

Sr. No.213

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

**CWP No. 6818 of 2014(O&M)
Date of decision: 17.05.2018**

Gram Panchayat, Balbhera

....Petitioner

versus

State of Haryana and others

....Respondents

CWP No. 23293 of 2014(O&M)

Gram Panchayat, Balbhera

....Petitioner

versus

State of Haryana and others

....Respondents

CWP No. 23254 of 2014(O&M)

Gram Panchayat, Balbhera

.....Petitioner

versus

State of Haryana and others

....Respondents

**Coram: Hon'ble Mr. Justice Mahesh Grover
 Hon'ble Mr. Justice Rajbir Sehrawat**

**Present: Mr. P.S.Sikand, Advocate
 for the petitioner.**

Ms. Kirti Singh, DAG, Haryana.

**Mr. Rajinder Goyal, Advocate
for respondents No. 5 to 9.**

Rajbir Sehrawat, J.

This shall dispose of three writ petitions bearing CWP No.6818 of 2014, CWP No. 23254 of 2014 and CWP No. 23293 of 2014.

The facts involved in all the petitions are almost similar. However, for reference the main facts are taken from CWP No. 6818 of 2014.

The present petition has been filed by the Gram Panchayat, Balbhera challenging the Order dated 25.04.1997(Annexure P-2) passed by the Assistant Collector, Ist Grade, Guhla; whereby the application filed by the petitioner against the private respondents under Section 7 of the Punjab Village Common Lands Act, 1961 was dismissed and also the Order dated 13.09.2013 passed by the Commissioner, Ambala Division, Ambala; whereby; reversing the Order passed by the Collector in favour of the petitioner, the matter was remanded to the District Collector, Kaithal for deciding the same afresh; by treating it to be a case of title under Section 13-A of the Punjab Village Common Lands(Regulation) Act, 1961.

The brief facts are that the petitioner Gram Panchayat had filed three different applications under Section 7 of the Punjab Village Common Lands(Regulation) Act, 1961 before Assistant Collector, Guhla claiming that the private respondents herein (hereinafter referred to as the 'respondents') were unauthorised occupant of the land detailed in the application. Therefore, it was prayed that the possession of the land mentioned in the application be restored to the Gram Panchayat and a penalty @Rs.10,000/- per hectare per year be imposed upon the respondents.

Notice of the application was issued by the Assistant Collector. On being put to notice; before the Assistant Collector, the respondents claimed that they have been in cultivating possession of the disputed land since the year 1936 from the time of their ancestors. They have not paid any rent etc. to the petitioner. The land does not come within the definition of Shamlat Deh land nor the Panchayat has any relation with this land. It was further claimed that respondents have become owner of it. Therefore,

dismissal of the application was prayed for.

Parties led their respective evidences before the Assistant Collector, Ist Grade, Guhla.

The respondents placed on record the jamabandi of the land right from the year 1936-37 upto the year 1980-81. The Gram Panchayat had placed on record only Jamabandi Ex:-A-1 and the Khasra Girdwari Ex:A-2. After hearing the parties and perusing the record, the Assistant Collector, Ist Grade, Guhla vide impugned order dated 25.04.1997 dismissed the application filed by the petitioner Gram Panchaya; holding that it is clearly proved that respondents and their ancestors are in possession of the land in dispute since the year 1936 without payment of any rent to anyone. Therefore, in view of Section 4 (3)(i) this land does not come within the definition of Shamlat Deh. Respondents have been cultivating this land in capacity of owners and that the Gram Panchayat has no concern with the land.

Against this decision of the Assistant Collector, Ist Grade, Guhla the petitioner Gram Panchayat had preferred an appeal before the Collector, Kaithal. The Collector, Kaithal reversed the order passed by the Assistant Collector, Ist Grade, Guhla and allowed the application filed by the Gram Panchayat. Respondents were ordered to be ejected from the land in dispute and were further held liable to pay Rs. 10,000/- per hectare per year; as the compensation for the losses sustained by the Gram Panchayat; from the crop of Kharif of the year 1996 till the time the actual possession of the land was handed over to the Gram Panchayat. While ordering so, the Collector, Kaithal had recorded that respondents have not proved that the land is Shamlat Land and how much is their share in Shamlat Land. The

Collector, Kaithal further held that as per cash book Ex:02 and the copy of lease register Ex:03 & Ex:04 the land in dispute is found to have been given on lease in the year 1981-82. Therefore, it is fully proved that disputed land is Panchayat Deh and has been leased out previously also by the Gram Panchayat. Similar orders were passed in all the three cases.

Aggrieved against these orders, the respondents had preferred three different revision petitions before Commissioner Ambala Division, Ambala. However, all the three revision petitions filed by the respondents in these three writ petitions were dismissed by the Commissioner, Ambala Division, Ambala vide order dated 31.03.2009.

Challenging the above said Order passed by the Commissioner, Ambala Division, Ambala the petitioners had filed three different civil writ petitions before this Court bearing CWP No. 8863 of 2010, CWP No. 13014 of 2010 and CWP No. 15445 of 2010.

This Court partly allowed these writ petitions vide order dated 18.05.2012 by setting aside the order passed by the Commissioner, Ambala Division, Ambala and remanded the matter to Commissioner, Ambala Division, Ambala for adjudicating afresh after taking into consideration all the relevant jamabandies prior to 26.01.1950.

Pursuant to the above said direction of this Court, the Commissioner, Ambala Division, Ambala had taken up the matter and passed the impugned order dated 13.09.2013, whereby the Commissioner has set aside the order passed by the Collector and has remanded the matter to the District Collector, Kaithal, with a direction that these cases be decided as title suits under Section 13-A of Punjab Village Common Lands (Regulation) Act, 1961, after examining the Jamabandies prior to

26.01.1950 and the Consolidation Scheme. It was further directed that parties would be allowed to produce the evidence in support of their case. While remanding the case, the Commissioner has recorded that as per the revenue record, the Jamabandi for the year 1936-37 and afterward show the petitioners to be in cultivating possession of land as co-sharer; whereas as per the facts produced by the Gram Panchayat nature of the land in question is recorded as '*Banjar Kadim*' and '*Banjar Jadid*'. Keeping in view the nature of the land, the cultivation of the land under possession of the respondents could not be presumed. It was further recorded by the Commissioner, that no finding has been given by the Collector regarding the revenue record; specially the jamabandies prior to the year 1950. From the very beginning this case involves question of title which has been raised but the same has not been decided in accordance with law. Therefore, the Commissioner held that the Collector has passed the order of ejectment without deciding the question of title. Accordingly, for consideration of the Jamabandies prior to the year 1950; as per the direction of the High Court; the Commissioner remanded the matter to the Collector for deciding it afresh. It is this decision of the Commissioner, Ambala Division, Ambala which has been impugned by the Gram Panchayat. Gram Panchayat in these three writ petitions.

Having heard learned counsel for the parties and perusing the record, we do not find any infirmity in the order passed by the Commissioner. A perusal of the record shows that the respondents have produced on record the jamabandies right from the year 1936-37 till 1981-82. However, the Collector had not recorded any appreciation of this evidence. The entire evidence on the record show that question of title was

involved in this case. Therefore, it was incumbent upon the authorities to decide the title of the land in question. Although the Assistant Collector in the initial order had held that the land does not fall within the definition of Shamlat Deh as per Section 4(3)(i), however, he has also not decided the question of title in accordance with law, as to whether the respondents were the owner in possession of the suit land or not.

So far as the challenge by the petitioner to the Order of the Assistant Collector, Ist Grade, Guhla dated 25.04.1997 is concerned, suffice it to say that this was an initial order and had merged into the previous revisional order. Therefore, this order did not have any independent existence after the matter had reached the stage of this Court and subsequently to the Commissioner Ambala Division, Ambala after remand of the matter by this Court. Hence, in any case, the challenge to that original order does not survive at all.

Although this Court had directed the Commissioner, Ambala Division, Ambala to decide the matter afresh by taking into consideration the record prior to the year 1950, yet, it would not have been proper for the Commissioner to himself decide the issue of title on the basis of the record prior to the year 1950. Had the Commissioner done so, then the valuable rights of appeal of the parties would have been adversely affected. Therefore, the Commissioner has done only the right thing by remanding the matter to the Collector for deciding the case afresh; while permitting the parties to lead the evidence and to decide this case by treating it a title suit. Hence; the Commissioner has committed no illegality or perversity in remanding the matter back to the Collector.

Otherwise also, vide impugned remand order no prejudice has

been caused to the Gram Panchayat. After the remand of case by this Court for decision afresh, the matter would have to be decided afresh, in any case. Therefore, the Gram Panchayat can not take objection to decision of the title of the suit land. Rather the Order of the Commissioner has provided one additional window to the parties to approach in appeal, in case the evidence is not properly appreciated by Court below. Therefore, this Order is to the benefit of the parties instead of being prejudicial to them.

In view of the above, we do not find any merit in the petitions bearing CWP Nos.6818, 23254 and 23293 of 2014 and the same are dismissed.

[Mahesh Grover]
Judge

[Rajbir Sehrawat]
Judge

17th May, 2018
Shivani Kaushik

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*