

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 2853 of 1995 (O&M)

Reserved on : 1.2.2024

Date of Decision: 19.2.2024

Hari Singh (deceased) through LRs and another

.....Petitioners

Versus

Joint Development Commissioner, Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. M.S.Bedi, Senior Advocate with
Mr. Manpreet Singh, Advocate and
Ms. Navjot Kaur, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. M.L.Saini, Advocate
for respondent No. 3.

SURESHWAR THAKUR, J.

1. The instant petition is directed against the order dated 20.10.1994 (Annexure P-4), whereby the Joint Development Commissioner (IRD), Punjab (exercising the powers of the Commissioner), after allowing the appeal filed by the Gram Panchayat Mardan Heri, bearing No. 162 of 1989, proceeded to set aside the verdict made on 27.3.1989 (Annexure P-3), by the Collector concerned, whereby the latter proceeded to declare the present petitioners as lawful owners in possession of the lands, as detailed therein.

Submissions of the learned senior counsel for the petitioners

2. The learned senior counsel for the petitioners, has vigorously argued, before this Court, that when through Annexures P-1 and P-2, the Assistant Collector(s) concerned, after declining the relief to the State, on

their respective petitions, thus seeking the eviction of the present petitioners from the disputed lands, rather declared the present petitioners to be the owners in possession thereof. Consequently, the learned senior counsel submits, that since the above pronounced verdicts respectively embodied in Annexures P-1, and, P-2, acquire a binding, and, conclusive effect, given theirs remaining unchallenged. Therefore, he argues, that thereby the declaration of title vis-a-vis the present petitioners was also concomitantly binding, upon the author of Annexure P-4, thus on the ground that any contest reared by the Gram Panchayat concerned, against the assigning of the espoused declaratory relief to the plaintiffs (petitioners herein), rather became completely barred by an estoppel created by the binding, and, conclusive declaration, as made vis-a-vis the plaintiffs therein (the petitioners herein), thus through Annexure P-1, and, P-2.

**Reasons for rejecting the above submissions, and, thereby for
rejecting the instant petition.**

3. Apparently, both the Annexures P-1, and, P-2, were made on the petitions cast, under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), rather by the State of Punjab against the present petitioners. It is expressly clear from a reading of the above annexures, that both of them are most sketchily, and, cryptically drawn, thus without any issues being struck, despite a dispute becoming raised by the respondents therein (the petitioners herein), vis-a-vis, the entitlement of the State, to seek the eviction of the present petitioners, arrayed as respondents therein, from the disputed land. Contrarily, it appears, that merely on a cursory reading of the records, hence respectively through Annexures P-1, and, P-2, rather respectively the Assistant Collectors concerned, after declining the espoused eviction decree to the State,

proceeded to in a most summary manner, make a declaration of title vis-a-vis the respondents therein (the petitioners herein). Now assuming, that even if the respondents therein had raised a dispute vis-a-vis the entitlement of the State, to receive a decree for eviction, on the respective petitions, but yet on such a dispute becoming raised by the respondents, it was but incumbent, upon the authorities concerned, to initially test whether such a dispute was raisable, and, also to discern from the documents appended with the responses filed to the eviction petitions, thus by the respondents therein, whether prima facie thereby they had a good title over the disputed lands. Moreover, thereafter if such a prima facie conclusion did become so formed, yet it was further imperative for the authorities concerned, to formulate issues for the relevant evidence adducing onus becoming cast upon the litigants concerned.

4. However, it is apparent on a reading of both Annexures P-1, and, P-2, that neither there is any prima facie finding recorded therein, that upon keen discernments being made of the documents relied, upon, by the respondents, thus for theirs claiming qua therebys the petitions for eviction lodged against them, are required to be ousted, but therebys the said claim is well premised, nor reiteratedly there is any prima facie finding recorded in both the annexures (supra), that such documents prima facie did entitle the respondents therein to non-suit the State, nor subsequently any issue became struck on the contentious pleadings laid before the authorities concerned. Paramountly also, no evidence discharging onus became cast, upon the litigants concerned. All the above omissions are striking departures from the required recourses to become adopted by the authorities concerned in theirs proceeding to make a declaratory title vis-a-vis the litigants concerned,

especially in a motion cast under Section 7 of the Act of 1961, becoming

laid before them. Therefore, the declaration of title, as, made, upon the respondents therein, the plaintiffs in suit No. No. (11) 68/DDPO, did not attract any binding, and, conclusive jurisdictional vigour, so as to estop the Gram Panchayat concerned, to contest, that the declaratory decree, claimed by the plaintiffs in the suit (supra), was liable to be declined.

5. The reason for making the above conclusion stems from the factum, that in the special statute (supra), there is no specific procedure regulating the trial of the petitions, as become laid before the statutory authorities constituted therein, thereby but obviously the procedure for regulating the entering upon trial of a motion laid under the statute (supra) before the statutory authorities concerned, but is regulated by the provisions, as cast under the CPC. If so, it was but incumbent, upon the Assistant Collectors concerned, who respectively made Annexures P-1, and, P-2, to on any dispute of title becoming raised by the respondents in the said petitions, to strike issues on the contested pleadings, and, to thereafter formulate issues whereafter it became imperative, upon them to cast the evidence adducing onus, upon the litigants concerned.

6. However, as stated (supra), there has been a blatant derogation of the above procedure, thereby but reiteratedly, as stated (supra), the declaration of title made through Annexures P-1 and P-2 vis-a-vis the respondents in the said petitions, rather has been done in a most sketchy, and, summary manner. Resultantly, the declaration of title, as made through Annexures P-1 and P-2 rather vis-a-vis the respondents therein, who are the petitioners before this Court, thus cannot be assigned any jurisdictional vigour.

7. Even otherwise, in both Annexures P-1, and, P-2, though the lands therein may be common to the lands in the suit (supra), as became laid

by the plaintiffs therein (the petitioners herein), but in the array of defendants in the said suit, than the State of Punjab becoming impleaded rather the Gram Panchayat concerned, became impleaded as a defendant. Therefore, with the renditions enclosed respectively in Annexures P-1, and, P-2 becoming made against the State of Punjab, whereas, in the impugned rendition, thus becoming impleaded not the State of Punjab but the Gram Panchayat concerned. Therefore, the estopping principle purportedly operating against parties similar thus both in the earlier, and, in the subsequent lis, thus cannot be made fully functional, as the earlier lis' carried respectively Annexures P-1, and, P-2 rather were not inter se those opponents to the present petitioners, who became arrayed in Annexure P-3. Therefore too, when the defendants in the civil suit (supra), is the Gram Panchayat concerned, thereby it is open to the Gram Panchayat concerned, especially when for the reasons assigned hereinafter, the mutation of land became attested in its favour, thus to contest the assigning of a declaratory relief, to the present petitioners, irrespective of the fact, that assumingly rather the suit lands in the civil suit concerned, thus being similar to the suit lands, in both Annexures P-1, and, P-2.

8. Though, it appears that through Annexure P-3, as made upon the plaintiffs' suit, claiming therein the assigning of a declaratory decree vis-a-vis them, and, against the Gram Panchayat concerned, and, relating to the suit land, thus prima facie became founded, upon Annexures P-1, and, P-2. However, the said decision became reversed, through the making of Annexure P-4, by the appellate authority concerned. The appellate authority concerned, in accepting the Gram Panchayat's appeal directed against the order (Annexure P-3), as made by the Collector concerned, whereby it

assigned the espoused declaratory decree to the plaintiffs, based its decision

on a well appraisal of the revenue records, as borne in the jamabandi relating to the year 1953-54, wherein, the disputed lands became entered as shamlat deh land whereafter too, the said land has been entered in the ownership of the Gram Panchayat concerned. The above made revenue entry in the jamabandi (supra), enjoys a presumption of truth, and, unless the said presumption of truth became dislodged through adduction of cogent thereto evidence, thereby, an aura of conclusivity is assignable to the said revenue entries. However, no evidence either clinching or cogent to rebut the said entries, became adduced by the present petitioners, inasmuch as, no evidence became adduced rather suggestive, that the present petitioners becoming displayed in the revenue records to hold independent cultivating possession of the suit land, prior to 1950, thus for therebys theirs becoming assigned the benefit of the savings clause to the definition of shamlat deh, as occurs in Section 2(g)(5)(viii) of the Act of 1961, provision whereof stands extracted hereinafter. Resultantly, the entries (supra) declaring the panchayat to be the owner of the suit land, than rather being construed to be untenably made, and/or in derogation of the earlier thereto entries purportedly in favour of the present petitioners, contrarily are to be construed to be made in terms of the prior thereto revenue entries which also may have become entered in the revenue records but in terms of the uncontested consolidation scheme.

“(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.”

9. Moreover, the adduction of the revenue records prior to 1950, thus by the plaintiffs, was imperative, as thereby alone the entries, as occurred in the jamabandis prepared for the year 1953-54, and, theirs

reflecting the Gram Panchayat concerned, to be the owner, thus may have

become eroded of their efficacy. However, since the said revenue record (supra), remained unadduced, thereby the omission of adduction into evidence of the above revenue records, thus enables this Court to garner an inference, that with there being no cogent evidence to rebut the efficacy of the entries carried in the revenue records relating to the year 1953-54, and, there onwards, and, with their making echoings, that the Gram Panchayat concerned, to be the owner of the suit land, qua rather the relevant revenue entries do acquire an aura of conclusive truth.

Final order

10. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned orders are maintained, and, affirmed.
11. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

February 19th, 2024
Gurpreet

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