

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

Date of decision: 30.6.2015

(I) CWP No.5265 of 1992

Gurdial Singh

... Petitioner

versus

Additional Director Panchayats, Punjab and another

... Respondents

(II) CWP No. 5271 of 1992

Sawan Singh and another

... Petitioners

Versus

Additional Director Panchayats, Punjab and another

... Respondents

(III) CWP No. 5343 of 1992

Des Raj

... Petitioner

Versus

Additional Director Panchayats, Punjab and another

... Respondents

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

Present: Mr.Vikas Singh, Advocate,
for the petitioners
Mr.P.S.Bajwa, Addl.AG, Punjab,
for respondent No.1.
None for respondent No.2-Gram Panchayat

RAJIVE BHALLA, J. (Oral)

By way of this order, we shall decide CWP Nos.5265, 5271 and 5343 of 1992, as they call for an answer to the same question. Facts are being taken from CWP No.5265 of 1992.

The petitioners pray for issuance of a writ in the nature of certiorari quashing order dated 31.10.1991 (Annexure P-2) passed by the Additional Director Panchayats, Punjab, allowing the appeal filed by the Gram Panchayat, setting aside the order passed by the Director/District Development and Panchayat Officer, Patiala, and as a consequence, allowing the application filed by the Gram Panchayat, under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as “the 1961 Act”).

Counsel for the petitioners submits that a perusal of the order passed by the Collector reveals that after considering entries in jamabandis before the year 1950, the Collector recorded a finding that as the petitioners/predecessors were in cultivating possession, prior to 26.1.1950, the land is excluded from Shamlat Deh. The Additional Director Panchayats, has without referring to these entries but by referring to entries in jamabandis of the years 1959 onwards held that as the Gram Panchayat is recorded as owner and the petitioners are recorded as unauthorised occupants, the land vests in the Gram Panchayat. The findings recorded, without referring to jamabandies prior to 26.1.1950 and by referring to jamabandis recorded after 26.1.1950 are illegal and may, therefore, be set aside.

As no one put in appearance on behalf of the Gram Panchayat, Mr.P.S.Bajwa, Additional Advocate General, Punjab, was requested to assist the Court.

Mr.Bajwa submits that as the land in dispute is recorded as Shamlat Deh and there is no evidence of the cultivating possession of any of the petitioner's predecessors, much less of the petitioners and the petitioners have failed to link pre and post consolidation khasra numbers, the findings recorded by the Additional Director Panchayats do not call for any interference.

We have heard counsel for the parties. The Gram Panchayat filed an application under Section 11 of the 1961 Act, followed by an application under Section 7 of the 1961 Act, seeking a declaration of its title and the eviction of the petitioners, respectively, on the premise that the land in dispute is Shamlat Deh and the petitioners have no rights, title or interest therein. The petitioners filed a reply asserting that the land is excluded from the Shamlat Deh of the village as it was in their cultivating possession prior to 26.1.1950. The Collector, after appraising the relevant revenue record, particularly jamabandis prior to 26.1.1950, held that the land in dispute is excluded from the Shamlat Deh of the village. The Appellate Authority has reversed this order by holding that the land in dispute vests in the Gram Panchayat.

A considered appraisal of the opposing stands of the parties and the impugned order reveals that the Gram Panchayat alleges that the land is Shamlat Deh, whereas the petitioners by alleging

their cultivating possession prior to 26.1.1950, claim exclusion of the land in dispute, from the Shamlat Deh of the village under Section 2(g)(viii) of the 1961 Act.

A perusal of jamabandi for the year 1949-50 reveals that the land is recorded as Shamlat Deh Hasab Rasad Zare Khewat, in possession of Gurdial Singh, son of Sunder Singh, co-sharer on payment of land revenue. The Collector relied upon this entry while holding that the land in dispute is excluded from the Shamlat Deh of the village. The Appellate Authority has not referred to or discussed this entry but has, on the basis of entries in jamabandis for the year 1959-60 etc., which are irrelevant for determining exclusion of the land, under Section 2(g)(viii) of the 1961 Act, reversed the order of the Collector and held that the Gram Panchayat is owner of the land in dispute. The impugned order having been passed without considering entries in jamanbandi, recorded before 26.1.1950 is illegal.

Consequently, the writ petitions are allowed in part. The order dated 31.10.1991, passed by the Additional Director Panchayats, Punjab, is set aside and the matter is remitted to the Joint Development Commissioner, Punjab (exercising the powers of the Commissioner), for adjudication afresh and in accordance with law. The Joint Development Commissioner shall examine jamandies, prior to 26.1.1950, any additional evidence that parties may produce to prove or disprove the ingredients of Section 2(g)(viii) of the 1961 Act, as well as any evidence produced, to link pre and post consolidation khasra

numbers. The Joint Development Commissioner shall record its opinion uninfluenced by any observations made in this order. Parties are directed to appear before the Joint Development Commissioner, Punjab, on 5.8.2015. The appeal be decided within three months.

(RAJIVE BHALLA)
JUDGE

30.6.2015
pk

(AMOL RATTAN SINGH)
JUDGE