

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

Civil Writ Petition No.10030 of 1993  
Date of Decision: 13.7.2015

Gurdawara Sahib, Bhamarsi Zer, Tehsil Sirhind, District Patiala.

..Petitioner

versus

The Joint Development Commissioner, Punjab and another

..Respondents

CORAM: HON'BLE MR JUSTICE RAJIVE BHALLA  
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.S.Athwal, Advocate, for the petitioner.

Mr. P.S.Bajwa, Addl.A.G., Punjab,  
for respondent no.1.

Mr. S.S.Swaich, Advocate,  
for respondent no.2.

RAJIVE BHALLA, J. (ORAL)

The petitioner prays for issuance of a writ of certiorari quashing, order dated 3.2.1993 (Annexure P-7), passed by Joint Development Commissioner (IRD), exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act")

Counsel for the petitioner submits that the Joint Development Commissioner (IRD) has dismissed the appeal filed by the Gurdawara Sahib against the order passed by Collector-cum-Divisional Deputy Director, Panchayats, without assigning any

reasons founded, whether in law or in fact. A perusal of the impugned order reveals that though the appellate authority has accepted that land was in possession of the Gurdawara Sahib, before 26.1.1950 but has, surprisingly, held that as the Gurdawara Sahib is neither recognised by the Shiromani Gurdawara Parbandhak Committee (for short “the SGPC”) nor is it registered as a Society, the land is likely to be misused and, therefore, cannot be declared as the ownership of the Gurdawara Sahib. The reasons are not only perverse and arbitrary but are not founded upon any legal principle. The appellate authority was required to determine, after examining Section 2(g) and 4(3)(ii) of the 1961 Act, whether, the land in dispute, is included in or excluded from “shamilat deh” but has dismissed the appeal without considering relevant jamabandis which record the possession of the Gurdawara even before 26.1.1950.

Counsel for the private respondents, while conceding that he is unable to support the reasons assigned by the appellate authority, submits that as the Gurdawara Sahib has not been able to prove exclusion of the land in dispute under any of the clauses of Section 2(g) or Section 4(3)(ii) of the 1961 Act, the writ petition may, therefore, be dismissed as the land, in dispute, is clearly recorded as “shamilat deh” and vests in the Gram Panchayat.

We have heard counsel for the parties and perused the impugned order.

The petitioner filed application under Section 11 of the 1961 Act, which was decided by the Collector, by holding as follows:-

“ After hearing the arguments of the counsel for the

parties and perusing the documentary evidence I have arrived at the conclusion that the applicant was in possession of the land shown in the copy of jamabandi for 2003-2004, Exhibit A-4 and year 1950-51, Exhibit A-5, 54-55, Exhibit A-6, 7, 8. During the course of consolidation of holdings this land went to another pool as is clear from khatauni Morababandi Ex. A-9. After fixing the value of the old khasra numbers according to Naqsha Haqdarwar Exhibit A-10 the land in dispute was allotted to applicant according to khatauni paimaish Exhibit A-11 Misal Haqiat Exhibit A-12 and the applicant has been in its possession according to copies of jamabandi for the year 1962-63, 1967-68, 1972-73, 1977-78, 1982-83 Exhibit A-13 to A-17 which clearly indicates that he has been in continuous possession of land in dispute before 26.1.50. Gurdwara Sahib is a joint religious institution of the village Panchayat due to which the ownership of the land in dispute will remain with the panchayat but the village panchayat can't evict the applicant from it because the income from the land in dispute is utilised for the betterment of Gurdawara Sahib and for other religious purposes.”

A perusal of the order reveals that though the Collector has held that the petitioner is recorded in possession before 26.1.1950, dismissed the petition by holding that as the Gurdawara is the joint religious institution of the village, the Gram Panchayat will

remain owner but cannot evict the petitioner.

Aggrieved by this order, the petitioner filed an appeal, which was allowed by the Additional Director Panchayats, Punjab, Chandigarh on 4.5.1990 but this order was set aside in Civil Writ Petition No.12339 of 1990 and the matter was remitted to decide the question of title afresh. In the meanwhile, power to decide the appeal was conferred upon the Joint Development Commissioner (IRD) who dismissed the appeal by holding as follows:-

“ This is an appeal against the order dated 29.6.1987 passed by Collector (Divisional Deputy Director Panchayats, Patiala). The basic reason due to which these orders were challenged is that though the land is in possession of Gurdwara Sahib since prior to 1950. Even then, it will be held that since Gurdawara is neither recognised by the S.G.P.C, Amritsar nor its management is registered under the Registration of Societies Act, so only management rights and not the ownership rights of land in dispute can be given to Gurdwara. I have heard the counsel for both parties and gone through the record produced before lower court. Record especially Ex.A-1 to Ex.A-17 shows that the land in dispute have been in possession of Gurdwara as 'Maurusi' under shamilat Deh as well as vested with Gram Panchayat. Originally the land was in possession of Mangta, Chhajju etc. According to Jamabandi Ex.A-1, but subsequently it was given to Gurdwara for 'Dharamarath' according to Jamabandi

Ex.A-6. Therefore, it is clear that the land has been given to Gurdwara for the purpose of use for religious purpose. If absolute ownership is transferred then it is likely to be used for the purpose other than religious purpose and for the benefit of persons managing the Gurdwara. Therefore, orders of Collector holding that Gurdwara will remain in possession and management of Gurdwara and it can not be declared as owner, is correct there is no reason to interfere with the same and the appeal is, therefore, rejected.”

A perusal of the impugned orders reveals that reasons assigned by the appellate authority are not only perverse and arbitrary but are founded on personal perceptions rather than the facts or the law. The appellate authority has observed that as the Gurdawara Sahib is not recognised by the SGPC and is not a registered society, the land is likely to be misused. The appellate authority was required to determine the rights of parties, in accordance with entries in relevant jamabandis and provisions of the 1961 Act. This apart, the appellate authority has after recording that the land was given to the Gurdawara as reflected in jamabandi, Exhibits A-1 to A-6 proceeded to hold that the land in dispute is likely to be used for purposes other than religious purposes and, therefore, affirmed the order passed by the Collector. The appellate authority was required to examine whether the land in dispute is or is not included in the “shamilat deh” of a village under Section 2(g) (ix) of the 1961 Act, which excludes land used for religious purposes

from the “shamilat deh” of the village or under Section 4(3)(ii) of the 1961 Act, which excludes land in possession of a non-proprietor from the “shamilat deh” of the village.

We, therefore, have no hesitation in holding that the appellate authority has erred in the exercise of its jurisdiction and, therefore, allow the writ petition, set aside the impugned order passed by the Joint Development Commissioner (IRD), exercising the power of Commissioner, under the 1961 Act and remit the matter for adjudication, afresh and in accordance with law. The appellate authority shall consider the entire revenue record, Sections 2(g)(1) to (5), 2(g)(i) to (ix) and 4(3)(ii) of the 1961 Act, while passing a fresh order.

The parties are directed to appear before the Joint Development Commissioner, Punjab, on 26.8.2015, who shall decide the appeal, within three months of the receipt of a certified copy of the order. The parties are restrained from creating any third party interest in the land in dispute during pendency of the appeal. No order as to costs.

( RAJIVE BHALLA )  
JUDGE

13.7.2015  
VK

( AMOL RATTAN SINGH )  
JUDGE