

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 93 of 2007 (O&M)

Date of decision: 08.03.2017

Gurjit Singh and others

.... Appellants

versus

State of Punjab and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Padamkant Dwivedi, Advocate for the appellants.

Mr. Gaurav Garg Dhuriwala, DAG, Punjab.

Mr. Arun Jain, Sr. Advocate with
Mr. Ashok Jindal, Advocate for respondent No. 4.

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned Single Judge dated 05.04.2006 and the order dated 28.02.2007. Initially the Civil Writ Petition preferred by the present appellants was dismissed which led to Letters Patent Appeal No. 87 of 2006 where the appellants pleaded that the learned Single Judge had gone wrong in not appreciating the original conveyance deed which was on record and rather had observed that only a typed copy had been placed on record which was erroneous.

The Hon'ble Division Bench, while dismissing the Letters Patent Appeal, has observed as under: -

“The learned counsel for the appellants has raised certain issues with regard to the fact as to whether the land was Shamlat Deh and has also pointed out that the original conveyance deed was on record and the finding of the learned Single Judge that only a typed copy had been put on record was erroneous. As these are the questions which need to be brought

to the notice of the Learned Single Judge. We dismiss the appeal at this stage with liberty to the appellants to raise these issues in a review application with liberty that in case the appellants fail in review, they would be at liberty to approach this Court yet again.

Sd/-H.S.BEDI
Acting Chief Justice
Sd/- Ranjit Singh
Judge”

Thereupon review application was preferred resulting in the impugned order.

The disputed land is measuring 307 Kanals and 4 Marlas which the Gram Panchayat claims to be Shamlat Deh and was held so by the competent authority. As against this, appellants pleaded ownership on the basis of allotment by Rehabilitation Department fortified by subsequent sanad in their favour. It is pleaded that after partition, the appellants were allotted evacuee land in lieu of the land left behind by them in Pakistan regarding which the respondents do not press any claim but plead that the appellants can have the allotted land but not the entire land which is substantially more and belongs to the Gram Panchayat.

We notice from the orders of the Revenue Authorities and also from the findings of the Learned Single Judge that the entire case of the appellants was based on the strength of two documents Exhibits D-1 (application) and D-2 (sanad). Before the Collector, they produced Revenue Officer to lend authenticity to these two documents but the Collector negated the same by observing as under: -

“This witness in his cross examination admitted that there are no khasra numbers in Ex.D1 and D2 and these

both documents have not been prepared in his presence nor the Patwari had prepared the report in his presence. Making this statement further clear this witness also stated that in whole of the record brought by him, Khasra Numbers are not entered.”

At this juncture, we may also extract the cross-examination of this witness as under:-

“It is correct that in Ex.D-1 and D-2 Khasra Numbers are not mentioned, and nor these documents have been prepared in my presence, nor Patwaris report has been made in my presence. It is correct that whatever record I have brought that does not contain entries of khasra numbers. It is incorrect that I am giving false statement with the connivance of the respondent.”

The aforesaid leaves no room for doubt that only photostat copy of the sanad was produced which does not contain the requisite particulars of the land.

Even though a case has been set up in the earlier Letters Patent Appeal that original documents had been ignored by the learned Single Judge, the same was not produced before him even in review application.

Even in the present proceedings, repeated questions were put to the learned counsel for the appellants to show the original allotment letter, if any. The allotment has to precede the preparation of sanad. But no such document was shown to us and in this situation, we are unable to find any fault in the findings recorded by the learned Single Judge. Apart from this, the State is on affidavit more than once to state that no allotment of the land in dispute was ever made to the appellants. It is stated that in the present Letters Patent Appeal also a specific affidavit dated 03.10.2012 was filed by the State who responded by making categoric assertions that the land in

dispute has never been allotted to the petitioners (appellants herein) and there is no allotment order on record regarding the same. We may extract the relevant portion of the affidavit as under: -

“4. That it has been further revealed that the land in dispute had never been allotted to the petitioners and there is no allotment order on the record regarding the allotment of the land in dispute in favour of appellants/their predecessors.”

Same was the stand in the writ proceedings and when we examine this from the perspective of concluding the controversy, we have no option but to express that the appellants had every opportunity to produce the original documents before the Revenue Authorities, the writ Court as also in proceedings in the intra-Court appeal but for reasons known to them, the best evidence in their favour has been with-held and in this eventuality we would have no hesitation to accept what has been observed by the authorities below as also to accept the affidavit filed by the State that no such allotment was made in favour of the appellants or their predecessors. The observation of the learned Single Judge is extracted herein below: -

“The crux of the judgment delivered in **Malwinder Singh's** case (supra) is that Shamilat-deh were indivisible and impartible and the evacuee share in it cannot be utilized for allotment to the displaced persons. Though by amendment, the Government of Haryana exempted evacuee property from vesting in Gram Panchayat under 1961 Act, yet the Government of Punjab did not bring any such legislation by way of amendment under force.”

The aforesaid observation may not be correct as above needs amendment by Government of Punjab in 1995 but it becomes

inconsequential in view of what has been observed by us to determine the appeal.

Hence, the present Letters Patent Appeal is dismissed.

(MAHESH GROVER)
JUDGE

March 08, 2017
Divyanshi

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No