

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.17687 of 2002(O&M)

Date of Decision:-19.07.2019

Surat Singh & Ors.

.....Petitioners.

Versus

The State of Haryana & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUM KUMAR TYAGI**

Present:- Mr. M.S. Rana, Advocate for the Petitioners.

Mr. Rajeev Doon, Assistant Advocate General, Haryana.

JASWANT SINGH, J.

Petitioners-alleged proprietors of the village have preferred the instant writ petition, being aggrieved against the orders dated 12.11.1999 (**P-4**) passed by Assistant Collector, Ist Grade, Jhajjar whereby the title suit filed by petitioners under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act, 1961) has been dismissed, and the said order has been affirmed by Collector, Jhajjar vide order dated 18.10.2000 (**P-5**) exercising the powers of Appellate Authority, which in turn has been affirmed by Commissioner, Rohtak Division,

Rohtak vide order dated 25.10.2001 (**P-6**) exercising the powers of Revisional Authority.

Learned Counsel for the petitioner has argued that in the instant case, authorities below have wrongly dismissed the title suit filed by petitioners under Section 13 A of the Act, 1961 by completely overlooking the entries in Jamabandi for the year 1950-51 whereby the land in question has been recorded as *Shamlat Deh Hasab Rasad Paimana Malkiat* and possession has been shown of '*Makbooza Malkan*', and as per him the said entries were in existence since 1942-43. It is thus argued that in view of the said entry having been recorded, it is apparent that although land was earmarked for common purposed by applying pro-rata cut on the holdings of the proprietors, however, same was never put to any common use and, therefore, the land in question would be deemed to be in possession of proprietors, i.e. the petitioners/claimants and, therefore, the mutation no.409 dated 28.12.1954 (P-2) sanctioned in favour of the Gram Panchayat is liable to be set aside. Finally, prayer has been made for allowing the instant writ petition.

On the other hand, learned Counsel appearing for the respondents-State has supported the findings recorded by the Authorities below and has prayed for dismissal of the instant writ petition.

After hearing learned Counsel for the parties, at length and scrutinizing the paper book, we are of the opinion that the instant petition is without any merit and, therefore, liable to be dismissed.

It is not in dispute that before the Authorities below the claimants as well as a Gram Panchayat had relied upon the same Jamabandi for the year 1950-51 whereby land was reflected under the ownership of "*Shamlat Deh Hasab Rasad Paimana Malkiat*" and possession was shown as that of "*Makbooza Malkan*". As per the petitioners this entry would essentially mean that proprietors of the village are owners in possession of the land and consequently, the claimants, who claim themselves as proprietors are entitled to be declared as owners in possession of this land.

However, we are afraid that the said interpretation made by the petitioners-claimants is completely misconceived. In order to come within the exception clause of Section 2(g) of the Act, 1961 it is incumbent upon the claimants to show their actual physical possession over the land which may be recorded as *Shamlat* land. However, it is evident that none of the claimants/petitioners have been able to prove their individual cultivating possession over the land in question. No doubt the entry "*Shamlat Deh Hasab Rasad Paimana Malkiat*" would translate into "*possession of proprietors over the Shamlat land as per their shares*", but that does not help the case of the petitioners/claimants because it does not fall within the exceptions mentioned in Section 2(g) of the Act, 1961. Once the claimants have failed to prove their individual actual physical possession over the land in question, we have no hesitation but to hold that the land rightly belongs to Gram Panchayat and the mutation was correctly sanctioned in favour of Gram Panchayat in

the year 1954, as Gram Panchayat had become the owners of the instant land by operation of law.

In view of the foregoing discussion, finding no merit in the instant writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

July 19th, 2019
Vinay

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