

208

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23401-2014 (O&M)
Date of decision : 07.03.2017

Rajman and others

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Rana, Advocate, Senior Advocate with
Mr. Inder Pal Goyat, Advocate and
Mr. Rajinder Paul, Advocate
for the petitioners.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Anil Malik, Advocate for
Mr. Vikas Chaudhary, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

CM-8139-CWP-2015

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the amended memo of parties is taken on record subject to all just exceptions.

CM stands disposed of.

CWP-23401-2014 (O&M)

The petitioners have knocked the door of this Court seeking intervention under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of *certiorari* to quash the impugned order dated 04.09.2014 (Annexure P-10) of respondent No.3/Financial

Commissioner, Haryana, allowing the appeal filed by respondent Nos.1 & 2 reversing the well-reasoned order of the Commissioner dated 31.03.2009 (Annexure P-8) and as well as quashing of the mutation bearing No.5090 dated 17.09.2003 (Annexure P-5) sanctioned by the Assistant Collector 1st Grade, Narwana, entering the land measuring 363 kanals 11 marlas in favour of the State by declaring it as 'Escheat Land' and a further writ of certiorari for quashing the impugned order dated 03.04.2007 (Annexure P-7) passed by the Collector dismissing the appeal by upholding the mutation (Annexure P-5) and directing the respondent(s) not to dispossess the petitioners from land till the title is decided by the competent court of law keeping in view fact that the petitioners are in possession of the land for the last 50 years.

Mr. B.S. Rana, learned Senior Counsel assisted by Mr. Inder Pal Goyat and Mr. Rajinder Paul, learned counsel appearing on behalf of the petitioners submits that Shiv Chand son of Shadi, resident of Village Baroda, Tehsil Narwana, District Jind, was the owner of the land, measuring 363 kanals 11 marlas comprised on khewat No.159/219 to 229, situated at Village Baroda, Tehsil Narwana, District Jind, as per the jamabandi for the year 1999-2000 (Annexure P-1). He renounced the world and became a Jain Sadhu. The petitioners being the nearest heirs as per the provisions of Section 29 of the Hindu Succession Act, 1956 (hereinafter called 'the 1956 Act'), are in cultivating possession of the land, in question, for the last about 50 years which fact is evident from the jamabandi for the year 1969-70 (Annexure P-2) and 2009-10 (Annexure P-3). Sant Shiv Chand, unfortunately, died on 14.01.2003 without leaving widow, son or daughter.

The petitioners being agnates of the deceased Sant Shiv Das, having a

common ancestor, namely, Ram Das, succeeded to his property which fact is evident from the pedigree table (Annexure P-4). However, vide impugned mutation bearing No.5090 dated 17.09.2003, the Assistant Collector 1st Grade, Narwana, erroneously entered the land in the name of the State declaring it "Escheat Land". The petitioners are the agnates of the deceased Sant Shiv Chand. The aforementioned action was challenged by filing an appeal before the Collector which resulted into dismissal. The entries in *panda bahi* written in *Samwat* 1895-97 and *Samwat* 1977 (corresponding to 1838-40 AD and 1920 AD), have been ignored. They have a presumption of truth as per Section 32 of the Indian Evidence Act, 1872 (for short 'the 1872 Act'), but could not have been discarded by the Collector, much less, Financial Commissioner, rather taken note as per the provisions of Section 114 of the 1872 Act.

The Commissioner vide detailed order set aside the order of mutation by taking into consideration the provisions of Section 29 of the 1956 Act and para 7.26 of the Haryana Land Records Manual, much less, ***Wazib-ul-arz*** of the village which specifically deals with the estate of the heirless deceased to the effect that if any owner dies without any heirs, then firstly his near relatives, thereafter other shareholders in the Khewat, thereafter each of the owners in the village, shall be the owner in possession of his estate. However, if any owner in the village is also not ready to take his land, only then the Government shall be declared the owner of the land. In support of his contentions, he relies upon the *ratio decidendi* culled out by the judgments of Lahore High Court in **“Bura and another V/s Nanak etc.” 1925 Lahore 281 (3)** and as well as of this Court in **“Jagdish Parshad v/s Sarwan Kumar and others” 2002 (3) RCR (Civil) 34.**

He further submits that the order of the Financial Commissioner, Haryana is most cryptic and non-speaking, does not deal with the contention of the petitioners and the aforementioned provisions of law. The petitioners being the agnates have full right. As per Section 12 of the 1956 Act, the order of succession among agnates or cognates is to be determined, as per the rule of preference. The petitioners being the legal heirs of Bhalle Ram are, thus, claiming themselves to be agnates of the deceased Sant Shiv Chand and proof of the aforementioned, relationship, in the shape of pedigree table (Annexure P-4) of the deceased was submitted, much less, proved on record. The *panda bahi* has also been proved on record which is admissible in law in view of the provisions of Section 32 of the 1872 Act. The *panda bahi* being 30 years' old are admissible in evidence under Section 90 of the Indian Evidence Act, 1872. The common descendant was Ram Das. Ram Das had two sons, namely, Jeeta and Maya Chand. The deceased Sant Shiv Chand was the descendant of Jeeta, whereas the petitioners are the descendant of Maya Chand, thus, urges this Court setting aside the impugned orders under challenge.

He further submits that the question of title is already been pending adjudication in civil court. The mutation cannot be kept in abeyance, much less, be continued in favour of the State as the petitioners are in cultivating possession. In case the order under challenge is not set aside, there is every likelihood/apprehension that State will endeavour/may take the steps to take the possession or create third party rights.

Per contra, Mr. Sandeep Singh Mann, Sr. DAG, Haryana submits that the pedigree table placed on record viz-a-viz the *panda bahis* are inconsistent. The *panda bahis* cannot be looked into in view of the

provisions of Section 114 of the 1872 Act. The Assistant Collector 1st Grade had given ample opportunities to the petitioners to produce that they had any link with the deceased Sant Shiv Chand for succession to his property and rightly so, the Assistant Collector had taken prevalence of pedigree table prepared by the revenue authorities viz-a-viz oral and hearsay evidence including pedigree prepared on the basis of the *panda bahi*. *Panda bahi* did not match with the *Shazra-Nasab* of the revenue authorities (Annexure R-8). There is no mention of *Harnath* in the pedigree table. Interposing of *Harnath* between Jeeta and Sanahi pushes Motiram down to 7th degree descendant of Ram Das. The petitioners had already filed one civil suit bearing No.239 of 12.07.2004 against the State, but the same vide order dated 05.05.2009 (Annexure P-9) has been dismissed as withdrawn. The matter can be only agitated before the Civil Court, thus, urges this Court dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

For appreciating the controversy raised in the present writ petition, it would be apt to reproduce the provisions of Section 29 of the 1956 Act, Para 7.29 of the Haryana Land Records Manual Record, Paragraph 838 of the Land Administration Manual and ***Wazib-ul-arz*** (Annexure P-11) which reads as under:-

"Section 29 of the 1956 Act;

29. Failure of heirs - If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir

would have been subject.

Para 7.26 of the Haryana Land Records Manual

Escheats - In mutation cases dealing with lands of deceased proprietors who have left no apparent legal or customary heirs or successors, the mutation should be disposed of by the Collector or by an Assistant Collector of the 1st Grade. Deputy Commissioners should see that there is no indiscriminate or indiscreet pressing of Government's claim to escheat and careful attention should be paid to the instructions contained in paragraph 838 of the Land Administration Manual.

Paragraph 838 of the Land Administration Manual

838. Escheats. The principles governing the escheat to the State of property left by hairless properties are set forth in Punjab Government Consolidated Circular No. 9 and in the judgement of the Financial Commissioner in Wazara and other Versus Mangal and Others, No. 2 Punjab Record , Revenue , of 1911. The following propositions were laid down Sir Jame Douie in that case :-

(1) The right of the Crown to claim escheat rests not on Customary or Hindu Law, though Hindu Law recognizes escheats , but on grounds of general of universal law.

(2) The right can only arise in the absence of relations entitled by law or custom to inherit.

(7) In any case in which the Wajib-ul-arz declares the right of the proprietary body to succeed to the land of hairless owners Government should set up no claim.

Wajib-UL-Arz Village Baroda

Revenue Estate No.113, Tehsil Narwana

District Sangrur

1 to 9

XXXXXXXXXX

10. Now, if any kind of Mines, Escheat Property, Forests or unoccupied or abandoned or un-inhabited land or old building

or if there is no regular production from the land or in case, in future any mine is found then, as per Section 41 of the Act 17 of 1887, ownership of all mines of stones or coal or metal or brass or old ruines or old buildings or any perennial benefit or sanad quarries etc., shall vest in the Government. If such acquisition results into loss to the agricultural land, then the Government shall make arrangmenet for reasonable compensation in liue thereof. If any owner dies without any heirs, then firstly his near relatives, thereafter other shareholders in the Khewat, thereafter each of the owners in the village, shall be the owner in possession of his estate. If any owner in the village is also not ready to take his land, only then the Government shall be declared the owner of the land. XXXXXXXXXXXX."

On cumulative reading of the aforementioned provisions, it leads to irresistible that it is the relatives or the agnates of the deceased, who have a preference for getting the property mutated. It is a settled law that the mutation does not confer a title. The possession of the petitioners is also not in dispute. The only point to be seen is whether the State Government vide impugned mutation bearing No.5090 cause an entry by treating the mutation to be Escheated to the State. The answer would be in "Negative". It is conceded position on record that the civil suit qua title is pending. In view of the *ratio decidendi* culled out by a Hon'ble Division Bench of this Court in **"Jagjit Singh V/s Divisional Commissioner Patiala and others" 2012 (13) RCR (Civil) 96**, the mutation cannot be kept in abeyance.

In my view, once the person is found to be in possession, the mutation has to be recorded in their name subject to the final outcome of the civil suit. The order of the Commissioner is a detailed one which has taken into consideration the aforementioned provisions of law, whereas the

Financial Commissioner and the Collector have abdicated in not taking into consideration the provisions of law.

The provisions of Section 32 of the 1872 Act are also not in dispute. It is a settled law that the entries in the *panda bahi* are admissible in evidence. The aforementioned view of mine is derived from para Nos.9 and 12 of the judgment rendered in **Jagdish Parshad's case** (supra) which reads thus:

"9. It is true that the entries made in the bahis of pandas are admissible and relevant under Section 32 of the Evidence Act. In this case the question is whether that bahi was maintained by that panda in the ordinary course of business of panda and further whether the entries were being made in regular course of business and daily raised by the learned counsel for the appellant arises or not. Panda Prem Kumar PW1 stated that he is doing pandagiri at Haridwar, his father and grand father were also doing pandagiri at Haridwar. He stated that this bahi was started in Sambat 1754 BK. In this bahi, there are entries recorded by his ancestors and their karindas/Munims. At page 130 of bahi (Alwar ki bahi No.2), there is entry in the hand writing of Roshan Lal Gumashta (Ex.P1 is its copy). When their jajmans come to them, they record entry pertaining to them in their bahi. At the foot of that entry, the jajman signs if he is literate. On Kartik Shudi 11 sambat, 1994, Mani Ram came to Haridwar to their Haveli Bara Bazar along with his family and this Entry Ex. P1 was made by Roshan Lal. Portion A to AS is in the hand of Roshan Lal beneath which there are Mani Ram's signatures. Portion B to B in the entry Ex. P1 is in the hand of Mani Ram. Similarly in Bikrami Sambat 1996 Baisakh Badi Asthami. Mani Ram again came to Haridwar when entry Ex. P2 was made. In entry Ex.P2, portion A to A is in the hand of Asha Ram gumashta. Writing B to B is in the hand of Mani Ram. Beneath A to A there is signature of Mani

Ram. He identified the hand writing of Roshan Lal and Asha Ram. His father maintained these bahis in 1994 and 1996 Bikrami. He stated that he could not make it to the court because of failing health and ripe age of 84-85 years. Asha Ram and Roshan Lal are dead. Roshan Lal died in 2019-2020. Asha Ram died in 2016 Bikrami. He stated that this Bahi was maintain in the regular course of business and is continuing from generation to generation. Entries were made in this bahi caste wise and village wise.

12. In this case, the admissions made by Sarwan Kumar on various occasions that Jagdish Parshad is the son of Mani Ram have been proved to be untrue. Shri Kabul Chand is the common relation of the parties. He has stated that Sarwan Kumar is the son of Mani Ram while Jagdish Parshad is the son of Mool Chand. As common relation of the parties, he was able to form this impression about the relationship of Sarwan Kumar with Mani Ram and about the relationship of Jagdish Parshad with Mool Chand from conduct towards each other. He is to be believed. In the record of the property tax, Jagdish Parshad is shown as the son of Mani Ram. Mani Ram went to Haridwar twice. Once in 1994 BK and then in 1996 BK. Entries were made in the Bahi of the panda which were signed by Mani Ram. In those entries, Sarwan Kumar is described as the son of Mani Ram while Jagdish Parshad is described as the son of Mool Chand. Mani Ram and Mool Chand are described as the sons of Kalu Ram. Whatever is stated in those entries, that is to be taken as the statement of a dead person under Section 32 of the Evidence Act. Why should the statement made by Mani Ram in the bahi of the panda be not believed particularly when that statement was signed by Mani Ram. If Jagdish Parshad had any doubt about the signatures of Mani Ram on those entries, he could make an application for the comparison of the signatures of Mani Ram on those entries with his signatures elsewhere. It may be mentioned that Mani

Ram was retired Station Master. He must have signed at many places during his life time. For the reasons best known to Jagdish Parshad, he did not make any such application and as such inference has to be drawn against Jagdish Parshad. As to whether the panda had maintained his bahi in the regular course of business and as to whether he had been making entries in his bahi regularly, that is of no consequence when those entries were signed by Mani Ram. Had those entries not been signed by Mani Ram, the question whether those bahis had been maintained in the regular course of business, would have been given weight. Further why should defendants 2 to 4 i.e. Chander Kala, Rameti Devi and Saraswati, who are daughters of Mani Ram, have stated that Sarwan Kumar is son of Mani Ram while Jagdish Parshad is the son of Mool Chand. If Jagdish Parshad were also the son of Mani Ram, they would have stated likewise. They would have stated that Jagdish Parshad is also their real brother and he is also the son of their father Mani Ram. In their written statements they have admitted the claim of the plaintiff whole hog, Jagdish Parshad did not choose to put any rejoinder to the written statement filed by Chander Kala, Rameti Devi and Saraswati. In this case, thus, the admissions made by Sarwan Kumar that Jagdish Parshad is the son of Mani Ram have been proved to be untrue."

Similar is the view of the judgment rendered in **Bura's case** (supra).

The finding of the Commissioner by taking heavy reliance upon the provisions of Section 114 of the 1872 Act would not come to the rescue of the State, for, it deals with the situation, where an evidence which could have been brought, been withheld. In the instant case, the petitioners have made all possible attempts to connect the pedigree table with the *panda bahi*. The absence of one of the successors-in-interest does not belie the

pedigree table. The attempt of State in escheating the property reflects something else which I refrain myself to ponder upon.

Keeping in view the aforementioned facts and circumstances, the impugned orders, under challenge, are hereby set aside and the order of the Commissioner is restored, in essence, the mutation bearing No.5090 is set aside. The Assistant Collector 1st Grade, is directed to cause the mutation in favour of the petitioners and the petitioners shall not be dispossessed till the pendency of the civil suit qua title.

With the aforesaid observations, the present writ petition is allowed.

07.03.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No