In the High Court of Punjab and Haryana at Chandigarh

CWP No. 1446 of 2020
Reserved on 20.2.2023
Date of Decision: 3.3.2023

Joginder Singh .....Petitioner

Versus

State of Punjab and others ....Respondents

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

Argued by: Mr. R.K.Garg, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Vishal Khatkar, Advocate for
Mr. Barjinder Singh, Advocate
for respondent No. 4.

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SURESHWAR THAKUR, J.

1. Petitioner Joginder Singh instituted a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'). In the said petition, he impleaded Gram Panchayat of village Bulley, Tehsil and, District Jalandhar as respondent. In the petition (supra), the petitioner claimed that he is the owner, and, in possession of the house, which became enclosed in Annexure A-1, as appended to the said petition. The said house was averred to become bounded in the hereinafter extracted manner.

East	:	House of Nirmal Singh and others
West	:	Property of others
North	:	Path 12 feet wide
South	:	Property of Harpal Singh

2. The construction raised on the petition land was contended to

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be so raised on a gair mumkin gali.

3. The learned Collector concerned, accepted the contentions of the Gram Panchayat concerned, that the petitioner had raised his house rather on a gair mumkin gali. Moreover, he also obviously concluded, that since a gair mumkin street or a gair mumkin phirni, did occur, within the abadi, thus the said gair mumkin rasta rather vested in the Panchayat or in the village proprietary body concerned. Resultantly, the Collector concerned, concluded, that since on the said gair mumkin gali, the petitioner had raised a house, despite the petitioner having no right, title or interest to raise any portion of his house rather on the said gair mumkin phirni. Thus, an order of eviction was made against the petitioner. The said order of dismissal, as made, on 8.2.2016, on the petition (supra), is carried in Annexure P-7. The aggrieved petitioner instituted an appeal thereagainst before the learned appellate authority concerned. To the said appeal became assigned Appeal No. 50 of 2016. The appellate authority concerned, through a decision made on 30.8.2019, on the said statutory appeal, after concurring with the verdict of dismissal, as initially made on the petitioner's apposite application, proceeded to dismiss the statutory appeal (supra).

4. The above concurrently made orders of dismissal hence by both the authorities below, on the petitioner's application cast under Section 11 of the Act of 1961, has led him to institute thereagainst the instant petition before this Court.

5. For the reasons to be assigned hereinafter, this Court finds merit in the instant petition, and, is constrained to allow it.

Reasons for allowing the instant writ petition

No recorded revenue rasta

6. The prime reason for allowing the instant petition becomes

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grounded in the factum, that a perusal of the jamabandi appertaining to the petition land, and, as becomes appended to the instant petition as Annexure P-1, does palpably underscore the factum, that the petition lands are thereins delineated to be abadi deh lands. However, significantly there is no recorded depiction thereins of a gair mumkin street or a gali/phirni. It appears, that may be since times immemorial, some vacant spaces existed in the abadi deh land, as, declared in Ex. P-1, and, further that such open spaces were meant for exercising thereons of easementary rights by the residents of the abodes, raised on the abadi deh land.

7. The omission of the above relevant fact in the jamabandi, cannot obviously gain any firm conclusion, that the petitioner had raised his house but on the recorded gair mumkin street or gali/phirni. Therefore, but obviously the onus shifted onto the Gram Panchayat concerned, to bringforth such tangible evidence rather displaying, that since times immemorial, the residents of the houses, as, raised on the abadi deh lands, had on the petition lands or in the entire expanse of the disputed petition lands, rather exercised their easementary rights. Even the above evidence is grossly amiss.

8. Moreover, even if the unrecorded gair mumkin gali or phirni existed within the abadi deh lands, but yet the precise dimensions thereof could but have been well gauged, only when such precise dimensions, did become precisely scribed, in the revenue records concerned. However, the revenue records, do not detail, the scribed dimensions of the gair mumkin gali or of phirni, which is alleged to be purportedly encroached upon by the petitioner. In sequel, the oral evidence, if any, about the dimensions of the gair mumkin phirni or gali, but on a part whereof, the petitioner has

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allegedly raised his house, is but a deficit substitute, and/or, is not a credible alternative evidence to the best evidence (supra), in respect of the dimensions of the said phirni. Contrarily, the apposite best evidence, was the precisely recorded dimensions in the revenue records of the said phirni or gali. However, as above stated, no precisely recorded dimensions of the gair mumkin gali, do not exist on record. Therefore, the reliance, if any, by both the learned authorities below, upon oral evidence, if any, in respect of the dimensions of the gair mumkin phirni or gali, but was completely inapt.

9. Be that as it may, there is no dispute with respect of the petitioner, raising a house on the abadi deh land. The reconstructed house, if any, which the petitioner raised on the abadi deh land, was but permissibly raisable by him, as he uncontrovertedly was holding his abadi on the abadi deh land. The dispute is squarely appertaining to the factum, qua whether in the petitioner proceeding to re-raise his abadi house on the abadi deh land, and, but after his demolishing the house, which was earlier existing thereons, whether he beyond the dimensions of the old house, had re-erected a new house, and/or had re-erected the old house not on old lines. The best evidence in the above regard became comprised in clinching proof being adduced by the aggrieved about the dimensions of the old house, besides clinching proof being adduced in respect of the dimensions of the re-constructed house. Naturally such dimensions of the old house, and, the dimensions of the new house, could but evidently reveal qua the petitioner rather in his re-constructing the old house on abadi deh, hence exceeding the dimensions of the old house, as was existing on the abadi land. However, the above evidence is grossly amiss, excepting a bald simpliciter protest by the Gram Panchayat concerned, qua the petitioner in re-raising

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his house, rather purportedly on old lines, his exceeding the dimensions of his earlier house, as existed on the abadi deh land.

10. Therefore, when also there is only oral evidence, with respect to the dimensions of the open space, which was but used as a gair mumkin phirni or gali, besides when as above stated, the further best evidence in respect of the dimensions thereof, as was required to be denoted in the records of rights, rather is also amiss. Thus, it was grossly inapt for both the learned authorities below, to yet decline the declaratory relief to the petitioner, merely on the strength of some oral evidence, purportedly suggestive, that the dimensions of the open areas in the abadi were of an expanse so as to include thereins also the house of the petitioner. Therefore, the denial of declaratory relief, to the petitioner, as owner of the petition land, by both the authorities below, but merely on oral evidence, and, without the best evidence (supra), is completely devoid of merit.

Bar of jurisdiction under Section 13 of the Act of 1961 rather is not applicable in respect of an unrecorded revenue rasta, as the same does not become Shamlat Deh

11. Predominantly also though Section 13 of the Act of 1961, provisions whereof stand extracted hereinafter, casts an interdiction against the assumption of jurisdiction by the Civil Court concerned, in respect of the lands, which are declared as Shamlat Deh lands, especially when the such lands vest in the Panchayat Deh concerned.

> *"13. **Bar of Jurisdiction in Civil Courts:-***
> *No civil court shall have jurisdiction:-*
> *(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat under this Act ; or*

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> *(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or*
>
> *(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine."*

12. Therefore, though in the light of the above, rather the verdict of dismissal, drawn by the learned Civil Judge concerned, on the plaintiff's application cast under Order 39 Rule 1 and 2 read with Section 151 CPC, as filed within Civil Suit No. 99 of 2009, whereins ,the petitioner was impleaded as a respondent, was visibly hit by the said statutory bar of jurisdiction. However, the statutory bar of jurisdiction, as was to be otherwise attracted to the above drawn proceedings before the Civil Judge concerned, may not get fully attracted thereto. The reason being that the statutory bar, contemplated in Section 13 of the Act of 1961, is attractable, only in respect of the lands designated as Shamlat Deh lands, given such lands obviously vesting in the village proprietary body or in the Panchayat concerned.

13. Preeminently though, any open space even within the abadi deh land, does also vest, in the Panchayat concerned, but yet there has to be an entry in the revenue record, in respect of any gair mumkin rasta or a gair mumkin gali or a gair mumkin phirni. If the said revenue entry does exist, thereupon alone the said designated/recorded entry, makes the open recorded spaces within the abadi deh land, to become construable, as Shamlat Deh lands, or then such open spaces within the abadi deh, do vest in the village proprietary body, otherwise not. Since, as above stated, the revenue records, do not detail, any open space within the abadi hence to be a gair mumkin rasta, therefore, the omission of the above revenue entry, did

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not make any open space in the abadi deh lands, to yet vest in the Panchayat deh nor to be Shamlat Deh. If so, the earlier controversy, did only relate to the exercisings of easementary rights, on an unrecorded rasta, but on the premise of custom prescription, and, necessity. Thus, the said controversy was amenable to be rested only before the Civil Court concerned, and, not before the Collector concerned. Therefore, the verdict which became made, hence by the learned Civil Judge concerned, on the plaintiffs' application cast under Order 39 Rule 1 and 2 read with Section 151 CPC, whereins, the petitioner was impleaded as a non-applicant, whereby the plaintiffs, were denied the relief of ad interim injunction, for restraining the petitioner herein, for raising a construction upon any part of the said street, resultantly does prima facie, acquire the fullest vigour and tenacity.

Effect of non-impleadment in earlier suit of the Gram Panchayat concerned, is inconsequential, as the petition land is not Shamlat Deh.

14. Though, the Gram Panchayat concerned, was not impleaded as a party thereins, but the consequence of non-impleadment of Gram Panchayat concerned, as a respondent-defendant, in the said civil suit or in the CMA concerned, is to work against the plaintiffs thereins, as they were dominus litis. The omission on the part of the plaintiffs, to, as dominus litis, to implead thereins the Gram Panchayat concerned, does leave room for this Court to conclude, that since in the civil proceedings, the dispute appertained to the illegal construction, hence made by the petitioner herein, upon an unrecorded rasta, and, which dispute is similar to the one, as raised in the petition cast under Section 11 of the Act of 1961. Moreover, since a similar dispute became rested in the civil proceedings. In addition, when the above decision, as above stated, does not attract the bar of ouster of jurisdiction of the Civil Court to try a civil suit in respect of exercisings of

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easementary rights on any unrecorded rasta when but, evidently does not vest in the Gram Panchayat concerned, nor in shamlat deh. Thus, the said decision does acquire force, as obviously the construction on the said rasta, may have been completed even at the stage, when the petitioner filed the petition under Section 11 of the Act of 1961, before the learned Collector concerned. Moreover, when the said construction never became stopped subsequent through any reversal order, being made by the Appellate Court concerned, qua the earlier drawn order by the learned Civil Judge concerned. Thus, the said order is binding even upon the Gram Panchayat concerned.

15. Nonetheless, even if the Gram Panchayat concerned, was not impleaded as a respondent thereins, despite its may be being both a necessary, and, proper party, and, that in the face of the non-impleadment of the Gram Panchayat concerned, as a respondent-defendant, in the civil suit concerned, thereupon the grace of the principle of *res judicata* being not assigned, to the subsequently drawn proceedings, by the petitioner, as thereins rather the Gram Panchayat concerned, is impleaded as a party. However, yet it was imperative, upon the Gram Panchayat concerned, to bringforth evidence, in respect of a recorded rasta, existing on the petition land, but along with its complete scribed dimensions. Further also, as above stated, it was incumbent upon, the Gram Panchayat concerned, to adduce credible evidence in respect of the dimensions of the old house of the petitioner. In addition, it was further necessary for the Gram Panchayat concerned, to also bringforth evidence in respect of the new construction being not raised on old lines, rather the petitioner exceeding the dimensions of the old house, as he had earlier raised on the abadi deh land. However,

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reiteratedly, as above stated, the above evidence is grossly amiss. Reiteratedly also, the oral evidence in respect of the dimensions of the gair mumkin street or gali, is inadequate to make a firm conclusion, that on the entire expanse of any open space within the abadi deh land, as purportedly used as a gair mumkin rasta, but since times immemorial, hence the petitioner has raised his construction. Resultantly, it appears, that the petitioner had raised his new house on the abadi deh land, but rather only on old lines. Therefore, when he did not exceed the domain or the frontiers of his old construction, as existed on abadi deh land. Thus, also he did not raise the new construction on the abadi deh land, by his making encroachments on any part of the unrecorded street or gali.

Final order

16. In view of the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it.

17. Consequently, the instant petition, with the above observations, is allowed. The impugned orders, dated 8.2.2016 (Annexure P-7), and, dated 30.8.2019 (Annexure P-9) as made by the statutory authorities below, are quashed, and, set aside.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 3rd, 2023
Gurpreet

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

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