

CWP No. 11345 of 1992

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 11345 of 1992

Date of Decision: 30.06.2015

Kehar Singh

..... Petitioner

Versus

Commissioner, Ambala Division, Ambala and others

..... Respondents

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

Present:- Mr. Arvind Singh, Advocate, for the petitioner.

Mr. D.Khanna, Addl. Advocate General, Haryana
for respondent nos. 1 to 3.

Mr. Ravinder Malik (Ravi) Advocate, for
respondent No. 4.

RAJIVE BHALLA, J (ORAL).

The petitioner prays for issuance of a writ of certiorari quashing, orders dated 14.02.1991, 04.06.1991 and 02.06.1992, passed by the Assistant Collector of the 1st Grade, Kurukshetra, the Collector Kurukshetra and the Commissioner Ambala, Division Ambala, respectively, rejecting the petitioner's plea that a question of title arises for adjudication and thereafter directing the petitioner's eviction.

Counsel for the petitioner submits that a perusal of jamabandi for the year 1944-45 reveals that the land in dispute, bearing khasra nos. 3561/1869, 1870 and 1861, is the ownership of Patti Raja Singh. The land is recorded as '*Chahi*', (cultivated land) in possession of Musmmat Nihali wd/o Bhuran and Sarda son of Mangta, on payment of '*Batai*'. After

consolidation, these khasra numbers were merged and assigned khasra number 2604 (measuring 10 Kanals 11 Marlas), but wrongly recorded as the ownership of '*Panchayati Deh*' and as '*rafai-aam*'. A perusal of khasra girdawaries for the year 1955-56 reveals that the petitioner is recorded in possession of 4 Kanals of '*Chahi*' land, out of Khasra No. 2604, thereby proving that the land in dispute was wrongly recorded as '*rafai-aam*' and '*gair mumkin johar*'. The petitioner produced these documents before the Assistant Collector of the 1st Grade, and pleaded that a question of title arises for adjudication. The Assistant Collector has, without considering these documents held that no question of title arises and allowed the petition, for eviction. The Collector and the Commissioner have committed the same error and though the Collector has referred to these documents, he has relied upon the entries of "*Panchayati Deh, Shamilat Deh, Rafai-aam and Gair Mumkin Johar*" to hold that no question of title arises for adjudication.

Counsel for the Gram Panchayat submits that it is true that if a prima facie question of title arises, the Assistant Collector is obliged to decide the question first but the obligation does not extend to answering a question even where documents produced do not give rise to a question of title. A perusal of the record reveals that on the coming into force of the 1961 Act, on 4th May, 1961, the land in dispute was recorded as the ownership of the *Panchayat Deh* and was *Rafai-i-aam* (used for common purposes) and thereafter as a '*Gair Mumkin Johar*' (a village pond). The entries in the khasra girdawaries recording the petitioner in cultivating possession of this land were never incorporated in the jamabandi. The

findings recorded in the impugned order that the petitioner has not been able to raise a prima facie question of title, are legal and valid and may be affirmed.

We have heard the counsel for the parties, perused the impugned orders and the revenue record produced by the petitioner.

The question that calls for an answer is whether the evidence produced by the petitioner raised a prima facie question of title that required the Assistant Collector of the 1st Grade to entertain and answer the question before proceeding to evict the petitioner?

Section 7 of the 1961 Act empowers the Assistant Collector of the 1st Grade to order eviction of a person in unauthorized possession of Panchayat Land. The proviso to Section 7 of the Act however empowers the Assistant Collector of the 1st Grade to consider on the basis of documents whether a prima facie question of title arises for adjudication.

The proviso to Section 7 of the Act, reads as follows:-

7. Power to put Panchayat in possession of certain lands.

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XXX

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“Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the First Grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter”

A perusal of the proviso reveals that if a party prima facie proves on the basis of documents, that a question of title arises, the Assistant Collector of the 1st Grade, is statutorily required, before,

proceeding any further to decide the question of title. However, the converse would also be true; namely if the documents produced are not sufficient to prove a prima facie question of title, the Assistant Collector of the 1st Grade may, after holding that no question of title arises, proceed to pass an order of eviction.

A perusal of the impugned orders reveals that the Assistant Collector, the Collector and the Commissioner have recorded concurrent findings of fact that documents produced by the petitioner do not raise a prima facie question of title. The petitioner, however, asserts to the contrary by referring to jamabandi for the year 1944-45 which records that the land in dispute belong to Patti Raja Singh, that land is '*Chahi*' (cultivated land) and is in possession of Nihali and Sarda as '*Gair Marusi*' on payment of '*Batai*'. The petitioner also relies upon entries in khasra girdawaries for the year 1955-56 to assert that entries in jamabandies recording the land, as the ownership of the Gram Panchayat, and as '*rafai-aam*'- and a '*gair mumkin johar*' are incorrect.

Apart from the fact that the petitioner is unable to prove any connection with the land or the persons recorded in possession in jamabandi for the year 1944-45, the petitioner has also failed to prove that these persons were proprietors, in the '*patti*'. The jamabandi for the year 1944-45 is, therefore irrelevant. A perusal of entries in jamabandi for the year 1955-56 reveal that the land in dispute is recorded as the ownership of Panchayat Deh and is used for common purposes as it is described as "*rafai-aam and gair mumkin johar*" (a village pond). Section 44 of the Punjab Land Revenue Act, 1887, attaches a presumption of truth to entries

in the record of rights and consequently to entries in a jamabandi which are a part of the record of rights. The entries in the khasra girdawari, recording a part of the land as cultivated are irrelevant as they were not incorporated in the jamabandi that followed these entries and even otherwise, a presumption of truth does not attach to entries, in khasra girdawaries. Thus as on the date of coming into force of the 1961 Act, the land in dispute was recorded as the ownership of the “*Panchayat Deh*” and was used for common purposes, concurrent findings of fact recorded by the Assistant Collector of the 1st Grade, the Collector and the Commissioner that documents produced by the petitioners do not raise a prima facie question of title, do not suffer from any error of jurisdiction or of law as to require interference.

Consequently, we find no merit in the writ petition and dismiss the same, accordingly.

(RAJIVE BHALLA)
JUDGE

30.06.2015
amit rana

(AMOL RATTAN SINGH)
JUDGE