

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 7294 of 2009 (O&M)

Reserved on : 28.2.2024

Date of Decision: 06.3.2024

Bakhshish Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

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

Argued by: Mr. R.G.S.Saini, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. V.K.Sandhir, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners make a challenge to the vires of Section 42-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948'), and, as became engrafted therein, through an assented legislative amendment becoming made in the year 2007. Furthermore, a prayer is also made in the instant petition for the quashing, and, setting aside of the concurrently made verdicts, respectively by the Collector concerned, and, by the appellate authority concerned, verdicts whereof, become respectively embodied in Annexure P-5, and, Annexure P-6, whereby the espoused declaratory decree by the plaintiffs, who are the petitioners before this Court, rather became declined to them.

2. The provisions of Section 42-A of the Act of 1948, as became engrafted in the Act of 1948, through an assented legislative enactment being made in the year 2007, become extracted hereinafter.

"42-A. Prohibition to partition the land reserved for common purposes:- Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgment, decree, order or decision of any court, or any authority or any officer, the land reserved for common purposes whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized and continue to be utilized for common purposes."

3. However, the challenge to the vires of the said added provision, is not amenable to become accepted, as this Court in a judgment rendered on 20.5.2011, upon CWP No. 15509 of 2007 along with connected therewith writ petitions, has rather upheld the vires of the said added provisions in the Act of 1948.

4. Be that as it may, it is yet to be determined whether the concurrently made verdicts (supra) whereby the espoused declaratory relief by the present petitioners qua theirs being declared as owners in possession of the suit land rather became declined, thus yet require theirs becoming upheld.

Facts of the case

5. It is averred in the petition, that prior to the consolidation of holdings, there was 161 bigha 5 biswas of land recorded in the revenue records as shamlat deh hasab rasad zare kherwat, rather in the column of ownership thereof, and, in the column of cultivation, the suit land became recorded as makbooza malkan, and, therefore, the proprietors of the village were the purported owners in possession of the suit land. This land became

comprised in khewat No. 80 khatoni No. 234 to 239, and, became mutated in the name of Nagar Panchayat vide mutation No. 638 dated 11.6.1956, but without any notice to proprietors of the village, and, without paying any compensation, but the petitioners, and, the other right holders of the village did not lay claim over this land. However, in the consolidation which took place in the village in the year 1957-58, the consolidation authorities purportedly imposed a pro-rata cut on the holdings of the proprietors, and, the estate right holders of the village, and, the land measuring 471 Kanals 13 Marlas was therebys taken out, rather for common purposes thus from the individual holdings of the petitioners and other right holders. Out of this land, only 227 Kanals 5 Marlas land was utilized for common purposes, such as passage, hadda rori, cremation ground etc., and, the land measuring 244 Kanals 8 Marlas remained unutilized for any common purposes and is bachat land, which is agricultural land being cultivated by the right holders. It is further averred that, the land measuring 244 Kanals 8 Marlas being bachat land, was required to be reverted back to the petitioners-proprietors. This land, as per Jamabandi 1958-59, comprised in Khewat No. 109 Khatoni No. 150-204 was described in the ownership column, as mushtarka jumla malkan bahaqdarar araji deh, and, in the column of cultivation, it was recorded as maqbooja malkan. The consolidation authorities did not revert back the disputed lands to the petitioners, but thus vide mutation No. 818 dated 12.6.1964, mutated the same in the name of Gram Panchayat in substitution of 'mushtarka jumla malkan, but without any notice or paying any compensation to them. The said mutation is challenged on the ground that it breaches the principles of natural justice.

Reasons for dismissing the instant petition

6. It has evidently emerged from the above extracted facts, that the consolidation operation, which had started in the mohal concerned, thus concluded in the year 1957-58. The plaintiff(s) contended, that the suit land became reserved for the common users of the village proprietary body concerned, but after pro rata cuts being imposed qua their legitimate holdings. Therefore, they contend, that since the common purpose for which their lands became reserved for the village proprietary body concerned, becomes abandoned or waived by the village proprietary body concerned, and/or the lands reserved for the relevant purpose remained unutilized for the said purpose. Therefore, they claim that they are entitled to re-distribution, and, re-partition of the disputed land(s).

7. Moreover, the plaintiffs-the petitioners herein also contended, that assumingly the reservations, as became made for the village proprietary body concerned, were not made from pro rata cuts being made from their legitimate holdings, yet since through their predecessors-in-interest, they were holding independent cultivating possession of the disputed land(s), 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 are entitled to the suit land(s), besides they are entitled to a declaratory decree for therebys the mutation, as became entered, in respect of the disputed land(s) vis-a-vis the Gram Panchayat concerned, in the year 1958-59, thus being quashed, and, set aside.

“(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.”

8. For the reasons to be assigned hereinafter, the above made submissions do not carry any worth, and, are liable to be rejected.

9. As aptly concluded by both the statutory competent authorities below, no iota of evidence became adduced by the petitioners, thus magnificatory, that the revenue entries prior to 1950, rather made any clear speakings therein, that in the column of cultivation thereof, the predecessors-in-interest of the petitioners rather were recorded to be holding independent cultivating possession over the disputed lands. Since adduction of the above evidence was most imperative for thereby the present petitioners well resting their claim on the savings clause (supra), whereas, the said evidence remaining unadduced. Resultantly, the petitioners became disabled to make any reliance, upon the savings clause (supra), nor thus the espoused declaratory decree was required to be made in their favour, as aptly done by the statutory authorities below.

10. Even otherwise, irrespective of the above entries becoming carried in the revenue records, thus prior to 1950, there is also no other evidence comprised in khasra girdawris prior to 1950, wherein, the predecessors-in-interest of the petitioners were declared to be holding independent cultivating possession of the suit land. In aftermath, the reliance, as placed upon the above savings clause to the definition of shamlat deh, rather is a misplaced reliance thereons.

11. The consequence of the above, is that, thus a frail challenge became made to the apposite mutation, as became attested vis-a-vis the petition lands qua the Gram Panchayat concerned, besides there was also a frail challenge laid to the reservations of the disputed lands being made for

the benefit of the village proprietary body, thus for the latter making common users thereof. In addition, the reservations, as made in the consolidation scheme are deemed to be made not after pro rata cuts being made by the consolidation officer concerned from the legitimate holdings of the predecessors-in-interest of the petitioners, but it appears that the said reservations were made rather only after the predecessors-in-interest of the petitioners purportedly holding lands in excess of their legitimate holdings, as declared in the pre consolidation records.

12. Subsequently, also when before the updation of the records of rights taking place in terms of Section 22 of the Act of 1948, rather the petitioners evidently omitted to recourse the remedies, as prescribed in Section 21 of the Act of 1948, inasmuch as, theirs abandoning or waiving their right to seek alteration or modification of the consolidation scheme, and/or their propagating that the disputed lands be returned or re-partitioned to them. Resultantly, the effect of the omission (supra), is that, thereby the abandonments (supra) rather tantamount to the petitioners acquiescing to the legitimacy of the preparation of the consolidation scheme, besides acquiesce to the legitimacy of updation of records, as became made in terms of Section 22 of the Act of 1948. As but a natural corollary thereof, the present petitioners become estopped to challenge either the consolidation scheme, besides they also become estopped to challenge the attestation of mutation, as became made in respect of the disputed lands, vis-a-vis, the Gram Panchayat concerned.

13. Importantly also, it emerges from the detailed allusion made by the statutory authorities below, vis-a-vis, the lease records, to which Ex. R-2 to Ex. R-50 became assigned, that after 1958-59 some of the petitioners

assuming possession of the disputed lands rather as lessees. The telling effect thereof, is that, thereby the petitioners acquiescing qua theirs being lessees over the disputed lands, whereby they become estopped to challenge the title of the land owners concerned, over the disputed land(s), who is the Gram Panchayat concerned.

Final order

14. 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.
15. No order as to costs.
16. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

March 06, 2024
Gurpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No