of the said entries, unless evidence surgeforth, hence pronouncing that the same were erroneously or fictitiously recorded, qua hence theirs enjoying a conclusive presumption of truth.

Rejection of the above contentions.

11. However, for the reasons to be assigned hereinafter the above

made contentions are rejected.

12. The reasons for making the above conclusion stems, from the factum, qua the suit land, though becomes described as Taraf, in the revenue records, and, obviously when it has also been recorded therein, as Shamlat Deh Hasab Rasad Raqba Khewat, and, though a further revenue entry also exists therein, rather reflecting that the predecessor-in-interest of the petitioners one Nanak, hence visibly cultivating the petition land. Thus, apparently the suit land was not meant for the benefit of the village community, nor was meant for the common purpose of the village proprietary body concerned. Therefore, prima facie the petitioners were well entitled to take the benefit of the saving clause (supra). However, yet evidence was required to surgeforth, displaying that the cultivation of the suit land, as made by the petitioners was in proportion to their lawful land holdings, as held outside the suit khasra numbers. The necessity of the adduction of the above evidence became sparked, from the trite factum qua the assigning to them of the benefit of the above referred saving clause, would accrue to the petitioners, only when apart from the land described as Shamlat Deh Hasab Rasad Raqba Khewat, they were also in the mohal concerned, rather holding lawfully cultivated lands, but obviously outside the suit khasra numbers. The further reason for the necessity of eruption or adduction of the above evidence, becomes aroused from the fact, that the import of the entry “taraf”, has to be read along with the entry of Shamlat Deh Hasab Rasad Raqba Khewat, and, when the import of the latter entry, is that, the benefit(s) of the entry of tarafdars, is to accrue to them only when the cultivators concerned, are also outside the suit khasra numbers, holding good title to lands co-equal in areas to the lands, described as such in the

revenue records. However, the above evidence is grossly amiss. Therefore, the want of the above evidence, does prima facie beget a conclusion, that the petitioners were not entitled to hold any valid title to the suit khasra numbers, nor they were prima facie entitled to make lawfully cultivation thereof, as the suit land became vested in the Panchayat deh.

13. Be that as it may, yet for the above referred entries, as made in respect of the suit khasra No. 794/1, rather to carry the utmost evidentiary vigour, did require theirs becoming co-related with the prior thereto entries, as, carried in the but proven similar prior thereto entries, as became assigned to the suit khasra numbers, at the pre-consolidation stage or at the pre-settlement stage. If the prior thereto revenue entries carried reflections, that the suit khasra numbers, mentioned therein are distinct from the khasra number, as mentioned in the head note of the plaint, thus yet a dire necessity arose, upon the litigants concerned, as well as the learned authorities below, to from all the records, discern whether after the conclusion of settlement operations or after the completion(s) of consolidation operations, the suit khasra numbers, were the newly drawn khasra numbers, from the similar prior thereto khasra numbers, as carried in the pre-settlement or pre-consolidation operation records, and/or that the sabik, and, the hal khasra numbers completely did tally with each other. Thereupon, only the apt inter se correspondence inter se the old or the hal khasra numbers, could become well established. However, the above evidence is grossly amiss. Therefore, the apposite inter se correspondence inter se the pre-settlement or pre-consolidation revenue entries, prima facie is not related to the suit khasra numbers.

irrespective of an entry of chakotedar, occurring in the revenue records, qua the predecessor-in-interest of the petitioners one Nanak, in respect whereof, he claimed the benefit of the saving clause, as dependent upon, the apposite suit land, being described as taraf. Thereupon, yet evidence was to emerge in respect of the petitioners, who claimed themselves to be not chakotedar(s), of land, described in the revenue records, as Shamlat Deh Hasab Rasad Jar Khewat, rather claimed a lawful title thereons to also further establish, that the such land, was never reserved or never became used for the benefit of the entire village proprietary body. The adduction of above evidence, would ensue in case the petitioners had placed on record the finalized consolidation scheme, but along with the field book concerned, and, its revealing that the suit khasra numbers, rather being untenably carved from the petitioners' lawfully held lands, and/or, from their lawfully held lands hence reservations were inaptly made for the benefit of the entire village proprietary body. However, the above exercise, has not been undertaken by both the authorities below, whereas, the necessity of making of embarkings, upon the said factum, was a dire necessity, to firmly conclude whether the apposite saving clause is applicable to the petitioners or not.

15. Moreover, it also appears that neither the petitioners carried, the above exercise, nor the authorities below deemed it fit to make the above exercise, relating to the apt inter se correspondence or similarity visibly emerging inter se the pre settlement or pre consolidation revenue entries. Only if the above inter se correspondence was established, thereupon it could be concluded, that the apposite post consolidation operations, revenue entries were falsely or fictitiously drawn, and, that no

reverence is to be meted thereto. In the absence of the above, at this stage, this Court cannot conclude, that the apposite post settlement records rather carrying the above echoings are truthful, nor thereupon they can become capitalized either by the petitioner nor by the Gram Panchayat concerned.

16. Nonetheless in the larger interests of justice, this Court after quashing the impugned order, directs the appellate authority concerned, to re-register the lis to its original number, and, thereafter, in accordance with law, and, after hearing all the affected persons, to from the revenue records, if existing on record, and, if not existing before it, to summon them, hence to establish that suit khasra number to which khasra No. 794/1 is assigned, was corresponding to the pre settlement or pre consolidation khasra numbers. Moreover, the learned Appellate Authority concerned, shall also make a conclusion, whether the above referred revenue entries bestowed any privilege to the petitioners to claim the benefit of the above referred saving clause. The decision, to be by the learned appellate authority concerned, shall also cover, whether the petitioners herein have established from the revenue records, whether qua the lands described as Shamlat Deh Hasab Rasad Jar Khewa, they are lawfully entitled to make cultivation thereof, given their well establishing that in the lands, outside the suit khasra numbers, theirs in the mohal concerned, also holding a valid title to areas of land co-equal to the lands, carried in the suit khasra numbers. Moreover, shall also consider whether the reservations made in favour of the panchayat deh concerned, were lawfully made reservations.

Summarization of Principles

- (i) When the suit land is echoed to be recorded as “taraf” also
when an entry of Shamlat Deh Hasab Rasad Raqba Khewat,

hence exists in the column of ownership, besides the predecessor-in-interest of the petitioners is shown to be holding cultivating possession over the suit land, but as a chakotedar. In such cases, cogent evidence must surge forth reflecting, that the “taraf” land is not being used for the benefit of the village community nor a part thereof is used for common purposes of the village, as enshrined in the proviso (v) of Section 2(g) of the Act, then only the petitioners can prima facie be entitled to take benefit of such proviso.

- (ii) The latest revenue entries to enjoy an aura of conclusive proof must be cogently established to become lawfully borrowed from the earlier thereto entries, as carried in the pre-settlement or pre-consolidation records.

Final order

17. The remandee Court is directed to make a fresh decision, in accordance with law, in respect of the above, but positively within six months from today, and, obviously through a speaking order.

18. With the above observations, both the petitions stand disposed of.

19. All the pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 3rd, 2023
Gurpreet