

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

CWP 24537/2018
Date of decision:21/2/2019

Shamlat Pana Brahmnan Nangal Kalan and others

.....Petitioners

v.

Village Panchayat through Sarpanch, Shamlat Pana Brahmnan, Nangal
Kalan, Tehsil and Distt. Sonapat and another

.....Respondents

Coram: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Arun Kumar Tyagi

Present:- Mr. Suresh Kaushik, Advocate for petitioners

Jaswant Singh, J., (Oral).

This order shall dispose of three writ petitions* as the land in dispute in these three writ petitions is situated in Village Nangal Kalan and the facts, pleadings and arguments addressed in these three petitions are identical. However, for the sake of clarity, facts of these three cases have been noticed hereunder separately .

CWP 24537/2018

Petitioners filed a claim on 29/7/2004 under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 before the Collector, Sonapat with the averments that agricultural land measuring

88 kanals 6 marlas situated in Village Nangal Kalan, Tehsil and District Sonapat, comprised in Khevat No.629/589-fully detailed in opening para of impugned order Annexure P-4, was kept for their common purpose during the consolidation and they were owners in possession till the date of filing of the claim. It was alleged that in the year 1966, respondent-Gram Panchayat in connivance with revenue officials got transferred the said land in the name of Panchayat vide Intkal No.3401 dated 25.11.1966 without any notice to biswa holders and shareholders of Pana. It was averred that neither any portion of the land in dispute was reserved for pasture nor any portion thereof was cultivated on lease. With these averments a decree was sought to the effect that owner of the land in dispute was Pana Brahman and not the respondent Gram Panchayat.

Respondent Gram Panchayat in its reply denied the averments made by the petitioners and it was asserted that the land in dispute was reserved as pasture in the consolidation and was being used by residents for common purpose of grazing the cattle/ for firewood before consolidation and had been under possession of the Village Panchayat and was covered under the definition of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and vested in Gram Panchayat. The Biswa holders and non-Biswa holders of the village and Pana had knowledge about the change in ownership/intkal of the land in dispute but still no Biswa holder challenged it. It was further averred that Mustil and Killa No.55//21,

22, 56//17/1, 24,25, 66//1, 2,9, 10,11,20 and 21 had been given on lease for a period of five years but the lessee had left the possession before the expiry of the term due to the land not being cultivable. It was specifically stated that the land was vacant and under possession of the Gram Panchayat being used for common purposes.

On the pleadings of the parties issues were framed. Both sides led evidence in support of their respective pleas. The learned Collector, after hearing both sides and on the basis of evidence produced before him dismissed the claim of the petitioners vide order dated 30.5.2007 (P-5).

Aggrieved against the same, petitioners filed an appeal before the Commissioner, Rohtak. The said appeal was dismissed by Commissioner,Rohtak vide order dated 23.6.2017(P-4). Hence the present petition seeking quashing of impugned orders P-4 and P-5.

CWP No.2654/2019

In this petition, petitioners on 3.3.2005 filed a claim under Section 13-A of the Punjab Village Common Lands (Regulation) Act,1961 before the Collector Sonapat with the averments that land measuring 340 kanals 10 marlas situated in the revenue estate of Village Nangal Kalan, comprised in Khevat No.629 Min/589-fully detailed in the opening para of impugned order Annexure P-4- was under the ownership and possession of Biswa holders of Pana Pachhala of Village Nangal Kalan. As per revenue record the land was Shamlat

Pana Pachhala Majkoor and in the cultivation column was shown as

Makbuja Malkan. Change of Intkal No.3401 dated 25.11.1966 of the land in dispute from Shamlat Pana Pachhala to Gram Panchayat was illegally done on the basis of letter of the Government. It was alleged that intkal was done in the absence of the Biswa Holders of the village and without any announcement and without any notice to Pana Pachhala and hence not binding. The land in dispute, at the time of consolidation, was not reserved for community purposes of the villagers and thus it did not vest in the Gram Panchayat but the Biswa holders of the Pana Pachhala were its owners. With these averments a decree was sought to the effect that owner of the land in dispute was Pana Pachalla and not the respondent Gram Panchayat.

Respondent Gram Panchayat in its reply denied the averments made by the petitioners and it was asserted that land in dispute was in use for community purposes before and after the implementation of the Punjab Village Common Lands (Regulation) Act,1961 and therefore, as per provisions of the Act it vested in the Gram Panchayat. It was denied that the land in dispute was in effective possession of the Biswa holders of Pana Pachhala but in possession of Gram Panchayat. It was asserted that change in ownership in favour of Gram Panchayat had been entered and approved legally under the provisions of the Punjab Village Common Lands (Regulation) Act,1961 and in the presence of Biswa holders of Pana Pachhala and others villages.

On the pleadings of the parties issues were framed. Both

sides led evidence in support of their respective pleas. The learned Collector, after hearing both sides and on the basis of evidence produced before him dismissed the claim of the petitioners vide order dated 20.7.2011(P-4).

Aggrieved against the same, petitioners filed an appeal before the Commissioner, Rohtak. The said appeal was dismissed by Commissioner, Rohtak vide order dated 23.6.2017(P-3). Hence the present petition seeking quashing of impugned orders P-3 and P-4.

CWP 4395/2019

Petitioners filed a claim on 28.10.2005 under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 with the averments that land measuring 448 kanal 2 marla situated in revenue estate of Village Nangal Kalan, comprised in khewat no.254 and 398/389-fully detailed in the opening para of impugned order Annexure P-4, was under the ownership and possession of Biswa Holders of Pana Bichla of Village Nangal Kalan and recorded in revenue record as Shamlat Pana Bichla Majkoor. Column of cultivation read as Makbuja Malkan. It was alleged that change of Intkal in respect of said land was entered illegally on the basis of letter dated 22.4.1961 which was verified by Assistant Collector 2nd Class. It was asserted that on the basis of the letter dated 22.4.1961 only intkal of Shamlat Deh Hasab Rasad Araj Khevat could be approved but not of the land of the Pana Thola and since the land of Pana Thola, as per revenue record, was not used for community purpose, the same did not vest in the Gram

Panchayat It was further alleged that Intkal No.3401 dated 25.11.1966 was done in the absence of the Biswa Holders of the Village and without any announcement and without any notice to Pana Bichla and hence not binding on petitioners. It was also asserted that since the land in question, at the time of consolidation was not reserved for community purposes of the villagers, therefore, it did not vest in the Gram Panchayat and rather Biswa Holders of the Pana Bichla were its owners. With these averments prayer for cancellation of Intkal No.3401 dated 25.11.1966 was made with further direction to Gram Panchayat not to transfer the land under litigation to anybody in any way.

On the pleadings of the parties issues were framed. Both sides led evidence in support of their respective pleas. The learned Collector, after hearing both sides and on the basis of evidence produced before him dismissed the claim of the petitioners vide order dated 20.7.2011 (P-4)

Aggrieved against the same, petitioners filed an appeal before the Commissioner, Rohtak. The said appeal was dismissed by Commissioner, Rohtak vide order dated 23.6.2017(P-3). Hence the present petition seeking quashing of impugned orders P-3 and P-4.

Learned counsel for the petitioners has argued that the authorities below have wrongly held that the land belongs to Gram Panchayat and that the management and ownership vests with it. It is argued that the petitioners have been able to prove their possession over the land in question prior to 26.01.1950 and therefore, they are

entitled to be declared as the owners of the property.

After hearing learned counsel for the petitioners and perusing the paper books, we are of the opinion that the instant writ petitions are without any merit and liable to be dismissed.

It is evident from the record that some individuals, for themselves as representatives of "*Shamlat Pana Brahman Nangal Kalan*" have raised a claim of ownership. It is further not in dispute that as per Jamabandi for the year 1944-45(P-1), "*Shamlat Pana Brahman Nangal Kalan*" has been reflected as the owner, with column of cultivation reflecting "*Makbooza Malkan*" (i.e. possession of owners) with nature of land recorded as *Charand* (for pastures). This entry continues in the subsequent Jamabandis as well. Not only this, a perusal of the impugned orders reveal that as per "*Shart Wazib-ul-arz*" (Ex.DA) in condition no.1 the land has been shown as pasture and therefore reserved for common purposes.

No consolidation scheme has been brought on record by the petitioners from which this observation by the authority below can be negated. It is settled position of law that revenue entries carry a presumption of truth under Section 44 of the Punjab Land Revenue Act, 1887 and this presumption can be rebutted by leading cogent and convincing evidence. No such evidence is coming forth in the instant case. Meaning thereby, the claimants/petitioners have not been able to show their individual cultivable possession over the land in question

prior to 26.01.1950 and it is "*Shamlat Pana Brahman Nangal*

Kalan”,which has been shown to be in possession.

In view of the above,finding no merit, instant writ petitions
are ordered to be dismissed.

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(Jaswant Singh)
Judge

21/2/2019
joshi

(Arun Kumar Tyagi)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No

- *1. CWP 24537 of 2018 (Shamlat Pana Brahmnan Nangal Kalan and others v Village Panchayat through Sarpanch,Shamlat Pana Brahmnan, Nangal Kalan, Tehsil and District Sonapat and another)
- 2. CWP 2654 of 2019 (Shamlat Pana Pachhala, Nangal Kalan and others v Gram Panchayat Shamlat Pana Pachhala through Sarpanch,Nangal Kalan, Tehsil and District Sonapat and another).
- 3.CWP 4395/2019 (Shamlat Pana Bichla,Nangal Kalan and others v Gram Panchayat through Sarpanch, Shamlat Pana Bichla,Nangal Kalan,Tehsil and Distt.Sonapat and another.