

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P. No. 12885 of 2020

Date of Decision : 28th September,2020

Ajmer Singh and others

.... Petitioners

vs.

State of Punjab and others

.... Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. Mohd. Yousaf, Advocate
for the petitioners.

Ms. Sunint Kaur, AAG, Punjab
for respondents No.1 to 3.

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MEENAKSHI I. MEHTA, J. :

By way of the instant petition, the petitioners have approached this Court for seeking the relief of issuance of a writ in the nature of certiorari seeking quashing of the order dated 22.01.2020 passed by respondent no.2 whereby the appeal, as preferred by them against the order handed down by respondent no.3 on 03.12.2018 declaring respondent No.4 to be the owner of the land in dispute (for short “disputed land”), had been dismissed.

2. Bereft of unnecessary details, the factual-matrix, as canvassed by the petitioners in this petition, is that during the land consolidation

proceedings, the land owned by Nand Kaur, their predecessor-in-interest, fell within the *phirni* (the circular passage/road around a village). She preferred an application to the Consolidation Officer with a request to make good the deficiency, so caused to her land. Thereupon, the Consolidation Officer, after perusing the record, found that her land measuring 09 biswas had come under the *phirni* and in lieu thereof, she was entitled to 04 biswas land. Therefore, the Consolidation Officer passed an order on 26.05.1955 (Annexure P-2) for allotting the land measuring 04 biswas to her out of the land of one Jawahar Singh and Chanan who were owners in possession of the land comprised in Khasra Nos.253 and 276, as shown in Annexure P-1.

3. The petitioners have, further, averred that consequent upon the land consolidation proceedings, Khasra No.253 was re-numbered as Khasra No.472 whereas Khasra No.276 was converted to Khasra No.468 although a part of Khasra No.276 was also merged in Khasra No.472, as shown in the copy of the Field Book (Annexure P-3). A mutation bearing No.1442 was also sanctioned on the basis of the afore-mentioned order Annexure P-2. Thus, they have been in possession over the disputed property as its owners since the year 1955 and have also raised construction thereupon without any interference from any quarter and their names were also duly recorded as the owners of the said land in the *jamabandi* for the year 1966-67 (Annexure P-4).

4. It has also been averred by the petitioners that in the year 2017, respondent No.4-Gram Panchayat preferred a petition (Annexure P-5) under

Section 11 of the Punjab Village Common Lands Act, 1961 (for short, “the PVCL Act”) before respondent No.3 for declaring it to be the owner in possession of the land measuring 04 biswas comprised in Khasra Nos.468 and 472 i.e the disputed land. The petitioners, who were arrayed as respondents in the above-said petition, appeared therein but during the pendency of the said petition, respondent No.3 got an FIR bearing No.15 dated 25.01.2018 lodged against them at Police Station Sherpur, District Sangrur, under Sections 420 IPC and 13-A of the PVCL Act. They preferred **CRM-M No.32573 of 2018** seeking quashing of the said FIR wherein an interim order has been passed by this Court in their favour. In fact, respondent No.4 is taking undue advantage of a stray entry recorded in its favour in respect of the disputed land in the *jamabandi* pertaining to the year 1961. Respondent No.3 wrongly allowed the above-said petition vide order dated 03.12.2018 (Annexure P-7). The appeal preferred by them against the said order has also been dismissed by respondent No.2 vide order dated 22.01.2020 (Annexure P-8) without assigning any cogent reason. Both the above-said orders deserve to be set aside as the order dated 26.05.1955 has not been challenged till date and thus, it has attained finality. Respondent No.3 was not competent to entertain and decide the afore-mentioned petition as moved by respondent No.4.

5. Learned AAG Punjab has appeared on behalf of respondents No.1 to 3 in pursuance of the advance notice issued to the respondents.

6. We have heard learned counsel for the petitioners as well as

learned counsel for respondents No.1 to 3, at preliminary stage and have also perused the record thoroughly.

7. Learned counsel for the petitioners contends that vide order Annexure P-2, Nand Kaur, the predecessor-in-interest of the petitioners, had been given the land measuring 04 biswas in lieu of her 09 biswas land which had come under the *phirni* and in pursuance of the said order, the land comprised in Khasra Nos.253 and 276 was given to her and as per Annexure P-1, i.e. the copy of new Khatauni, Khasra Nos.253 and 276 were owned by Jawahar Singh and Chatra and as per Annexure P-3, i.e. the copy of the Field Book prepared during the consolidation proceedings, Khasra No.276 was re-numbered as 468 and Khasra No.253 was also given a new number as Khasra No.472. He has also pointed out that in Annexure P-4, i.e. the copy of the *jamabandi* for the year 1966-67, both the petitioners are recorded as the owners of these Khasra Numbers i.e. the disputed land and he further contends that it being so, the impugned order Annexure P-8 passed by respondent No.2 in the appeal as preferred by the petitioners against order Annexure P-7, passed by respondent No.3, allowing the petition as moved by respondent No.4-Gram Panchayat against the petitioners under Section 11 of the PVCL Act, is liable to be quashed/set aside.

8. However, learned counsel for respondents No.1 to 3 argues that as per the relevant revenue record, the disputed land has been reserved for toilets and has been described as *Gair Mumkin* and the Consolidation

Department had no jurisdiction to pass any order regarding the land reserved for common purpose of the villagers and respondents No.3 and 2 have passed the impugned orders in accordance with law.

9. The petitioners claim their ownership over the disputed land through their predecessor-in-interest namely Nand Kaur on the strength of the order dated 26.05.1955 (Annexure P-2) whereby she was ordered to be given 04 biswas land in lieu of her land which had come under the *phirni* during the consolidation proceedings. However, it is worthwhile to mention here that though the above-said order had been passed on the basis of the statement of her attorney Gurdit Singh to the effect that she be given the land out of the land belonging to Chanan and Jawahar Singh but the fact remains that no particular Khasra Number of the land belonging to the said land-owners finds mention therein and rather, in the concluding lines of this order, it has been mentioned that the copy of the same be sent to the ACO for compliance. The petitioners have not placed any material on the file to show that Khasra Nos.253 and 276 (later on re-numbered as 472 and 468 respectively) had been allotted to said Nand Kaur in compliance of the said order. It is also not out of place to mention here that as is explicit from the bare perusal of Annexure P-1, the afore-said Jawahar Singh and one Chatra are recorded therein to be the owners of the land comprised in several Khasra Numbers besides Khasra Nos.253 and 276. Moreover, in the Field Book Annexure P-3, the land comprised in Khasra No.468 is mentioned as *Gair Mumkin* toilets and the land comprised in Khasra No.472 is described

as *Gair Mumkin* land meant for storing manure heap (*Rurhi*).

10. To add to it, in para No.3 of the petition, the petitioners have averred that on the basis of order Annexure P-2, a mutation bearing No.1442 was also sanctioned and in the impugned order Annexure P-8, the date of the sanction of this mutation has been mentioned as 01.10.1964. The petitioners, in para No.6 of the petition, have also averred that respondent No.4-Gram Panchayat is taking the advantage of a stray entry in the *jamabandi* pertaining to the year 1961, meaning thereby that before the sanction of the above-said mutation, the disputed land was recorded to be owned by the Gram Panchayat in the said *jamabandi*. However, the petitioners have not produced the copies of the said *jamabandi* as well as the mutation on the file which could have been the most relevant and material documents to ascertain the factum of ownership over the disputed land because the said mutation must be containing the description of the previous owner of the disputed land which is claimed to have been mutated in the name of the petitioners. Thus, the petitioners have withheld the best possible documents from being brought on the file to substantiate their claim in the instant case despite the fact that the same could have been easily available to them. In these circumstances, Annexure P-4, i.e. the copy of the *jamabandi* pertaining to the year 1966-67, showing the petitioners to be the owners of the disputed land, is not of much avail to them to establish their version as put forth in the present petition.

11. In view of all the above-discussed facts and circumstances, we

are of the considered opinion that the impugned orders do not suffer from any infirmity, illegality or perversity and do not call for any interference by this Court.

12. As a sequel to the foregoing discussion, this petition, being sans any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

28th September, 2020.
monika/seema

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>