

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

CWP No.22564 of 2018

Date of Decision:-20.05.2019

Raghubir & Ors.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

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

Present:- Mr. Rajiv Sharma, Advocate for the Petitioners.

JASWANT SINGH, J.

Nine (09) petitioners, who claims themselves to be the proprietors of Village Ankhir, Tehsil and District Faridabad, have preferred the instant writ petition, seeking writ in the nature of Certiorari for quashing mutation no.192 dated 03.08.1955 (**P-2**) whereby land of proprietors of Village Patti has been mutated in favour of Gram Panchayat; Notification dated 22.08.1978 (P-3), whereby land in name of Gram Panchayat has been notified to vest in Faridabad Complex; and Judgment and decree dated 30.08.1972 passed by Sub Judge 1st Class, Ballabgarh, whereby Raghubir and Ors have been declared as owners of the land in question, in a suit filed by them against Gram Panchayat.

Learned Counsel for the petitioners has vehemently argued that the land in question has been wrongly mutated in favour of Gram Panchayat, as the land in question was never used for common purposes

and infact the land in question belongs to Pattis, which is exempted from being declared as Shamlat land as per provisions of Section 2(g)(5)(v) of The Punjab Village Common Lands (Regulation) Act, 1961. It is further argued that the subsequent notification of the year 1978, whereby land in question has been transferred in favour of Faridabad Complex is also meaningless and void, in view of the fact that at the first instance, the land in question could not have vested in Gram Panchayat. Lastly, it is argued that the Judgment and Decree dated 30.08.1972 passed in favour of Raghubir Singh and others is liable to be set aside/ignored because the then Sarpanch had admitted the claim of Plaintiffs (Raghubir etc), which led to passing of Judgment and Decree dated 30.08.1972. It is submitted that the said judgment and decree was put to challenge by Municipal Committee, Faridabad, which has been dismissed by trial Court and subsequently affirmed by the Appellate Court, however, a Regular Second Appeal No.23 of 1997 titled as "MCF Vs. Bhim Singh & Ors." is pending consideration after being admitted. It is stated that a civil suit was also filed by present petitioners, but same has been dismissed by trial Court as well as Appellate Court on the ground of jurisdiction. Thus, on the strength of the said facts, it is prayed that instant writ petition deserves to be allowed.

We have heard learned Counsel for the petitioners at length and have perused the paper book with his assistance. However, we are of the view that instant writ petition is without any merit and, therefore, deserves dismissal.

Admittedly, as per jamabandi for the year 1939-40 (P-1), the land in question is reflected as *Shamlat Deh Hasab Zail* with 7 *Pattis* shown as the owners and possession was reflected of owners. It is further an admitted position that vide mutation no.192 dated 03.08.1955 (P-2), the

the said mutation has been put to challenge before us after a period of more than 63 years on the ground of same being invalid, as it is in contravention of Section 2(g)(5)(v) of the Act, 1961. However, we are of the view that the said argument is completely misconceived for three reasons:-

Firstly, the reliance on Section 2(g)(5)(v) is misplaced as the mutation is of the year 1955 whereas the Act came into force in 1961. Despite our request, we have not been shown what were the provisions governing such properties prior to commencement of 1961 Act.

Secondly, even if it is taken that Section 2(g)(5)(v) was in existence, still the argument is fallacious. For ready reference Section 2(g)(5)(v) is required to be reproduced:-

“ *is described in the revenue records as Shamlat, taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof **or for common purposes of the village*** ”

A perusal of the same shows that onus was upon the petitioners to prove that the land in question was not put to common use. The entries in the Jamabandis relied upon by petitioners *prima facie* prove that the land was reserved and used for common purposes and therefore in possession of the Gram Panchayat through the proprietors because it is reflected as *Gair Mumkin Pahar/Gair Mumkin Johar/Tor* etc. In order to take shelter of Section 2(g)(5)(v), it was incumbent upon petitioners to prove their locus as well i.e. petitioners/their predecessors in interest were in actual physical cultivating possession of the land and same was not put to common use. However, there is no such evidence on record and the Jamabandis prove the contrary. Even the present petition has not been

or their predecessors in interest are the sole proprietors.

Thirdly, the instant petition is clearly barred by delay, laches and law of limitation, as petitioners are challenging a mutation which was sanctioned more than 63 years earlier, which has been acted up[on as land stands transferred by way of notification in favour of Faribadad Complex in the year 1978. It is settled position of law that a party aggrieved is required to challenge any order passed a competent authority within a reasonable period, which usually is taken as 3 years from date of knowledge. Undisputedly, petitioners/their predecessors had the knowledge of such mutation as well as Notification.

Consequently, seen from any angle, it is apparent that neither the petitioners have any locus to challenge the mutation and in case there was any right, same stands extinguished by operation of law of limitation as well as equitable principle of delay and laches.

Once that is so, we are afraid the petitioners are barred from laying challenge to the Notification dated 22.08.1978 as well for same reasons.

As far as challenge to the judgment and decree dated 30.08.1972 is concerned, we are of the opinion that in view of the fact that petitioners have no locus to lay claim to the land owned by Gram Panchayat, they therefore have no right to challenge the Judgment and Decree dated 30.08.1972, which is already under challenge before this Court in RSA No.23 of 1997 filed by Municipal Committee, Faridabad.

Today the said RSA is also listed along with instant writ petition in view of the previous orders passed by Co-ordinate Bench of this Court, however, in view of the fact that issue involved in the RSA No.23 of 1997 is different and is consideration before the learned Single Bench for

adjudication, we order that the RSA be segregated and put up as per roster

for final disposal.

In view of the above, finding no ground to interfere, the instant writ petition is hereby dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

May 20 2019
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No