

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.10009 of 2015
Date of Decision: 19.5.2015

Inder Singh and others ..Petitioners

versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Vikas Singh, Advocate, for the petitioners.

RAJIVE BHALLA, J.

The petitioners pray for issuance of a writ of certiorari quashing order dated 18.4.2012, passed by the Director, Rural Development and Panchayats, Punjab, exercising the power of Commissioner, under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”).

Counsel for the petitioners submits that jamabandis from the years 1944-45 to 2004-05, the khatoni paimaish and the Naqsha Haqdarwar (consolidation documents), prove that the petitioners were in possession, prior to 26.1.1950. The Collector, therefore, rightly allowed their petition and held that the land in dispute is not included in the “shamilat deh” of the village. The Director, Panchayats, has, however, reversed this order without considering relevant jamabandis and by relying upon an order passed under Section 7 of the Act, which is irrelevant as it merely reveals a summary determination of

rights. The finding that the petitioners have not been able to prove that the land was in their possession, before 26.1.1950, is contrary to the record.

Counsel for the petitioners also submits that a perusal of the record reveals that as most of the land was “Banjar Qadim”. The land, therefore, could only vest in the Gram Panchayat, if the Gram Panchayat had proved that it was used as per the revenue record for common purposes of the village. The Gram Panchayat apart from the oral statement by the Sarpanch, has not produced any other evidence.

We have heard counsel for the petitioners, perused the impugned order as well as order passed by the Collector and relevant revenue documents.

A perusal of the facts reveals that the petitioners have claimed exclusion, of the land in dispute, from the “shamilat deh” of the village by asserting that their predecessors were in possession, prior to 1950. The petitioners have also pleaded that they should be declared owners under Section 4 (3) of the Act. The Collector allowed the petition by holding that jamabandi for the year 1944-45 records the possession of proprietors as “cultivators”. The petitioners have, therefore, succeeded in proving their cultivating possession, before 26.1.1950 and exclusion from the “shamilat deh”.

Aggrieved by this order, the Gram Panchayat filed an

appeal. The Director, Rural Development and Panchayats, exercising the power of Commissioner, under the Act, has reversed this order by holding that the revenue record does not prove that the petitioners or their predecessors were in cultivating possession, at any time before 26.1.1950. The Director Panchayats also relied upon an order dated 24.10.1986, passed under section 7 of the Act to support his finding.

A due consideration of the arguments and paper book reveals that the petitioners claim exclusion of the land in dispute from the “shamilat deh” of the village by alleging that their predecessors were in “cultivating possession”, before 26.1.1950. A perusal of jamabandis appended with the writ petition and produced before the Collector, reveal that most of the land was “Banjar Qadim”, i.e., could not be in cultivating possession. At this stage, it would be appropriate to point out that “Banjar Qadim” is a variety of land that has remained fallow for more than eight harvests and, therefore, cannot be in cultivating possession of any person. Section 2(g)(viii) of the Act, excludes such land from inclusion in “shamilat deh”, as defined under section 2(g) of the Act, as was in the “individual” “cultivating possession” of proprietors, in accordance with their share holdings, before 26.1.1950. Apart from the fact that the land is recorded as “Banjar Qadim” and therefore, could not be in

“cultivating possession”, the petitioners have not been able to prove their share holdings or the other ingredients of Section 2 (g)(viii) of the Act.

The argument that as the land was “Banjar Qadim”, it is excluded from “shamilat deh” because the Gram Panchayat has not proved that it was used for any common purpose, must also be rejected as no such plea was raised before the Collector and cannot be raised, for the first time, in writ proceedings. The Commissioner, however, should not have relied upon the eviction order, as an eviction order is passed on a summary determination of rights. This error, however, would not make any difference to the outcome of the writ petition.

The petitioners having failed to prove “cultivating possession”, prior to 26.1.1950, the Director Panchayats has rightly held that the land in dispute is included in the “shamilat deh” of the village and vests in the Gram Panchayat.

Consequently, finding no merit, the writ petition is dismissed in limine.

(RAJIVE BHALLA)
JUDGE

(SHEKHER DHAWAN)
JUDGE

19.5.2015
VK