

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 20925 of 2021
Reserved on 12.7.2023
Date of Decision: 19.7.2023**

Sarabjit Singh and others

....Petitioners

Versus

Director, Rural Development and Panchayats
Punjab and others

....Respondents

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

Argued by: Mr. Ankur Bansal, Advocate
for the petitioners.

Mr. Avinit Avasthi, AAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant petition is directed against the order dated 19.2.2021 (Annexure P-26), as, passed by the Director, Rural Development and Panchayats Department, Punjab (exercising the powers of Commissioner), whereby the appeal filed by the petitioners under Section 11(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961') against the order dated 8.5.2013 (Annexure P-17), and the order dated 29.1.2014 (Annexure P-20), became dismissed.

2. The predecessor-of-interest of the petitioners one Bhan Singh, as unfolded by Annexure P-1, was cultivating the writ property, as a gair marusi. However, through a sale deed drawn on 26.7.2002, he alienated the writ property to his successors-in-interest, who are the present petitioners.

However, prima facie any gair marusi, over any disputed parcel of the land, is but obviously incapacitated to alienate the same, through his executing a registered deed of conveyance qua his alienees. The reason being simple, that thereby he has no right, title and interest as owner thereof, thus to make a valid deed of conveyance to his alienors.

3. Despite the acquisition of prima facie an invalid right, title and interest in the writ property by the present petitioners from their predecessor-of-interest, who but was a gair marusi over the same, yet the petitioners contended, that they have acquired a lawful right, title and interest over the writ property. Moreover, they also contend, that their predecessor-of-interest was, prior to 1950, thus in undisputed settled possession of the writ property, thus his possession over the writ property, but thus fell within the contours of the exclusionary definition to shamilat deh. The said exclusionary definition, as carried in Section 2(g)(viii) of the Act of 1961, becomes extracted hereinafter.

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

4. Be that as it may, it is but necessary to refer to the factual background of the case, as despite the above uncontested entries, existing in the record of rights, rather the present petitioners yet claim, the benefit of the above extracted exclusionary clause to the definition of shamlat deh, and, thereby seek to, irrespective of the alienation(s) (supra), becoming made by their predecessor-in-interest, who but was a gair marusi over the writ property, concomitantly thus seek the protective cover of the above extracted exclusionary clause to the definition of shamlat deh.

5. Initially the Gram Panchayat concerned, instituted a petition bearing No. 309 of 10.3.2003, before the Collector concerned. The said petition was instituted under the provisions of Section 7 of the Act of 1961, whereby the Gram Panchayat concerned, sought the eviction of the predecessor-in-interest of the present petitioners from the petition property. However, through an order made thereons on 4.6.2004, order whereof becomes embodied in Annexure P-6, the said petition was rejected, not on merits but on the ground that the same is misconstituted, as it has been filed by the individual persons, who are not authorized by a resolution of the Panchayat concerned, to thus institute it, before the Collector concerned. Being aggrieved from the order (supra), the Gram Panchayat concerned, through its members and Nambardar, instituted thereagainst an appeal bearing No. 71/2005 before the competent authority concerned. However, the said appeal, through an order made thereons, on 24.8.2007 (Annexure P-7), thus became dismissed in default,

6. Since the dismissal order Annexure P-6, was not an order drawn on merits, but was made on the ground of the opposite petition being misconstituted, thereby the said order does not operate, as *res judicata*, nor thereby the Gram Panchayat concerned, became estopped to subsequently institute an ably constituted apposite petition against the encroacher concerned, before the Collector concerned. It was in the year 2007, a suit bearing No. 59/29.3.2005 became instituted at the instance of the Gram Panchayat of village Butala, through its Sarpanch. In the said suit, the predecessor-in-interest of the present petitioners, became impleaded as respondent No. 1. Through an order made on 5.12.2007 (Annexure P-8), thus for want of appearance of the plaintiff in person, and/or for want of

concerned, on the date assigned for the concerned, hence recording their respective appearances before him, thus the said civil suit became dismissed in default. There is nothing on record suggestive, that the said order became rescinded.

7. It appears, that subsequently the Gram Panchayat concerned, through one Tarlochan Singh instituted an application under Sections 4, 5 and 7 of the Punjab Public Premises (Eviction and Rent Recovery) Act, 1973 (for short 'the Act of 1973') read with the provisions of Punjab Gram Panchayat (Common Purposes Lands) Act, 1976, seeking eviction of the present petitioners from the petition land, but without impleading therein one Bhan Singh, the predecessor-in-interest of the present petitioners, who though had become impleaded as such in case No. 309 (supra), whereons the order, as embodied in Annexure P-6, thus became passed. However, through an order made thereons on 12.12.2011 (Annexure P-9), the said petition became adjourned sine die.

8. Since in the column of ownership of the record of rights (Annexure P-1), an entry is made in favour of Jumla Mustarka Malkan Hasab Rasad Khewat, thereby when the said disputed lands are owned by the village proprietary body, thereby since a catena of judgments, as, pronounced by this Court, thus mandating that thereby the writ property becomes a "public premises", and, as such petition(s) (supra), become maintainable before the Commissioner exercising the powers under the Act of 1973. Therefore, the said petition was maintainable, nor also as stated above, the order made on the earlier petition (Annexure P-6), thus estopped the Gram Panchayat concerned, from instituting the subsequent ably constituted petition (supra), before the Commissioner concerned.

9. The petitioners herein also instituted a suit under Section 11 of the Act of 1961, before the empowered Collector concerned seeking therein the according of a declaratory decree, qua theirs being the valid title holders over the suit property. However, through an order made thereons, on 8.5.2013, order whereof becomes embodied in Annexure P-17, the said suit became dismissed. The said dismissal order, as became made on the petition (supra), thus claiming therein the makings of a declaratory decree, became founded on the factum, that since the present petitioners had purchased the said land from one Bhan Singh, who was rather a gair marusi over the disputed land, resultantly, it was concluded, that the alienation, as, made of the disputed lands, by a gair marusi, who otherwise has no legal capacity to execute, as a valid owner thereof, any deed of conveyance with the alienors, rather being tainted. Therefore, the acquisition of title by the petitioners, through the said deed of conveyance, was declared to be void, and, as such the petitioners' suit became dismissed, and, obviously their possession over the suit land, was also but declared to be illegal and unauthorized.

10. The petitioners instead of casting a challenge to the said Annexure P-17, before the Appellate Authority concerned, took to institute an application for restoration of the order, drawn on 8.5.2013 (Annexure P-17). However, the said application was dismissed through an order, made thereons on 29.1.2014, and, as becomes comprised in Annexure P-20. The dismissal order, as made on the application (supra), became aptly founded upon the factum, that since a decision on merits became rendered on the relevant suit, thereby the remedy of making an appeal thereagainst, rather was available, than the institution of the application for recalling the order, as became made by the learned Collector concerned on 8.5.2013

11. Aggrieved against the concurrently made order dated 8.5.2013 (Annexure P-17), and, the order dated 29.1.2014 (Annexure P-20), the petitioners preferred a statutory appeal bearing No. 137 of 2014, before the statutory appellate authority concerned. The statutory appellate authority concerned, through an order made on 19.2.2021 (Annexure P-26), made a tenable dismissal order on the said statutory appeal. The reason which led the appellate authority concerned, to make a dismissal order on the statutory appeal (supra), became rested on the premise, that the alienor of the petitioners though was a gair marusi, yet he proceeded to obviously make an illegal conveyance deed in favour of the petitioners, thereby untenably conferring an absolute title as owners upon them qua the suit property.

12. It appears, that prior to the dismissal order (supra), being made by the competent appellate authority on the relevant statutory appeal, the appeal (supra) was put up before the National Lok Adalat, Rural Development and Panchayat Department Punjab. On the said statutory appeal, the hereinafter extracted order became pronounced on 12.11.2016 (Annexure P-21).

“File presented before Lok Adalat. Sarpanch Sarabjit Singh present. Party No. 1 present. Parties has decided that appellants will deposit 13 lakh Rs. (Thirteen Lakh) in the Panchayat account within 30 days. Statements of parties recorded. Case is disposed off based on the statement of parties.”

13. The said order was challenged at the instance of the petitioners through theirs instituting before this Court CWP No. 2383 of 2017. This Court vide order made on 5.9.2019 (Annexure P-23), after setting aside the order dated 12.11.2016 (Annexure P-21), directed the appellate Court

concerned, to decide the appeal (supra) filed by the present petitioners. However, it was also directed that the amount of Rs. 13 lacs, as, deposited by the petitioners, be returned by the Gram Panchayat concerned, within a period of 15 days from the date of presentation of the order.

14. As stated at the outset, it is but an unlawful alienation of the suit property through a registered deed of conveyance, being made by a legally incapacitated vendor, that led the jurisdictionally competent authorities, to decline the espoused declaratory relief to the present petitioners. Therefore, besides when the entries in the jamabandi, but reveal, that the alienor of the present petitioners, was a gair marusi, and, when the said entry enjoys a presumption of truth, and, has remained unchallenged, nor when its efficacy becomes dislodged, through adduction of cogent evidence, thereby the said entries, enjoy an aura of conclusivity. Consequently, obviously an unlawful alienation of the suit property was made to the petitioners by their vendor. In sequel, but obviously the petitioners could not claim the benefit of the above referred exemption clause, to the definition of shamilat deh.

Final order

15. In consequence, the instant petition is dismissed. The impugned order (Annexure P-26) is maintained, and, affirmed, and, the adjourning sine die of the petition filed under the Act of 1973, thus through an order made on 12.12.2011, hence is recalled, and, the petition under the Act of 1973, if has not culminated in a final order becoming drawn by the competent authority concerned, thereby the Collector concerned, is directed to forthwith terminate the petition constituted under the Act of 1973, thus through his making a lawful decision thereons. However the sum of Rs. 13 lacs, as ordered by this Court in Annexure P-23, to be refunded to the

petitioners by the Gram Panchayat concerned, if remains unrefunded, be forthwith refunded to the petitioners.

- 16. No order as to costs.
- 17. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 19, 2023
Gurpreet

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