

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1288 of 2015
Date of Decision:-4.2.2016.

Jagseer Singh and others

.....Petitioners

Versus

Director, Department of Rural Development and Panchayat, Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. C.M. Munjal, Advocate for the petitioners.

Mr. Rajesh Bhardwaj, Additional A.G. Punjab.

Mr. Vijay Kumar Chaudhary, Advocate for respondent No.4.

SURYA KANT, J. (ORAL)

1.) The petitioners have laid challenge to the orders dated 14.3.2013 and 18.9.2014 passed by the Collector and the Appellate Authority, respectively under the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') whereby their declaratory petition filed under Section 11 of the 1961 Act was dismissed and so was the fate of their appeal.

2.) The case of the petitioners is that they are successors-in-interest of Uggar Singh son of Deva Singh who was in possession of

Khasra Nos.169 and 106 (new number 17) measuring 18 *kanal* 4 *marla* of land as per the *jamabandi* for the year 1911-12. Both these *khasra* numbers were recorded as *Nehri* i.e. cultivable and possession of Uggar Singh was shown as 'shareholder' in the land owned by *Shamlat Deh Hasab Rasad Arazi Khewat*. The same entry has been repeated in the subsequent *jamabandis* till the year 1945-46 and even subsequent thereto. The *jamabandis* would further depict that the land recorded as *Bajar Kadim* or *Gair Mumkin Raasta* etc. are not shown in 'individual cultivating possession' of any shareholder.

3.) The Collector, unfortunately, discarded the above stated evidence observing that the revenue record is in Urdu language and the translator who was produced as a witness had no authenticity. The witness produced in this regard is stated to be a retired Consolidation Officer. The Appellate Authority dismissed the appeal mainly relying upon *jamabandi* for the year 2001-2002 in which Gram Panchayat is recorded as the owner of the suit land.

4.) In our considered view, the approach of both the Authorities is erroneous in law. The litmus test was to determine whether the petitioners or their predecessor-in-interest was in individual cultivating possession of the suit land on or before 26.1.1950 and thus the land stands excluded from the ambit of 'Shamlat Deh' under Section 2 (g) (iii) and (iv) of the 1961 Act? For such determination, the entry in the *jamabandi* for the year 2001-2002 is immaterial. The appropriate recourse would have been to travel into the old entries of revenue record and determine:-

- (i) Whether Uggar Singh was a proprietor of the Village and if so, what was his total land holding?

(ii)Whether there was any oral or written partition amongst the shareholders before 26.1.1950?

(iii)If issue No.(ii) is answered in affirmative, whether Uggar Singh was in cultivating possession of the suit land to the extent of his own share or in excess thereto?

5.) A cumulative effect of the answers to these questions will surely determine the fate of the petitioners' claim under Section 11 of the 1961 Act. As no such exercise has been undertaken, the impugned orders are liable to be set aside and the matter has to be remitted to the Collector for fresh adjudication, in accordance with law and in the light of the observations made herein-above.

6.) We order accordingly.

7.) The parties are directed to appear before the Collector, Bathinda on 1.3.2016 who shall decide the petition as early as possible but not later than six months.

8.) We make it clear that this order shall not be construed as an expression of opinion on the merits of the case.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

February 4, 2016.

sandeep sethi