

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

201

CWP No.18859 of 2014 (O&M)

Date of Decision: 27.08.2019

Karnail Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Rajiv Kataria, Advocate and
Mr. Aman Joon, Advocate for the petitioner.

Mr. Shreesh Gupta, Sr. D.A.G., Punjab.

Mr. V.K. Sandhir, Advocate and
Mr. Hardip Singh, Advocate for respondent No.3.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the order dated 31.05.2013
(Annexure P-11).

Shorn off unnecessary details, counsel for the petitioner has submitted that an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Punjab) (for short, “the Act”) was filed by the Gram Panchayat against the petitioner for seeking his eviction from the land measuring 78 kanals 5 marlas. At the same time, the petitioner had also filed a suit under Section 11 of the Act for declaring himself as owner of the land measuring 78 kanals 5 marlas. Both the petitions were clubbed together and the application filed by the Gram Panchayat under Section 7 of the Act was dismissed whereas the suit filed by the petitioner was decided in his favour vide order dated 28.06.1982. As a result, two appeals were filed by the Gram Panchayat against the same order vide

which application under Section 7 of the Act was dismissed and suit filed under Section 11 was allowed. The appeals were also dismissed on 31.10.1986. The Gram Panchayat challenged the orders dated 26.06.1982 and 31.10.1986 by way of a writ petition No.449 of 1987 which was allowed on 30.01.2013 by this Court and the matter was remanded back to the Director, Rural Development and Panchayats, Punjab, exercising the power of the Commissioner under the Act for deciding the appeal again. The said order dated 30.01.2013 reads as under:

"The Gram Panchayat of Village Nalini prays for issuance of writ of certiorari quashing orders dated 26.06.1982 (Annexure P-4) and 31.10.1986 (Annexure P-5), passed by the Divisional Deputy Director-cum-Collector, Rural Development and Panchayats, Patiala and the Joint Director, Panchayats, Punjab(exercising the powers of 'Commissioner'), respectively.

Counsel for the parties agree that the writ petition may be allowed and the matter may be remitted to the Appellate authority for adjudication afresh as the Collector and the Appellate Authority, have committed an error of law by granting benefit under Section 4(3)(ii) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'), whereas the case as discernible from pleadings and the evidence, on record, should have been decided in the light of Section 2(g)(viii) of the 1961 Act.

In view of the agreement between counsel for the parties, the writ petition is partly allowed, the order dated 31.10.1986, passed by the Joint Director, Panchayats, Punjab, is set aside and the matter is remitted to the Director, Rural Development and Panchayats, Punjab, exercising the power of Commissioner under the 1961 Act,

for adjudication of the appeal filed by the Gram Panchayat, afresh and in accordance with law within three months from the parties putting in appearance before him on 11.03.2013."

After the remand, the appeal of the Gram Panchayat was allowed by the Commissioner on 31.05.2013, holding that the petitioner has been recorded as Gair Marusi in the jamabandis for the years 1943-44, 1947-48 and 1951-52 whereas the land is owned by Shamlat Deh Hasab Rasad Jar Khewat.

At the time of notice of motion issued on 11.09.2014, the following order was passed by this Court:

"It is specifically contended that in none of the revenue entries prior to 1950, Rakha Singh son of Jhagru Singh is recorded as gair marusi and the revenue record in this regard has been misread by the Commissioner while recording findings at Page 88-89 of the paperbook.

Notice of motion.

On our asking, Mr. Rajinder Goyal, Additional Advocate General, Punjab, accepts notice on behalf of respondent Nos.1 and 2. Requisite number of copies of the petition be handed over to him during the course of the day.

Let respondent Nos.3 to 7 be served through dasti notice for 13.10.2014.

Till then, both the parties are directed to maintain status-quo.

The Deputy Commissioner, Fatehgarh Sahib is directed to ensure that the original revenue record alongwith a revenue official well conversant with Urdu/Persian language remain present in Court on the next date of hearing.

A copy of this order be given to learned State counsel for information and necessary compliance."

Though, thereafter the case has been adjourned for the completion of the pleadings but in view of the aforesaid order dated 11.09.2014, Hari Lal Nafri, Tehsildar, Fatehgarh Sahib filed his affidavit dated 27.07.2015 along with the translated version of the jamabandis for the year 1943-44, 1947-48 and 1951-52 from Punjabi to English.

Learned counsel for the petitioner has submitted that this Court had categorically observed in the order dated 30.01.2013 that the case in hand was to be decided under Section 2(g)(viii) of the Act and as per the said provision, the Panchayat, in order to succeed in the application filed under Section 7 in order to hold that the land in dispute is shamlat deh and the petitioner is sitting unauthorisedly over it, has to prove that the land in dispute is shamlat deh but in view of the Section 2(g)(viii) it would not be a shamlat deh if it is assessed to land revenue and has been in individual cultivating possession of co-sharers not being in excess of their respective shares in such shamlat deh on or before 26.01.1950. It is submitted that this aspect of the matter was not looked into by the Commissioner and has wrongly observed that the petitioner has been recorded in the revenue record i.e. jamabandis for the year 1943-44, 1947-48 and 1951-52 as Gair Marusi whereas the jamabndis which have been produced on record by the Tehsildar, pursuant to the order dated 11.09.2014, categorically shows in column No.5 that the petitioner is a co-sharer to the extent of half share along with Bhana son of Kahan Singh in the land in dispute as recorded in the jamabandis for the year 1943-44, 1947-48 and 1951-52. Therefore, he fulfils the mandate of law as provided in Section 2(g)(viii).

At this stage, counsel for the respondent has submitted that in order to prove that the land in dispute does not fall within the definition of shamlat deh, while referring to Section 2(g)(viii), besides the cultivating possession the petitioner has also to prove that he is not cultivating the land in excess of his respective share in the shamlat deh.

We have heard counsel learned counsel for the parties and after perusal of the record, are of the considered opinion that the finding recorded by the Commissioner that the petitioner is recorded as Gair Marusi in the jamabandis for the year 1943-44, 1947-48 and 1951-52 runs contrary to the jamabandis produced on record by the Tehsildar, Fatehgarh Sahib pursuant to the order dated 11.09.2014. Thus, the finding recorded that the petitioner has been recorded as Gair Marusi loses its veracity. At the same time, however, it cannot be lost sight of the fact that in order to exclude the land from shamlat deh, the petitioner has not only to prove that the land has been assessed to land revenue but it has been in his cultivating possession being a co-sharer not in excess of his share in the shamlat deh. The petitioner may in this regard lead evidence required for this purpose which is not possible before this Court.

Therefore, while allowing the writ petition and setting aside the impugned order dated 31.05.2013 (**Annexure P-11**), the case is remanded back to the Commissioner to decide the matter afresh after taking into consideration the aforesaid observation of this Court as well as the jamabandis for the year 1943-44, 1947-48 and 1951-52 produced on record after translation by Hari Lal Nafri, Tehsildar, Fatehgarh Sahib, who may be examined in the Court as a witness in the Court in

order to establish the genuineness of the aforesaid three jamabandis which have been relied upon by the petitioner. The petitioner may, further in order to take advantage of Section 2(g)(viii), prove that the land in dispute in his possession, if any, being cultivating by him as an individual, is not in excess of his share in the shamlat deh.

With these observations, the parties are directed to appear before the Commissioner on 30.09.2019.

It is needless to mention that appellate Court may, if need be, frame specific issues so that both the parties may lead their respective evidence. In case such a situation arises, the appellate Court shall also provide adequate opportunity to both the parties to lead their oral as well as documentary evidence.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

27.08.2019

Vinay

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