

In the High Court of Punjab and Haryana at Chandigarh

CWP No.1279 of 2014

Date of Decision: 10.4.2015

Tajinder Pal

.....petitioner

versus

Director, Rural Development and Panchayats, Punjab
and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr.Rai S.Chauhan, Advocate,
for the petitioner,

Mr.Rajinder Goyal, Addl.A.G.Punjab

Mr.Hardeep Singh, Advocate,
for respondent No.3.

Raj Mohan Singh, J.

Petitioner assails the order dated 8.10.2009 (Annexure P-5), passed by respondent No.2, order dated 20.10.2010 (Annexure P-8) passed by respondent No.1 and yet another order dated 23.5.2013 (Annexure P-13) passed by the same respondent on remand.

Petitioner staked his claim in respect of 24 kanals 13 marlas of land and 17 kanals 12 marlas of land, as shown in para No.2 of the writ petition. He alleged that the aforesaid land remained in continuous possession of his grandfather, then father and now with him since 1943-44 onwards and thus, the land does not vest in Panchayat as *shamlat deh*. Petitioner also alleged that the land in question was never used or reserved for any common purpose of the village. Petitioner on the strength of Section 4 (3) (ii) of the Punjab

Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') claimed that the Panchayat has no right, title or interest in the land and he being *khewatdar* and in continuous possession of the land is entitled to retain the same as such.

Gram Panchayat filed petition under Section 7 of the Act against the predecessor-in-interest of petitioner, which was dismissed in default by the Collector vide order dated 3.3.2003 (Annexure P-2). The said petition was never restored. Thereafter, the predecessor-in-interest of petitioner filed petition under Section 11 of the Act for declaration of title in respect of the land in question. The petition was contested by Gram Panchayat but it was allowed by respondent No.2 vide order dated 11.5.2006. Gram Panchayat assailed the aforesaid order before respondent No.1, who vide order dated 7.1.2009 (Annexure P-4) accepted the appeal and remanded the case to respondent No.2 for fresh decision. On remand, respondent No.2, after consideration of material on record, passed the order dated 8.10.2009 (Annexure P-5) dismissing the claim of petitioner. Respondent No.2, while passing the order dated 8.10.2009, adverted to the revenue record and found that the name of the petitioner came in revenue record for the first time in the year 1956-57. So far as *khewatdari* of the village was concerned, no evidence was led as to how the cut was imposed during consolidation proceedings. The authorities also observed that while Gram Panchayat was recorded as the owner no such entry was ever made in favour of the petitioner in the revenue record. In this way, cultivating possession of the petitioner since 1943-44 till date was not

proved. Consequently, petitioner was not held to be the owner of land, rather Gram Panchayat, Boran was declared its owner.

The said order was further assailed by the petitioner in appeal. The appeal came up for hearing before respondent No.1, wherein the petitioner asserted his claim qua the land in question i.e. 24 kanals 13 marla being in possession before 26.1.1950 and accordingly sought protection under Section 4 (3) (ii) of the Act. Respondent No.1 adverted to revenue record w.e.f. 1943-44 and observed that the petitioner could not produce any record before the authorities that how much cut was imposed for common purpose out of his land. The mutation had already been sanctioned in favour of Gram Panchayat and the same was never set aside by any competent authority, nor the petitioner had ever initiated any proceedings in that context. Therefore, by relying upon Section 42-A of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the 1948 Act'), it was observed that the land was not capable of partition. The land vested with the Gram panchayat under its ownership. Respondent No.1 dismissed the appeal vide order dated 20.10.2010 (Annexure P-8). Petitioner then assailed that order in CWP No. 11515 of 2012 and this Court, vide order dated 10.1.2013 (Annexure P-11), remanded the case to respondent No.1 for deciding the appeal afresh within stipulated period. It was observed that the appeal could not have been dismissed by resorting to Section 42-A of the 1948 Act.

Consequently, the matter was again taken up by respondent No.1, who after considering the jamabandi for the year

1947-48 onwards held that the land is *shamlat deh* as it was so recorded in the jamabandi for the year 1963-64, 1969-70, 1974-75 and 1979-80 also. The same entry has been reflected in subsequent jamabandis and the mutation was also entered in the name of Gram Panchayat, which has not been set aside by any authority. In view of that, the claim of petitioner being in possession prior to 26.1.1950 was negated and petition was dismissed vide order dated 23.5.2013 (Annexure P-13).

In the instant writ petition, petitioner has again re-iterated the claim primarily relying upon the jamabandi for the year 1947-48. His contention is that by virtue of Section 4 (3) (ii) of the Act, the claim deserves to be accepted.

Before advertng to the controversy, it is necessary to spell out the ingredients of the relevant provision of law. Section 4, 3 (ii) of the Act contemplate that three conditions are to be complied with, namely, (i) the person must be cultivating the land, which is part of *shamlat deh* of the village; (ii) He should be cultivating such land for a period 12 years preceding the commencement of the 1961 Act and (iii) he should be cultivating such land without payment of rent or payment of charges in respect of land revenue and cess.

In the column of ownership in the jamabandi for the year 1947-48, the land has been described as *shamlat deh*. Since all the clauses of Section 2 (g) of 1961 Act have individual characteristics hence, would cover the case independent of each other. In the event of petitioner's failure to bring the case within any of the exclusion clauses, the case would fall back to Section 2 (g) (i) of the 1961 Act

and the entry by its nomenclature as *shamlat deh* would obviously bring the land to be vested in Panchayat as *shamlat deh*.

A bare perusal of jamabandi for the year 1947-48 gives the following characteristics:-

“(a) Land was recorded as *shamlat deh* as usual.

(b) Some portion of the land was in possession of *Muslims* as it was shown as *gair mumkin* graveyard and cremation ground.

(c) The other portion of land was shown as non cultivable *banjar kadim* and *gair mumkin*”

Jamabandi further reveals that in column No.5, relating to the petitioner, there were the following entries:-

“Sadhu Singh son of Chanda Singh -Jat and Surjit Singh son of Bhagwan Singh Jat in equal share, non heriditor mujara awwal resident of Rampur Nau Abad. Chamsa Singh, Niranjan Singh sons of Pakhar Singh in equal share- Jat resident of Mullanpur Tehsil Samrala Mujara Dom.”

In column No.9, following entries were found:-

“*Jima Mujara Awwal Basere Malkan Basja Bai Jima Mujan Dom Basere Malkan Bawaja Rishtadari*”

A perusal of aforesaid characteristics in respect of land does not confirm to the requirement of Section 4 (3) (ii) of 1961 Act. In column No.9, the entry of *Mutalba* (pending) and *Malkan* (ownership right) are also not sufficient to hold that the land in question was ever assessed to land revenue. In view of aforesaid,

the basic ingredients are not found to have been proved. The entries of *shamlat deh* prior to consolidation irrespective of any nomenclature thus would definitely vest the land in Gram Panchayat under Section 2 (g) (i) and Section 4 of the 1961 Act. The simplicitor expression of “*shamlat*” in the column of ownership, even if, not followed by any other entry like “*hasab rasad*” or “*hasab hissa*” etc., would ensure that the land vests in the Gram Panchayat in view of enactment of 1961 Act.

In **Telu Ram and others vs. Gram Sabha Manakpur**

1976 PLJ 628, this Court held that all the clauses of Section 2 (g) (i) to (v) of 1961 Act are independent of each other. Recourse to any of the clause can be made to the exclusion of other. If the case falls under any of the clause, then it would suffice to bring the same within the ambit of said clause to hold the land to be *shamlat deh*.

In **Shiv Charan Singh and another vs. Gram Panchayt**

Narike and others **1971 PLJ 453**, the afore cited proposition was reiterated to hold that all the sub clauses of Section 2 (g) of the Act are independent of each other and do not circumscribe the scope of each other in any manner.

The jamabandi for the year 1947-48 depicted the land as *shamlat deh* in column of ownership and the column of cultivation also showed the status of predecessor vis-à-vis father of the petitioner to be *mujara awwal* and *mujara dom* with some arrangement qua the payment of rent on account of responsibility of tenant being a *mujara dom* on account of *rishtedari*. Such an arrangement cannot be construed to meet the requirement of law

under Section 4 (3) (ii) of the Act.

Learned counsel for the petitioner also relied upon a copy of jamabandi for the year 1955-56 to contend that the predecessors-in-interest of the petitioner have been shown as owner (s) in the column of ownership and have been further shown in self cultivating possession of the land. Since the requirement of law is to show possession prior to the date of commencement of the Act, therefore, this plea of the petitioner cannot be appreciated, keeping in view the revenue entries already on record where no such recital was ever pointed out. The cultivating possession for a period of 12 years immediately preceding the commencement of the Act is the requirement under law and such cultivating possession need to be without payment of any rent or payment of charges in excess of land revenue or cess. Since these characteristics have not been proved on record, the petitioner cannot possibly further improve his case beyond what was pleaded before the authorities below. Looked from any angle, the claim of the petitioner cannot be appreciated in the light of facts emerging on record. For the reasons afore-stated, the writ petition stands dismissed.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

April 10, 2015
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