

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11386 of 2016 (O&M)
Date of Decision: 16.01.2020

Lakhmi through LRs

....Petitioners

Versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA

Present: Mr.Vikram Punia, Advocate for the petitioners.

Ms.Kirti Singh, Deputy Advocate General, Haryana.

Mr.S.P.Chahar, Advocate for respondent No.4.

RAKESH KUMAR JAIN, J.(Oral)

The petitioners are the legal heirs of Lakhmi son of Sh.Ram s/o Gokal. They have prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 21.12.2006 passed by the Collector, Sonapat by which the suit filed by the petitioners under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') was dismissed, order dated 17.12.2009 passed by the Commissioner by which the appeal filed by the petitioners was dismissed and order dated 30.9.2015 by which the Financial Commissioner Haryana has dismissed the revision of the petitioner.

In brief, the predecessor-in-interest of the petitioners, namely,

Lakhmi filed a suit under Section 13-A of the Act for seeking declaration of

his ownership in regard to the land bearing Khewat No.373, Khatoni

No.584 min Killa Nos.63/11/2, 20/1 measuring 2K-1M and Killa No.20/1 measuring 5K-15M of Khewat No.63 total measuring 7K-16M situated in village Anwli, Tehsil Gohana. It was inter alia averred in the suit that the petitioners are in possession through their predecessor-in-interest on the land in dispute which bears Khasra No.109, Khewat No.190 and Khatauni No.406 (pre-consolidation) but after the consolidation the petitioners were allotted the land in lieu of Khasra No.109 which is recorded in mutation No.2228. Suit was dismissed on 21.12.2006. The petitioners filed statutory appeal before the Commissioner, Rohtak Division, Rohtak which was also dismissed on 17.12.2009. The petitioners thereafter, preferred a revision petition before the Financial Commissioner, Haryana which too was dismissed on 11.7.2012. Thereafter, the petitioners filed the writ petition bearing CWP No.22158 of 2012 before this Court which was allowed on 30.9.2013 and the order of the Financial Commissioner was set aside and the case was remanded back to him to decide again with the following directions:

“Matter is remitted to the above officer to decide revision petition, filed by the petitioner, afresh. All the documents on record be discussed. Oral evidence, especially statement made by the Patwari be also noticed. Officer concerned shall also notice judgment passed by the Civil Court and its effect on rights, inter-se the parties.”

Thereafter, the matter was heard again by the Financial Commissioner, Haryana and vide her order dated 30.09.2013 the revision was dismissed which led to the filing of the present petition.

Learned counsel for the petitioners has vehemently argued that

order dated 30.9.2013 is patently illegal being contrary to the facts and law.

It is submitted that the petitioners had become owners of the property in dispute, reflected in the mutation No.2228 which was entered pursuant to the order passed by the Consolidation Officer on 09.02.1968. In this regard, petitioners have also referred to the statement of PW3 Ashok Patwari.

On the other hand, counsel appearing on behalf of the respondents have jointly submitted that there is no error in the appreciation of the facts by the Financial Commissioner because the case set up by the petitioners in the suit filed before the Collector is that their predecessor-in-interest were coming as owners of Khasra No.109 bearing 2 bighas of land which is reflected in the jamabandi (Ex.P1) for the year 1930-31, Ex.P2 for the year 1950-51 and Ex.P3 for the year 1954-55 and after consolidation, carried out in the year 1966, the petitioners have been allotted land measuring 3 Kanal 12 Marla falling in Khasra No.45//21 min. It is further submitted by the respondents that in regard to the land in question, the predecessor-in-interest of the petitioner had filed a civil suit in which he has averred that the land measuring 3K-4M falling in Khasra No.63//11/2, 20/1 was allotted in lieu of land measuring 17 biswa of Khasra No.109. At the same time, suit for declaration was filed on the basis of adverse possession meaning thereby the petitioners have admitted that the Gram Panchayat is the owner and by virtue of possession for more than 12 years without any objection, they have required the ownership of the property in dispute. It is further submitted that the petitioners have taken contradictory stand in two suits i.e. before the civil court they have claimed their ownership on the land in dispute which falls in Khasra No.63//11/2 (11-2), 7K-16 M by virtue of adverse possession and before the Revenue Authorities a suit under Section

consolidation, they have been allotted land measuring 3 kanal 12 marlas falling in Khasra No.1-15 (21 min). It is further submitted by the counsel for the respondents that the petitioners have failed to connect the pre-consolidation numbers with the post consolidation numbers of the land in dispute therefore, they cannot rely upon mutation No.2228 for purposes of the ownership.

In rebuttal, counsel for the petitioners has submitted that the petitioners, in any case, are relying upon the revenue document i.e. mutation on the basis of which they are claiming title over the property in question as owners.

We have heard learned counsel for the parties and perused the record with their able assistance.

The issue involved in this case is as to whether the petitioners are the owners of the property in dispute on the basis of the revenue record?

The revenue record produced in the suit filed by the petitioners are the jamabandis Ex.P1, Ex.P2 and Ex.P3 which are prior in time to the cut off date i.e. 09.01.1954 as provided in the Punjab Village Common Lands (Regulations) Act, 1961 and are required to be in cultivating possession of the said land before 26.01.1950 but the said land is falling in Khasra No.109 in lieu of which, after the consolidation, the petitioners have been allotted land measuring 3 kanal 12 marla falling in Khasra No.45 and the petitioners have not referred to any other land in their possession before the cut off date referred to above, for the purpose of establishing that they have been in cultivating possession of the land in dispute also which has been given after consolidation. Thus, in the absence of any evidence to co-

dispute, the Revenue Courts below have rightly dismissed the suit of the petitioners as the petitioners cannot be allowed to rely upon the mutation only which does not confer any title. Moreover, it has also been observed by the Financial Commissioner that said mutation does not explain as to why the said land was allotted to him and whether it was in exchange of land allotted earlier by the CO. Since burden of proof was upon the petitioners and were supposed to lead positive evidence.

Thus, in view of the aforesaid discussion, we are of the considered opinion that there is no error in the orders impugned herein, and therefore, the writ petition is found to be without any merit and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

16.01.2020
Meenu

(ASHOK KUMAR VERMA)
JUDGE

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