

In the High Court of Punjab and Haryana at Chandigarh

1. CWP No. 26082 of 2018
Reserved on 24.1.2023
Date of Decision: 03.2.2023

Baldev Singh and another Petitioners

Versus

The Commissioner, Karnal Division, Karnal and others Respondents

2. CWP No. 26083 of 2018
Jaswant Singh Petitioner

Versus

The Commissioner, Karnal Division, Karnal and others Respondents

3. CWP No. 26084 of 2018
Chander Kala and others Petitioners

Versus

The Commissioner, Karnal Division, Karnal and others Respondents

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

Present: Ms. Vibhuti Naraina, Advocate
for the petitioners.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

Mr. Jai Parkash Sharma, Advocate
for respondent No. 3-Gram Panchayat.

SURESHWAR THAKUR, J.

1. Since all the writ petitions (supra) arise from a common order, made on 7.6.2018, by the learned Divisional Commissioner, Karnal Division, Karnal, upon the revision petitions filed by the aggrieved concerned,. Therefore, all the three writ petitions are amenable for being decided through a common verdict.

2. Through the impugned verdict dated 20.3.2015, as made upon the appeals, cast by the Gram Panchayat concerned, under Section 13-B of the Punjab Village Common Lands (Regulation) Act, 1961, by the appellate authority concerned, rather the petitioners were ordered to be evicted from the petition land. The above made order brought grievance to the petitioners, and, they were led to institute thereagainst the revision petitions, and, vide impugned order dated 7.6.2018, the same were ordered to be dismissed by the revisional Court concerned. Aggrieved from the above concurrent orders, the petitioners are but obviously led to constitute thereagainst the instant petitions.

Factual background

3. The Gram Panchayat concerned, claimed the eviction of the petitioners from the petition land on the ground, that even though there occurs a revenue entry in the relevant revenue records, displaying the petition land, as Mushtarka Malkan Wa Digar Haqdaran Hasab Rasad Zaar Khewat, and, even though in the column of cultivation thereof, the name of the petitioners herein hence becoming recorded. However, since the petitioners, are echoed in the lease register, to cultivate the petition land as lessees, therefore, they were rather amenable to become evicted from the petition land(s).

4. Keeping in view the above made contention, the authority, which made the impugned verdict, concluded that the petitioners were liable to be evicted from the petition land(s).

Submissions of the learned counsel for the petitioners

5. The learned counsel for the petitioners submitted with much vigour before this Court, that though the consolidation operations, concluded in the mohal concerned, in the year 1959, and, though in the finalized consolidation scheme, the petition lands were reserved as bachat land hence for enabling the Gram Panchayat concerned, to rear incomes therefrom. However, she further submits, that since in the judgment rendered by the Hon'ble Apex Court in case titled as '**Bhagat Ram and others versus State of Punjab and others**' to which Writ Petition No. 125 of 1966, is assigned, relevant portion whereof extracted hereinafter, an expostulation of law occurs, that the above reservation of land, as made to the Gram Panchayat concerned, in the finalized consolidation scheme, rather for enabling the Gram Panchayat concerned, to rear income from such lands, is unconstitutional, as it infringes the mandate of Article 31-A of the Constitution of India. Therefore, she submits, that irrespective of the fact, that when the apposite revenue entry, shows the petitioners to be cultivating the land as lessees, and, also may be assumingly if the petitioners are tendering lease moneys, yet the petition lands which were reserved, as bachat lands, in the finalized consolidation scheme, were untenably reserved for the benefit of the Panchayat, to enable it to rear income therefrom, and, as but a natural corollary thereof, there is no relevance to the revenue entry depicting the petitioners to be the lease holders of the petition land.

Contrarily, she submits that the above made legally inapt reservation, in the

finalized consolidation scheme, qua the petition lands, and, qua the Panchayat, yet rather make the petitioners to be making lawful cultivation of the petition lands in their individual rights, as owners thereof.

“The income derived by the Panchayat is in no way different from its any other income. It is true that section 2(bb) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines 'common purpose' to include the following purposes :

". . . providing income for the Panchayat of the village concerned for the benefit of the village community."

Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly."

Submissions of the learned counsel for the Gram Panchayat

6. On the other hand, the learned counsel for the Gram Panchayat concerned, submits that the verdicts recorded against the petitioners are well meritorious, and, do not require any interference, being made by this Court.

Analysis of the submissions of the learned counsel for the petitioners

7. It is not disputed amongst the contesting litigants concerned, that the apposite finalized consolidation scheme became prepared in the year 1959. If so, if the petitioners were aggrieved from the factum of the above inapt reservation, being made, thereupon in the promptest sequel thereto, an apt redressal motion was to be constituted before the authority concerned. However, in the promptest sequel to the happening of the

finalized consolidation scheme, wherethrough reservation of the suit lands

became made, rather for the benefit of the Panchayat, hence the aggrieved therefrom did not make any apt promptest redressal motion before the competent authority concerned. Therefore, prima facie, the petitioners at this belated stage, are completely estopped to contend, that the said reservation, as made for the benefit of the Panchayat concerned, is untenable, and, nor can they contend, that the above extracted expostulation of law, as carried in the judgment (supra) becomes attracted to the petitioners, and, that the petitioners are to be deemed to be the valid cultivators of the suit lands, and, in their individual capacity, irrespective of a revenue entry, they are cultivating the petition lands as lease holders.

8. Leaving aside the above factum, that the making of belated challenge to the finalized consolidation scheme, which happened in the year 1959, does attract thereons the principle of estoppel, waiver, and, abandonment, whereby the petitioners are forestalled, from claiming any individual right, title or interest as owners in cultivation of the petition lands, yet there has to be firm, and, cogent evidence displaying, that the finalized consolidation scheme was fictitiously drawn, and/or thereons became reserved land for the benefit of the panchayat, and, that said reservation did occur from the lands of the land owners concerned, in respect whereof they held valid title as owners, and/or from within the limits of those lands whereons rather they held valid title, hence the lands being drawn or becoming reserved for the benefit of the panchayat.

9. In other words, if evidence surgesforth displaying, that despite the petitioners becoming lawfully entitled to retain lawful possession, as owners of the petition lands, at the time when consolidation operation

authorities concerned, reserving from their validly held land holdings, rather the suit lands for the benefit of the Panchayat. However, no cogent evidence exists on record, displaying, that even from the well recorded dimensions of the land holdings, as held by the petitioners, at the time of occurrence of consolidation operation in the mohal concerned, hence the consolidation authorities, drawing therefrom, and or, culling therefrom, the suit khasra numbers, and, thereafter reserving them as bachat land for the benefit of the Panchayat.

10. In case, the above cogent evidence emerged, and, did also manifestly reveal the above error, thereupon irrespective of the bar of estoppel or in the event of the barring rule of abandonment, becoming attracted against the petitioners' suit, this Court may have then become coaxed to conclude, that the above made reservation for the benefit of the Panchayat concerned, was untenably made and/or that it attracted the expostulation of law (*supra*), as became propounded by the Hon'ble Apex Court in the Bhagat Ram's case (*supra*). Contrarily, when the above trite evidence is grossly amiss, thereupon this Court is constrained to conclude, that the judgment (*supra*) is not applicable to the instant case. Moreover, also this Court is constrained to conclude, that the petitioners were at the time of finalization of consolidation proceedings, were holding the lands beyond the permissible limits to which they were lawfully entitled to, and, that resultantly, the consolidation staff became well enabled to assign such excess lands to the Panchayat concerned. The further inference therefrom, is that the petitioners who are well recorded as lessees of the petition lands, and, that obviously they were amenable for becoming evicted therefrom.

Summarization of Principles

- (i) The claim of the petitioners is not well vested over bachat land(s) if they fail to challenge the finalized consolidation scheme, which happened in the year 1950, given the said claim being barred by the principle of estoppel, waiver and abandonment, as, arising from arising from the vices of delay and latches.
- (ii) Firm and cogent evidence must be adduced, displaying that the finalized consolidation scheme was fictitiously drawn, and/or, the petitioners were unlawfully denied lawful allotments of land, as, held by them within the permissible ceiling limits. The above evidence is comprised in the records of the consolidation scheme being adduced, and, such records displaying, that the field books relating to the measurement(s), revealing that from the permissibly held land of the cultivators, lands being reserved for the benefit of the Panchayat. If the above evidence is amiss, thereupon, the finalized consolidation scheme, is to be accepted, especially also when no prompt challenge is cast thereagainst.

Final order of this Court

11. There is no merit in the petitions (supra), and, the same are hereby dismissed.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 03, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes