

CWP No.27646 of 2018

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

CWP No.27646 of 2018

Date of Decision:-22.04.2019

Baldev Singh.

.....Petitioner.

Versus

The State of Haryana & Ors.

.....Respondents.

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

Present:- Mr. Hawa Singh Hooda, Senior Advocate assisted by
Mr. Naveen Kashyap, Advocate for the Petitioner.

JASWANT SINGH, J.

Petitioner-Baldev Singh, who claims himself to be proprietor of Village Todda, Tehsil and District Panchkula has preferred the instant writ petition, impugned order dated 27.01.2010 (**P-9**) passed by Collector Panchkula; order dated 26.03.2013 (**P-11**) passed by Commissioner Ambala Division, Ambala; and order dated 19.03.2018 (**P-13**) passed by Financial Commissioner, Haryana, whereby his title suit filed under Section 13A of the Punjab Village Common Land (Regulations) Act, 1961 (hereinafter referred to as the Act, 1961) has been dismissed.

Learned Counsel for the petitioner has argued that

property in question has been reflected in the revenue record as “*Shamlat Deh Hasab Rasad Arazi Khewat*” and the possession has been shown of proprietors of the Village as per Jamabandi for the year 1945-46 and the said entries continued even after 1950, which is evident from subsequent jamabandies. It is the contention of the learned Senior Counsel that in view of the said entries and especially when the proprietors of the Village were in possession, partition proceedings were initiated, which ultimately led to property in question being partitioned amongst the share-holders vide instrument of partition dated 22.04.1991. It is submitted that once the said property stood partitioned amongst the proprietors, then no question remains of the property being “*Shamlat*” and therefore the proprietors are entitled to be declared as owners of the property in question. Hence, it is prayed that impugned orders be set aside by allowing the instant writ petition and declaring the proprietors to be the owners.

We have heard learned Counsel for petitioner at length and have also scrutinized the paper book with his able assistance. However, we are of the view that instant petition is without any merit and deserves to be dismissed.

It is apparent from the impugned orders passed by the Authorities that the property in question was reflected in the revenue record to be owned by “*Shamlat Deh Hasab Rasad Arazi Khewat*”, however, the possession was not reflected of any proprietor in its individual capacity. As per the exceptions carved out in Section 2 (g) of the Act, 1961, only those lands are exempted from the definition of

'Shamlat', which are assessed to land revenue and have been in

individual cultivating possession of co-sharer, but not being excess of their respective shares. For ready reference Section 2(g)(viii) is reproduced as under:-

“(viii) was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamlat deh on or before 26th January, 1950; ”

In view of the admitted position that the petitioner has failed to prove his actual individual cultivating possession over the land in question prior to 26.01.1950, he or for that matter no proprietors of the Village can be declared as owners by excluding the ownership of Gram Panchayat.

As far as the argument regarding property having been partitioned vide instrument of partition dated 22.04.1991 is concerned, we are afraid that the said argument is also without any merit. A perusal of the impugned orders show that when Assistant Collector 2nd Grade sanctioned mutation on the basis of instrument of partition vide mutation no.1414 dated 19.06.1996, the same was put to challenge by Gram Panchayat vide appeal before the Collector, 1st Grade, which was ultimately allowed vide order dated 25.03.1998. This order has been upheld upto this Court and infact, when CWP No.13027 of 2008 was filed challenging the orders setting aside the mutation of partition, present petitioner withdrew the writ petition with a liberty to approach Collector under Section 13A of the Act, 1961 in order to get the title adjudicated. Meaning thereby, petitioner had himself foregone right, if any, to claim ownership on the basis of said

document of partition.

Hence, seen from any angle, it is evident that the impugned orders passed by the Authorities below do not suffer from any illegality, much less perversity and, therefore, same are hereby affirmed.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

April 22, 2019
Vinay

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