

In the High Court of Punjab and Haryana at Chandigarh

1.

CWP No. 13463 of 1995 (O&M)
Reserved on : 14.2.2024
Date of Decision: 20.2.2024
- Gurmail Singh

.....Petitioner
- Versus
- State of Punjab and others

.....Respondents
2.

CWP No. 13316 of 1995 (O&M)
- Teja Singh (deceased) through LR.

.....Petitioners
- Versus
- State of Punjab and others

.....Respondents
3.

CWP No. 13317 of 1995 (O&M)
- Bhag Singh

.....Petitioner
- Versus
- State of Punjab and others

.....Respondents
4.

CWP No. 13464 of 1995 (O&M)
- Noharia Singh (deceased) through LR.

.....Petitioners
- Versus
- State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. Rajiv Kataria, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Jatinder Singla, Advocate with
Mr. N.P.S.Mann, Advocate
for the respondent-Gram Panchayat..

SURESHWAR THAKUR, J.

1.
- Since all the writ petitions (supra) arise from a common order,
therefore all the writ petitions (supra) are amenable to be decided through a

common verdict.

2. One Gurmail Singh, and, one Teja Singh both respectively instituted case bearing No. DDDP (11) Bhunerheri-40, and, case bearing No. DDDP(11) Bhunerheri-41, before the learned Collector concerned, wherein they impleaded the Gram Panchayat concerned, as respondent. In the said cases (supra), the above claimed the rendition of a declaratory decree qua them, for theirs becoming declared as lawful owners in possession of the suit land, as detailed in the head note of the cases (supra).

3. Both the cases (supra) were decided through a common order being made thereon, on 10.1.1994. The learned Collector concerned, after considering the relevant entries, as carried in the relevant revenue records, wherein in the column of possession thereof, the disputed lands were shown as Maqbuza Malkan, and, in the column of cultivation, they were described as Banjar Kadim, besides in the column of ownership there occurs an entry of Hasab Rasad Arazi Khewat, thus concluded, that petitioners in the suits (supra) were holding continuous possession over the suit lands, thereby in terms of apposite savings clause, as occurs in Section 2(g)(5)(viii) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961), provision whereof becomes extracted hereinafter, they were held entitled to the espoused declaratory decree, and, as such through the order dated 10.1.1994 (Annexure P-4), the Collector concerned, declared both Teja Singh and Gurmail Singh to be the lawful owners in possession of the disputed lands.

“(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.”

4. On a reading of the appeal bearing No. 36 of 1994 against the order (supra), it appears that the same became reared by the Gram Panchayat, Jaffarpur. Moreover, it also appears, that apart from the decision (supra), made upon the cases (supra) by the Collector concerned, some other village proprietors, had also filed declaratory suits, in respect of disputed lands, and, thereons too the espoused declaratory decree became assigned to them by the Collector concerned, leading the aggrieved therefrom, thus the Gram Panchayat concerned, to also institute Appeals No. 33 of 1994, 34 of 1994, 35 of 1994 and 36 of 1994 before the Appellate Authority concerned.

5. Moreover, a reading of the verdict drawn by the Appellate Authority concerned, on Appeal No. 36 of 1994, discloses that along with the said appeal also became decided Appeal No. 33 of 1994, Appeal No. 34 of 1994 and Appeal No. 35 of 1994.

6. Be that as it may, though case bearing No. DDDP (11) Bhunerheri-40 instituted by one Gurmail Singh, and, case bearing No. DDDP(11) Bhunerheri-41, instituted by one Teja Singh, led to the drawing of the order dated 10.1.1994 (Annexure P-4), thus the petitioners in the instant petition have chosen to assail the order dated 30.3.1995 (Annexure P-5), passed by the Appellate Authority concerned, whereby the latter after upsetting Annexure P-4, thus non-suited the present petitioners.

7. The learned counsel for the petitioners has forcefully contended before this Court, that with cogent evidence existing on record, thus suggestive, that the beneficent grace of the above savings clause to the definition of shamlat deh, rather is assignable to the present petitioners, yet the said adduced documentary evidence becoming completely overlooked.

8. However, this Court is not led to accept the said submission. The reason for declining the said submission emanates from the factum, that in the jamabandis for the years 1947-48, and, 1957-58, the Gram Panchayat concerned, is detailed to be the owner of the disputed lands. The mutation of ownership vis-a-vis the disputed lands, became conferred, upon the Nagar Panchayat concerned, in the year 1959. If so, since a presumption of truth is attached to the revenue entries (supra), as exist in the revenue records, thereby unless cogent evidence became adduced by the petitioners rather for belying the credibility of the revenue entries (supra), thereupon conclusivity is to be assigned to the revenue entries (supra). However, no cogent evidence became adduced by the present petitioners, thus for belying the presumption of truth attaching to the revenue entries, rather displaying that the disputed lands are shamlat deh lands, and, are owned by the Gram Panchayat concerned.

9. Be that as it may, and, irrespective of the above, the best evidence in respect of the petitioners becoming bestowed with the beneficial grace of the apposite savings clause (supra), became comprised in theirs/his tendering into evidence the khasra girdawris relating to the disputed lands, and, appertaining to the year prior to 1950, wherein, the petitioners were declared to be making independent cultivation(s) of the disputed lands. However, the above best documentary evidence remained unadduced. Resultantly, thereby too, the petitioners are completely estopped from contending, that prior to 1950, their predecessors-in-interest were holding independent cultivating possession over the disputed lands, and, that thereby they became well entitled to receive the beneficial grace of the apposite savings clause to the definition of shamlat deh. Predominantly also,

it is but evidently forthcoming from the lease register, as became tendered into evidence, besides became lawfully proven, that the present petitioners had taken the disputed lands on lease from the Gram Panchayat concerned, and, had also been tendering lease moneys to the Gram Panchayat concerned. Therefore, but obviously, the petitioners acquiesced to their being lessees over the disputed lands. Resultantly they are completely estopped from contending, that they have a title better than that of the lessees over the disputed lands, nor can they claim, that a declaratory decree, thus declaring them to be the lawful owners in possession of the disputed lands, thus be passed vis-a-vis them.

10. More importantly also, a perusal of sharat-wajib-ul-arz appended as Annexure R-1 (in CWP-13463-1995), displays that the said land has been reserved for cultivation of banjar kadim/gair mumkin, and, is in possession of gair marusi. Since Annexure R-1 is also the record of rights, and, to which also a presumption of truth is attached, and, with its making the above declarations, resultantly especially when no cogent rebuttal thereto evidence becomes adduced by the petitioners, thereupon, conclusivity is to be assigned to the declaration (supra), as carried in Annexure R-1. As but a natural corollary thereof, this Court is of the formidable view that the present petitioners rather than claiming ownership over the disputed lands, rather are gair marusi or lessees thereovers, and, as such they are not entitled to a declaratory title of absolute owners vis-a-vis the disputed lands rather becoming assigned to them.

11. Lastly, the learned counsel for the petitioners has argued, that since through the impugned verdict, the present petitioners were ordered to be evicted from the disputed land, whereas, the said verdict of eviction was

to be pronounced in a petition cast under Section 7 of the Act of 1961, before the Collector concerned. Therefore, he contends that till a lawful order is passed on an eviction petition cast under Section 7 of the Act of 1961, becoming instituted before the Collector concerned, thereupto the direction made in the impugned annexure qua the petitioners becoming evicted from the disputed lands, thus cannot be enforced.

12. However, this Court is not inclined to accept the above submission, as in the event of the Gram Panchayat concerned, after the plaintiff becoming non-suited, rather becoming but naturally declared to be the lawful owner of the disputed land, thereupon the said declaration thus ipso facto acquires enforceable legal vigour, whereby the said declaration becomes amenable for becoming executed, thus through an execution petition becoming instituted before the learned Collector concerned, that too without any subsequent thereto petition for eviction, cast under Section 7 of the Act of 1961 rather becoming instituted before the Collector concerned. The reason for making the above inference is but simple, as the filing of an execution petition at the instance of the Gram Panchayat concerned, to seek thereby the eviction of the present petitioners from the disputed lands, is co-equal to the filing of a petition under Section 7 of the Act of 1961 before the Collector concerned. Pre-eminently also after a declaration of title vis-a-vis the disputed lands being made through Annexure P-5, qua the Gram Panchayat concerned, but only after the plaintiffs being non-suited, thereby their possession over the disputed lands, as gair marusi thereovers, but becomes curtailed, and/or, thereafter thus to the Gram Panchayat concerned, who is the lawful owner of the disputed lands, rather the possession of the disputed lands would become restored, but only through the filing of an apposite

execution petition.

13. Resultantly, the above mechanism, and/or, the filing of the execution petition by the lawful title holder of the disputed lands, who is the Gram Panchayat concerned, becomes the apt recourseable mode for ensuring the restoration of possession qua it of the disputed lands, thus from the unauthorized occupants thereovers, than a petition for eviction under Section 7 of the Act of 1961 becoming instituted against the encroachers over the Panchayat land.

Final order

14. In consequence, this Court finds no merit in the petitions (supra), and, is constrained to dismiss them. Accordingly, all the petitions (supra) are dismissed. The impugned order(s) is/are maintained, and, affirmed.

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

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 20th, 2024
Gurpreet

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