

In the High Court of Punjab and Haryana at Chandigarh

1. CWP No. 7019 of 2017 (O&M)
Reserved on 16.2.2023
Date of Decision: 22.2.2023

Gram Panchayat of village Arno Petitioner

Versus

The Joint Development Commissioner (Exercising
the Powers of Commissioner), Punjab and others Respondents

2. CWP No. 17068 of 2019 (O&M)

Sarabdeep Singh and others Petitioners

Versus

Gram Panchayat/Gram Sabha of village Arno and others Respondents

3. CWP No. 17216 of 2019 (O&M)

Sarabdeep Singh and others Petitioners

Versus

Gram Panchayat/Gram Sabha of village Arno and others Respondents

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

Present: Mr. A.S.Dhindsa, Advocate
for the petitioner (in CWP-7019-2017) and
for respondents No. 1
(in CWP-17068-2019 & CWP-17216-2019).

Mr. K.S.Khehar, Advocate
for the petitioners(in CWP-17068-2019 & CWP-17216-2019)
and for respondents No. 4 to 32 (in CWP-7019-2017)

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since all the writ petitions (supra) are inter se common parties, and also since they relate to common thereto, or similar lands. Therefore, all the three writ petitions are amenable for being decided through a common verdict.

2. In ***CWP No. 17068 of 2019***, the petitioners claim the relief for quashing, and, setting aside of letter/order dated 10.6.2019, appended as Annexure P-11, to the said petition. The above annexure became issued by BDPO, Patran, whereby the petitioners have been directed to deposit with Gram Panchayat Arno, the lease hold money, as mentioned therein but before the sowing(s) crops in the Shamlat land, and, upon their failing to do so, they are purportedly threatened to face proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short' the Act of 1961').

3. In ***CWP No. 17216 of 2019***, the petitioners claim the relief for quashing, and, setting aside of the order dated 11.5.2017, appended as Annexure P-13 to the said petition. The said order became passed by the learned Collector concerned, on a petition instituted under Section 7 of the Act of 1961, against the respondents therein, who are the petitioners herein, whereby the respondents therein were directed to be evicted from the panchayat land.

4. ***CWP No. 7019 of 2017*** is directed against the order, as made by the appellate authority concerned on 23.2.2017, as becomes carried in Annexure P-8, whereby the Appellate Authority concerned, after allowing statutory appeal No. 84 of 2016, declared the appellants therein, who are the respondents in the instant petition, to be the owners in possession of the

petition lands. Obviously, the petitioner-Gram Panchayat concerned, through its Sarpanch, has instituted thereagainst the above petition, and, but with above asked for relief for the quashing of the order, as made by the Appellate Authority concerned, on appeal bearing No. 84 of 2016.

Factual Background

5. The order of dismissal, as made by the Collector concerned, on the petition cast under Section 11 of the Act of 1961, was recorded on 9.2.2016. However, in quick spontaneity thereof, the Gram Panchayat concerned, proceeded to institute on 6.6.2016, a petition under Section 7 of the Act of 1961, against the encroachers concerned, upon the panchayat lands, and thereons, as above stated, through the drawings of Annexure P-13 (in CWP-17216-2019), an order of eviction was made against the encroachers concerned. However, the filing of the statutory appeal against the order of dismissal, as made on the plaintiffs' suit on 9.2.2016, did lead the aggrieved therefrom, to cast a statutory appeal thereagainst, before the appellate authority concerned, and, on the said statutory appeal, became rendered an affirmative order, as becomes carried in Annexure P-8. However, importantly there is no order which exists on record record, rather suggestive, that at the time of institution of Appeal No. 84 of 2016, the aggrieved appellants had asked for the staying of proceedings, launched in the Section 7 petition, and, which may have been then yet subjudice before the learned Collector concerned. However, yet it appears that in pursuance to the order of eviction, as became passed by the learned Collector concerned, on a petition cast under Section 7 of the Act of 1961, as became instituted before him by the Gram Panchayat concerned, the learned Collector concerned, did issue warrants of possession, as become comprised

in Annexure P-14, and, in Annexure P-15 (in CWP-17216-2019). The above made orders appeared to become generated from the factum, that at the time of filing of statutory Appeal No. 84 of 2016, the aggrieved appellants neither asked for staying of the proceedings, as may have then become launched at the instance of the Gram Panchayat concerned, through recourse being made to Section 7 of the Act of 1961. However, a reading of the order made by this Court on 25.6.2019, upon CWP-17216-2019, reveals that this Court had ordered for stay of execution of Annexure P-14, and, of Annexure P-15.

6. As above stated, since the parties in the petition cast under Section 11 of the Act of 1961, and, in the petition cast under Section 7 of the Act of 1961, are similar, and, also when in the verdicts (supra), the lands are also similar. Therefore, the petitions (supra), are amenable for a common verdict being made thereons.

The reasons for setting aside the order dated 23.2.2017 Annexure P-8, and, affirming the order of the learned Collector concerned, as comprised in Annexure P-13

7. The entire fulcrum of the contest which has emerged amongst the contesting litigants concerned, is hinged upon the validity of the order, as made by the Collector concerned, on the statutory Appeal No. 84 of 2016, as arose from the order of the Collector, as became recorded on 9.2.2016, and, as becomes carried in Annexure P-3, whereby the plaintiffs' declaratory suit was dismissed. Though, the dismissal through Annexure P-3, of the plaintiffs' declaratory suit, did result in the aggrieved therefrom, succeeding in statutory appeal No. 84 of 2016, before the competent appellate authority concerned. However, in case this Court records a finding

qua the order, as made by the Collector concerned, on the petition cast under Section 11 of the Act of 1961, is a validly made order. Thus, this Court would become constrained to obviously conclude, that the order of eviction, as made on the petition cast under Section 7 of the Act, rather also was a lawfully drawn recourse, and/or that the said order merges into the affirmative order as may be becomes made by this Court on CWP No. 7019 of 2017, as becomes instituted by the Gram Panchayat concerned, challenging the order of the Appellate Authority concerned, whereby it accepted the petitioners' appeal for annulling, and, setting aside the order of the Collector concerned, whereby he had declined relief to the petitioners in a petition cast under Section 11 of the Act of 1961. Contrarily, if this Court deems it fit to dismiss the said appeal, thereupon, the respondents in the CWP No. 7019 of 2017, may have a good ground to constitute an appeal against the affirmative order, as made on the Gram Panchayat's petition cast under Section 7 of the Act of 1961.

8. This Court has carefully read, and, analyzed the records, besides has carefully evaluated the legal worth of the orders, as became passed respectively by the Collector concerned, and, as becomes enclosed in Annexure P-3, appended with CWP-17068-2019, besides has also keenly read the order of the learned Appellate Court concerned, as becomes enclosed in Annexure P-8, appended with CWP-7019-2017. For the reasons assigned to be assigned hereinafter, the order made on petition under Section 11 of the Act, by the learned Collector concerned, and, as becomes enclosed in Annexure P-3, thus is a validly recorded order. The reason for making the above conclusion ensues from the factum, that the

Collector concerned, after analyzing Ex. P-1, exhibit whereof is a jamabandi for the year 1952-53, had come to a conclusion, that thereins in the ownership column, the name of Nazamudeen son of Saaf Ali, is recorded, but in the cultivation column thereof, the name of Puran Singh son of Punjab Singh as Chakotedar is entered. Likewise, the Collector concerned on making an analysis of Ex. P-2 made an alike conclusion. Moreover, the Collector concerned, also bore in mind the factum, that the land concerned was denoted in the cultivation column, to be Banjar Qadim, and, as such came to a conclusion, that the said land was not amenable for cultivation, and, resultantly, concluded that the entry of one Puran Singh son of Punjab Singh to hold cultivation thereof, as Chakotedar, is per se a paper entry, and/or to which no credit can be assigned. In addition in the Misal Haqiat, appertaining to the petition lands, and, as becomes carried in Annexure P-4, the petition lands were, through the custodian concerned, declared to be shamlat deh, but they were yet declared to be in cultivation of a Joint Farming Society. However, through Ex. P-5, which is a copy of mutation No. 81, whereby the shamlat deh lands were denoted to be held by the custodian, rather the said entry was substituted by an entry in the name of Gram Panchayat concerned. However, the Collector concerned, came to a conclusion, that since the said mutation, which became attested on 8.5.1964, was attested without causing notice to those persons, who were revealed in the prior thereto jamabandis, to be holding cultivating possession of the suit lands. Therefore, he proceeded to annul the apposite mutation, which became attested on 8.5.1964, and, wherethrough the shamlat deh lands which were earlier thereto also declared to be owned by the custodian, were

9. However, in the operative part of the verdict, drawn by the Collector concerned, on the petition cast under Section 11 of the Act, and, as becomes enclosed as Annexure P-3, he declined the declaratory relief to the plaintiffs. The above declinings led the aggrieved therefrom, to institute appeal No. 84 of 2016, before the competent appellate authority concerned, which, as above stated, after accepting the appeal, decreed the plaintiffs' declaratory suit. The prime reason as became recorded by the appellate authority concerned, to grant the declaratory relief to the plaintiffs, became grooved in the factum, that the appellants were successful in proving, that they were holding cultivating possession of the suit lands, prior to 26.1.1950. The above assigned reason would become valid only if in the jamabandi for the years prior to 1951, the predecessors-in-interest of the plaintiffs, were evidently recorded therein to be holding individual cultivating possession of shamlat deh lands or of the disputed lands. However, in that respect, there was no jamabandi existing on record, except a reference in the order of the appellate authority concerned, to the jamabandi, drawn for the year 1952-53. Even the said jamabandi only recorded one Nazamudeen son of Saaf Ali, to be the owner of the petition lands, and, in the cultivation column thereof, the name of Puran Singh son of Punjab Singh though does exist. Therefore, though the apposite saving provisions, as occur in Section 2(g)(viii) of the Act of 1961, provisions whereof stand extracted hereinafter, did save the petition lands from their vestment in the panchayat deh. However, only if the predecessors-in-interest of the petitioners were holding the cultivating possession of the petition lands, in their individual cultivating possession, and, such individual cultivating possession of such lands, evidently being prior to

26.1.1950.

“(viii) 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”

10. As above stated, only in the jamabandi for the year 1952, and, which is not the jamabandi prior to 1950, rather the individual cultivating possession of the purported predecessor-in-interest of the petitioners, though becomes entered. However, as above stated, the said jamabandi is not the jamabandi prior to 26.1.1950 nor obviously the benign grace of the above saving clause can be assigned to the petitioners. In addition, even in the said jamabandi for the year 1953, the possession of the purported predecessor-in-interest of the petitioners was as Chakotedars under the land owner (supra). Therefore, but obviously, even the possession in the said year of the purported predecessor-in-interest of plaintiffs, is not, an individual cultivating possession of the purported predecessor-in-interest of the petitioners, but is as Chakotedar under the land owners concerned. Therefore, also the benign grace of the saving clause cannot be bestowed upon the petitioners.

11. The land owner who was a Muslim migrated to Pakistan, and, thus resultantly, the lands left behind by him in India, were subjected to vestment in the Panchayat Deh, hence through operation of the Punjab Act, 1953. Moreover, it is also not known whether the empowered custodian, did ably assign, the suit lands, to the purported predecessor-in-interest of the petitioners through his making valid allotments thereof to them. Therefore, the petitioners cannot contend that they were then enabled to draw any

provisions whereof become extracted hereinafter.

“has been allotted on quasi-permanent basis to a displaced person”

12. Contrarily, in Misal Haqiat (Annexure P-4), the name of the custodian appears, as owner the shamlat deh land. Therefore, but obviously the said appearance in Ex. P-4 of the name of the custodian as owner of the Shamlat Deh lands, is but a clear speaking about one Nazamudeen son of Saaf Ali migrating from India to Pakistan, and, resultantly, under the Punjab Act of 1953, the lands, as became left behind by him in India became vested in the Shamlat Deh, and, that hence the name of the custodian concerned, appeared in Ex. P-4 as owner of the Shamlat Deh lands. The above jamabandi authorized the custodian concerned, to allot the said lands to the displaced persons concerned, but prior to 1953, and, not subsequent thereto. Importantly, since under the Punjab Act of 1953, the petition lands vested in the Panchayat Deh, therefore, but obviously an entry occurring in the revenue records rather denoting them to be owned by the custodian concerned, but was subsequently required to be corrected or modified, as was done tenably hence through mutation No. 81 of 8.5.1964.

13. As above stated, since the lands became vested in Panchayat Deh, after coming into force the Act 1953, therefore, there was no imperative necessity for the consolidation officer concerned, to in the finalized consolidation scheme, rather make allotments of the suit lands to the Panchayat, given theirs being no requirement for the petition lands being allotted to the Panchayat Deh, but after the consolidation officer making pro rata cut from the lands ceiling limits of the cultivators concerned. Thus, in the appellate authority concerned, concluding that the said lands were not

allotted to the Panchayat concerned, in the finalized consolidation scheme, and, it further concluding, that resultantly the petitioners are owners in possession of the suit lands, is but a flimsily drawn reason. The same is also not supported by any evidence, which rather clearly reveals, that the petitioners had abysmally failed to draw succor from any of the above referred to apposite saving(s) clause(s). The learned Collector concerned, had tenably concluded that the petitioners were not able to even establish that they were the lawful successors-in-interest of one Puran Singh son of Punjab Singh, who however is reflected as Chakotedar under Nazamudeen son of Saaf Ali. The learned Collector concerned, has further tenably concluded, that the petitioners had also not been able to establish, qua theirs being the lawful successors-in-interest of the members of the Joint Farming Society, who in Ex. P-4 were revealed to cultivate the petition lands. The above conclusion may have been unrested by the petitioners through their placing on record, the apposite genealogical table, revealing qua theirs driving any interest in the suit land, through their predecessor-in-interest one Puran Singh son of Punjab Singh or from the members of Joint Farming Society, who in Ex. P-4, were reflected to cultivate the petition lands. However, the above evidence remain unadduced. Therefore, there was no occasion for the petitioners concerned, herein to become served with a notice prior to the drawings of mutation No. 81 of 8.5.1964, whereby the petition lands were ordered to be mutated from the name of custodian concerned, to the name of the Gram Panchayat concerned.

14. For the above reasons, this Court is of the firm view, that the order, as made by the appellate authority concerned, is required to be

quashed, and, set aside. Accordingly, the order of the learned Collector

concerned, as carried in Annexure P-13, is upheld. However, the declarations, as made by the learned Collector concerned, in Annexure P-4, that the mutation No. 81, which became attested on 8.5.1964, is vitiated on account of the persons concerned, becoming condemned and unheard, is also quashed and set aside. The reason being that the lands are shamlat deh, and, which but for all of the above reasons, became vested in the Panchayat Deh. Furthermore also with the petitioners not being able to establish that they are the lawful successors-in-interest of the members of Joint Farming Society, which as revealed in Annexure P-4, was making cultivation of the petition lands, thus obviously they also were not required to be heard in the proceedings, which resulted in the drawings of mutation No. 81 of 8.5.1964.

15. Since the verdict, made by the learned Collector concerned, on the petition under Section 7 of the Act of 1961, well merges into the verdict, as becomes drawn by this Court, therefore, the Collector concerned, was well enabled to enforce the order, as became made on the petition cast under Section 7 of the Act of 1961. Resultantly, the said order is ordered to be forthwith enforced against the suit lands, and, against the respondents concerned. It is also open to the Gram Panchayat concerned to put the petition lands to auction, besides any impositions of use and occupation charges upon the petitioner is upheld, and, they be also enforced forthwith.

Final order of this Court

16. Consequently, CWP No. 7019 of 2017, as filed by the Gram Panchayat concerned, is allowed, and, CWP No. 17068 of 2019 and CWP No. 17216 of 2016, are dismissed.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 22, 2023
Gurpreet

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