

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

CWP-1666-2015

Decided on : 20.05.2015

Amar Devi and others

..... Petitioners

VERSUS

**The Director Rural Development
and Panchayat, Punjab and others**

..... Respondents

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

Present: **Mr.Jai Bhagwan, Advocate, for the petitioners.**

**Mr.G.P.Singh, Addl.A.G., Punjab,
for respondents No.1 and 2.**

Mr.Harkesh Manuja, Advocate, for respondent No.3.

RAJIVE BHALLA, J.

The petitioners pray for issuance of a writ of certiorari, quashing order dated 30.09.1982, passed by the Collector-cum-DDPO-Patiala, ordering the petitioners' eviction and order dated 08.11.2013, passed by the Director Rural Development and Panchayat, Punjab (exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act"), dismissing their appeal.

Counsel for the petitioners submits that the Gram Panchayat (respondent No.3), initiated proceedings under Section 7 of the 1961 Act, for eviction of Saroop Singh (since deceased) from the land, in dispute. The petition was allowed by the Collector.

Saroop Singh filed CWP-3361-1988, which was partly allowed and the matter was remitted to the Joint Director, Panchayat, Punjab, for determining whether decree dated 18.02.1965 (Annexure P-7), passed in favour of Saroop Singh, is collusive. The Director Rural Development and Panchayat, Punjab, has dismissed the appeal without considering whether decree dated 18.02.1965, is collusive. A further perusal of the impugned order reveals that the appeal was disposed of with other connected appeals, without referring to the facts of the petitioners' case. Counsel for the petitioners further submits that a perusal of decree dated 18.02.1965, reveals that the Sub Judge, 1st Class, Patiala, has held that Tilak Ram, father of Saroop Singh, is owner in possession of the land, in dispute. The decree is binding upon the Gram Panchayat. Counsel for the petitioners further submits that the jamabandi for the year 1943-44 (Annexure P-4) records that the land, in dispute, is in cultivating possession of the petitioners' predecessor, thereby excluding the land from Shamilat Deh.

Counsel for the Gram Panchayat submits that a bare perusal of the decree (Annexure P-7) reveals that Tilak Ram, the petitioners' predecessor, filed a suit for possession and not a suit for declaration of his title. The Gram Panchayat filed a written statement, admitting the claim of the petitioners. The decree is clearly collusive as on the date of the passing of the decree, the land was recorded as the ownership of the Gram

Panchayat. The decree is a fraud upon the Punjab Gram Panchayat Act, 1954 (hereinafter referred to as the “1954 Act”) and the 1961 Act that statutorily vest the Shamilat Deh of a village in a Gram Panchayat. The Sarpanch even otherwise was not authorised to make any concession in favour of the petitioners. The decree being collusive and a fraud on the rights of the Gram Panchayat and the statute has to be ignored. The decree is also contrary to the revenue record as jamabandi for the year 1943-44 (Annexure P-4) records that the land is “Shamilat Deh Hasab Rasad Raqba Khewat”, i.e. the common land of the village which vests in the Gram Panchayat. The quality of the land is banjar qadim, a gair mumkin nadi (stream), gair mumkin paths (raasta), a gair mumkin gugga (a religious place), gair mumkin chah (a well), a gair mumkin johri (a small pond), which cannot possibly be excluded from Shamilat Deh. Tilak Ram son of Tarsema is recorded in possession of 16 biswas, in Khasra No.99 min, of barani land. Tilak Ram is also recorded in possession of Khasra No.876, measuring 41 kanals and 19 marlas which is Banjar Qadim. The jamabandi, therefore, proves that Tilak Ram was in cultivating possession of only 16 biswas but as the petitioners have failed to prove that Tilak Ram was a proprietor of the village or have they been able to link this land to the land, in dispute, they are not entitled to any relief.

We have heard counsel for the parties and perused the

impugned orders and the record.

The Gram Panchayat, filed a petition under Section 7 the 1961 Act, to evict Saroop Singh (since deceased). Saroop Singh pleaded that the eviction petition is not maintainable as a civil Court has already held, by judgment and decree dated 18.02.1965 that the land does not vest in the Gram Panchayat. Saroop Singh also pleaded that as his father Tilak Ram was in cultivating possession, before 26.01.1950, the land is excluded from Shamilat Deh. The Collector rejected the decree by holding that it is collusive and after considering the other evidence, held that the land belongs to the Gram Panchayat and ordered Saroop Singh's eviction. Saroop Singh filed an appeal which was dismissed by the Joint Director, Panchayats, Punjab. CWP-3361-1998 filed by Saroop Singh was partly allowed, on 26.11.2010, by setting aside the order passed by the Joint Director, Panchayats, and directing him to consider the nature of decree, dated 18.02.1965. An opportunity was also granted to parties to lead evidence.

At this stage, it would be appropriate to point out that neither party has chosen to lead any evidence, before the Director Panchayats and unfortunately the Director Panchayats has failed to record any opinion as to the nature of the decree. The Director Panchayat's failure to abide by directions issued in CWP-3361-1998 would normally entail remitting the matter and recording adverse comments but having pondered over the

matter we are of the opinion that as the dispute, in hand, has been pending, before one forum or other since 1982, it would not be appropriate to once again remit the matter to the Director Panchayats, particularly as neither party has adduced any further evidence and we have no hesitation in holding that the decree is not only collusive and contrary to the record produced by the petitioners but is a fraud upon the rights of the Gram Panchayat as well as on the provisions of the 1961 Act.

The petitioners claim exclusion of land, in dispute, from the Shamilat Deh of the village on the premise that the land, in dispute, was in cultivating possession of their predecessor-Tilak Ram, father of Saroop Singh (the original petitioner), before 26.01.1950. The petitioners, thus, rely upon Section 2(g)(iii) or Section 2(g)(viii) of the 1961 Act. The petitioners also rely upon decree dated 18.02.1965, in support of their plea that the land, in dispute, does not vest in the Gram Panchayat.

At the out set, we shall deal with the argument that the land, in dispute, is excluded from the Shamilat Deh of the village, as it was in the cultivating possession of Tilak Ram, father of Saroop Singh, before 26.01.1950.

Section 2(g) of the 1961 Act, postulates the circumstances in which a parcel of land shall be included or excluded from Shamilat Deh. Sections 2(g)(iii) and 2(g)(viii) are exclusion clauses that require a person claiming exclusion to prove, amongst other matters, the cultivating

possession of a proprietor/predecessor in accordance with his shareholding, before 26.01.1950. The petitioners are, therefore, required, amongst other conditions to prove the cultivating possession of a proprietor/predecessor in accordance with his shareholding, before 26.01.1950.

A perusal of the record reveals that jamabandi for the year 1943-44 (Annexure P-4), relied by the petitioners, records that the land is “Shamilat Deh Hasab Rasad Raqba Khewat” i.e. the common land of the village. Apart from 16 biswas of land, which is barani, a large tract of the land is banjar qadim. The remaining land is a gair mumkin nadi (stream), gair mumkin paths (raasta), a gair mumkin gugga (a religious place) a gair mumkin chah (a well) a gair mumkin johri (a small pond) i.e. land that was obviously used for common purposes. The parcel of land described as banjar qadim could not be in cultivating possession as land described as banjar qadim is land that has remained fallow for eight or more harvests. Thus, apart from 16 biswas, the other land could not be in cultivating possession of any proprietor, much less of Tilak Ram. The petitioners “may” have succeeded with respect to this 16 biswas of land but they have failed to prove that Tilak Ram (their so called predecessor) was a proprietor and the extent of his shareholding, as required by Section 2(g) (viii) of the 1961 Act and, therefore, cannot draw any benefit from this entry. A perusal of the jamabandi for the year 1956-57, reveals that Tilak

Ram is recorded "Gair Marusi" in possession of Khasra No.88 min, measuring 19 biswas. Tilak Ram is also recorded in possession of Khasra No.879, measuring 40 bighas and 19 biswas but not as a proprietor or a co-sharer. The petitioners have, thus, failed to prove that the land, in dispute, was in cultivating possession of a proprietor, before 26.01.1950, so as to exclude the land, in dispute, from the Shamilat Deh of the village under Section 2(g)(iii) or Section 2(g)(viii) of the 1961 Act.

The question that remains, is the affect of decree dated 18.02.1965, on the rights of parties. The 1961 Act as originally enacted, did not provide a forum for adjudicating dispute relating to rights in the Shamilat Deh of a village and, therefore, disputes regarding rights in the Shamilat Deh of a village were generally decided by civil Courts. Thus, on 18.02.1965, the date of passing the decree in favour of Tilak Ram, a civil Court was empowered to pass a decree determining rights in the Shamilat Deh of a village.

A perusal of decree dated 18.02.1965 reveals that Tilak Ram and Tota Ram sons of Partapa, filed a suit for possession of agricultural land situated in Rectangle No.19, Khasra No.16/2//2-16, 17//8-0, 18//80-0, 19//8-0 and 22//8-0, total measuring 34 kanals and 16 marlas. The filing of a suit for possession, inhers an admission that Tilak Ram (the petitioners' predecessor) was not in possession and, therefore, sought possession of the land, in dispute. As referred to in the preceding

paragraphs, neither Tilak Ram nor Saroop Singh were ever recorded in cultivating possession of any part of the Shamilat Deh of the village, as proprietors before 26.01.1950 so as to exclude it from Shamilat Deh. Tilak Ram and Tota Ram were, however, recorded in cultivating possession of 16 biswas of barani land bearing Khasra No.99 min, prior to 26.01.1950 but are not referred to as co-sharers. The jamabandi for the year 1955-56 records Tilak Ram, father of Saroop Singh, as “Gair Marusi” in possession of Khasra No.88 min, measuring 19 biswas (barani) and Khasra No.879, measuring 41 bighas and 19 biswas (banjar qadim) but not as a proprietor/co-sharer. It is, therefore, apparent that the land, in dispute, is included in the “Shamilat Deh” of the village. The suit filed by Tilak Ram and Tota Ram, sons of Partapa, for possession of agricultural land situated in Rectangle No.19, Khasra No.16/2//2-16, 17//8-0, 18//8-0, 19//8-0 and 22//8-0, total measuring 34 kanals and 16 marlas, was unfortunately decreed as the Gram Panchayat colluded with Tilak Ram and Tota Ram and filed a written statement, admitting the ownership of Tilak Ram and Tota Ram.

A civil Court decree is the final word on the rights of parties but where a decree is vitiated by fraud and or collusion, it may be disregarded by a forum where the decree is pressed into service, in defence. As already noticed, there is no evidence on record that Tilak Ram, father of Saroop Singh, was a proprietor, in the Shamilat Deh of the

village or that Tilak Ram was ever in cultivating possession of any part of the Shamilat Deh, as a proprietor. This apart, Tilak Ram is recorded as “Gair Marusi” in the jamabandi for the year 1955-56. The petitioners have also failed to tally pre and post consolidation numbers with the khasra numbers which were subject matter of the civil suit. The written statement, filed by the Gram Panchayat, admitting the claim of Tilak Ram, was not only contrary to the documents referred to in the preceding paragraphs but was also a fraud on the rights of the Gram Panchayat and on the provisions of the 1961 Act. This apart, the judgment and decree does not refer to any resolution passed by the Gram Panchayat authorising the Sarpanch to file a written statement, admitting the claim put forth by Tilak Ram. A Gram Panchayat is the custodian of public property particularly of the Shamilat Deh of a village and is required by the 1961 Act and the Punjab Gram Panchayat Act, 1954 to protect its property but the conduct of the then Sarpanch is otherwise. We, therefore, have no hesitation in holding that decree dated 18.02.1965 was the outcome of active collusion between Tilak Ram, Tota Ram and the then sarpanch and was also a fraud on the rights of the Gram Panchayat and provisions of the 1961 Act.

The Collector, therefore, rightly held that the decree is collusive and proceeded to ignore the decree. The Director Rural Development and Panchayat, Punjab, failed in his duty to record an

opinion as to the nature of the decree but as the decree is collusive, a fraud on the rights of the Gram Panchayat and the provisions of the 1961 Act, it does not confer any right upon the petitioners or divest the Gram Panchayat of its rights in the land, in dispute.

Consequently, we find no merit in the writ petition and while affirming the impugned orders, dismiss the writ petition, with no order as to costs.

[RAJIVE BHALLA]
JUDGE

20.05.2015
Shamsher S.Sabharwal

[AMOL RATTAN SINGH]
JUDGE