

CWP No.2469 of 2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(PROCEEDINGS THROUGH VIDEO CONFERENCING)

CWP No.2469 of 2022

Date of Decision: 10.02.2022

Dilawar Singh & others

...Petitioners

Versus

Financial Commissioner, Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jatin Hans, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

This writ petition has been filed challenging the order dated 01.06.2017 passed by the Collector, Bhiwani, whereby a petition under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to Haryana State, (hereinafter referred to as '1961 Act') in respect of land measuring 120 kanal and 7 marla comprised in Khasra No.228 situated in revenue estate of village Mundhal Khurd, preferred by respondents No.4 to 8 claiming the land to be vested in the Gram Panchayat, stood decreed; order dated 05.06.2018 passed by the Commissioner, Rohtak Division, Rohtak, whereby the appeal preferred by the petitioners has been dismissed and the order dated 17.07.2019 passed by the Financial Commissioner, Haryana, in the revision petition preferred under Section 13 AA of the 1961 Act challenging the aforementioned two orders, has also been dismissed.

2. It is the contention of the learned counsel for the petitioners that the suit preferred by respondents No.4 to 8 under Section 13-A of the 1961 Act would be barred by principle of *res judicata* under Section 11 of the Code of Civil Procedure as the mutation of the land in dispute when wrongly entered in the name of the Gram Panchayat after consolidation in the year 1954-55, was challenged by way of a civil suit filed by Amar Singh and others, although initially for declaration, to the effect that the said mutation had no effect on the rights of the share-holders of the village and the Gram Panchayat be restrained from interfering with the peaceful possession of the share-holders of the land in dispute. The said suit was contested by the Gram Panchayat, which was dismissed by the Sub Judge 3rd Class, Bhiwani, Camp at Hansi, on 30.07.1966, appeal against which preferred by said Amar Singh and others was dismissed by affirming the judgment of the trial Court by the learned Additional District Judge, Hisar, vide judgment dated 03.04.1968. However, the Regular Second Appeal No.1342 of 1968 was allowed by this Court vide judgment dated 08.03.1979, which judgment has been affirmed by the Hon'ble Supreme Court on 11.04.1996 on a challenge by the Gram Panchayat.

On the basis of this, a plea has been taken by the petitioners' counsel that the suit could not have been entertained and should have been dismissed being barred, instead of which, the Collector, Bhiwani has proceeded to reject the said plea of the petitioners by concluding that a fraud has been played on the rights of the Gram Panchayat to obtain a decree in favour of the proprietors of this land and this fraudulent decree is liable to

be ignored while deciding the question of title. The said order has been upheld by the Commissioner, Rohtak Division, Rohtak, in the appeal and by the Financial Commissioner, Haryana, in the revision petition, vide orders dated 05.06.2018 and 17.07.2019 respectively.

3. His further contention is that once the matter with regard to mutation having been settled in favour of the petitioners, the same could not have been opened again. It has also been asserted that the land measuring 120 kanal and 7 marla has been rightly recorded in the jamabandi as 'Hasab Rasad Haj Khewat' and in the column of cultivation as 'Makbuja Malkan' prior to consolidation. The change, if any, has been brought about after consolidation in the jamabandi for the year 1954-55 by wrongly recording it as *shamlat deh* but in the cultivation column, 'Makbuja Malkan' continues.

Another objection which has been raised is that respondents No.4 to 8 have no right to file an application under Section 13-A of the 1961 Act as they have no concern or connection with the suit land and therefore, revenue authorities should not have entertained the said plea. The findings with regard to the fraud having been played upon the Court is based upon the Sharat-Wazib-ul-arj. This Sharat-Wazib-ul-arj has not been brought on record before the Civil Court in the suit filed by Amar Singh and others by the Gram Panchayat nor has the revenue record been produced to substantiate the claim with regard to the original ownership of the land indicating Gram Panchayat to be the owner of the land which cannot be sustained as it is a public document which, if not produced during the civil

suit, adverse inference is required to be drawn under Section 114 (g) of the Indian Evidence Act. The said document being in the knowledge of the Gram Panchayat should have been produced before the Civil Court and the said document cannot now be used against the petitioners to divest them of the title of the property in dispute.

On the basis of these assertions, submission has been made by the learned counsel for the petitioners for setting aside the impugned orders passed by the revenue authorities and dismissing the suit preferred by the private respondents No.4 to 8 under Section 13-A of the 1961 Act.

4. We have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the pleadings, impugned orders and the judgment passed by this Court as well as the Hon'ble Supreme Court in the suit preferred by Amar Singh and others, which have been appended with the writ petition as Annexures P-5 and P-6 respectively, but do not find ourselves in agreement with the grounds which have been pressed into service as recorded above for setting aside the impugned orders passed by the revenue authorities.

5. The main ground/argument for challenging the impugned orders is that the suit preferred by respondents No.4 to 8 under Section 13-A of the 1961 Act would be barred by the principle of *res judicata*. At the first blush, the said plea, in the light of the order passed by this Court in the Regular Second Appeal, which has been upheld by the Hon'ble Supreme Court, appears to be carrying weight but when seen in the light of the pleadings in the civil suit and the judgments rendered by the Courts, the

same do not deal with the title of the land, rather it is with regard to the mutation, which was sanctioned in pursuance to the consolidation proceedings, which had taken place. It is a settled principle of law that the mutation does not confer any title. Reference in this regard can be made to the various judgments of the Hon'ble Supreme Court in Gurbaksh Singh vs. Nikka Singh, 1963 Suppl. (1) SCR 55 followed by Smt. Sawarni vs. Smt. Inder Kaur, 1996 (7) JT SC 580, Balwant Singh vs. Daulat Singh (dead) by LRs, (1997) 7 SCC 137, Suraj Bhan vs. Financial Commissioner, (2007) 6 SCC 186 as also in the judgment of the Supreme Court in Smt. Bhimabai Mahadeo Kambekar (D) through LR vs. Arthur Import and Export Company and others, (2019) 3 SCC 191, Special Leave to Appeal (C) No. 5743 of 2020 titled as The Commissioner Bruhath Bangalore Mahanagara Palike and another vs. Faraula Khan and another, decided on 25.01.2021 and Special Leave to Appeal (C) No. 13146 of 2021 titled as Jitendra Singh vs. The State of Madhya Pradesh and others, decided on 06.09.2021.

6. Perusal of the prayer made in the civil suit would show that the question of title was not involved in the said civil suit. The judgment passed in the civil suit is based upon the revenue record, which was made available to the said Court, where the most important document which determines the nature of the land and the ownership thereof prepared during the consolidation proceedings i.e. Sharat-Wazib-ul-arj has not been produced/brought on record. It is this document which would be the determinative factor qua the dispute in hand. The fraud was, therefore,

played on the rights of the Gram Panchayat to obtain a decree in favour of the proprietors of the Thola and therefore, the whole complexion of the orders/judgments passed by the Courts in favour of the petitioners would change and, therefore, has no bearing on the issue of title which is involved in this case.

This can be so said in the light of the fact that at the time of consolidation, Amar Singh, plaintiff in the Civil Suit, was one of the members of the Village committee, which had been found. Sharat-Wazib-ul-arj bears the signature of Amar Singh and others. Despite the said document being in the knowledge of Amar Singh, the same was intentionally not produced before any of the Civil Court knowing well that this was the document which would determine the nature of the land and the person in possession. The decree which is obtained by concealment amounts to misleading the Court by suppressing the material facts/documents/record leading to the rightful conclusion by the revenue authorities that the said judgment can be ignored.

The revenue authorities, in this case, on going through the Sharat-Wazib-ul-arj in detail, have returned a finding that all five ponds have been reserved for the common purpose which include *gair-biswedat* (non-proprietors) also. It has also been recorded that the animals can also drink water from them and no one has a right to obstruct them. It is undisputed that the Sharat-Wazib-ul-arj is prepared at the time of consolidation with the consent of all the proprietors/non-proprietors, which has remained unchallenged till date. Presumption with regard to the

correctness of the revenue record, unless and until rebutted, stands mentioned in Section 44 of the Punjab Land Revenue Act, 1887. In the said Sharat-Wazib-ul-arj, Dasuwala johar (pond) comprised in Khasra No.228, measuring 120 kanal and 7 marla (the land in dispute) is one of the five ponds, which are reserved for the common purpose and people are using this pond for common purpose.

It would not be out of way to mention here that the Sharat-Wazib-ul-arj prepared during the consolidation proceedings clearly mentions the nature of the land in dispute as 'gair-mumkin johar' measuring 120 kanal and 7 marla, which can be used by the inhabitants of the village for their common needs. It needs to be recorded here that this High Court as well as the Hon'ble Supreme Court had decreed the suit for injunction of Amar Singh and others only on the ground that no document had been brought on record which would prove that the land in dispute was being used for the common purpose of the village despite there being revenue record available to the contrary i.e. Sharat-Wazib-ul-arj. Even the revenue record showing the possession of the Gram Panchayat appears to have not been disputed but the same had been ignored in the light of the non-production of the above-mentioned document. The finding recorded by this Court and the Supreme Court with regard to the mutation having been sanctioned in favour of Gram Panchayat was so recorded not for the reason that the plaintiffs were able to establish their ownership over the land but for the reason of there being no revenue record produced by the Gram Panchayat indicating that the area was being used for the welfare of the

village community or a part thereof.

7. The plea of *res judicata*, as has been taken and pressed into service by the petitioners in the light of above facts, would not be sustainable especially in the light of the judgment passed by the Hon'ble Supreme Court in **Gram Panchayat of village Naulakha Vs. Ujagar Singh** 2000 AIR (SC) 3272, where principles have been laid down with reference to the 1961 Act, which read as follows:-

“(i) It is open to the opposite party to defeat the estopples by setting up and establishing certain affirmative answers. Of these there are four main classes – fraud, cross estopples, contract and public policy. Thus the law is well settled that no independent suit as a condition precedent is necessary.

(ii) Public property cannot be allowed to be jeopardized by persons who, at an earlier point of time, might have represented it and who were expected to effectively defend public interest and community property.

(iii) Even if, in a earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a latter suit or proceeding where title is directly in question, unless it is established that it was necessary in the earlier suit to decide the question of title for granting of refusing injunction.”

8. It would not be out of way to mention here that the Civil Court could have proceeded to consider the sanction of mutation only after the adjudication of the title. In case the petitioners were aggrieved by the wrong mutation having been sanctioned, they should have proceeded to file a suit for declaration under Section 13-A of the 1961 Act. The revenue

Courts have, therefore, rightly, in the light of the principles and facts, ignored the judgments which have been pressed into service by the petitioners.

9. Now coming to the aspect with regard to the acceptance of the suit for declaration preferred by respondents No.4 to 8 for declaring the Gram Panchayat as the owner of the land, suffice it to say that the Sharat-Wazib-ul-arj clearly establishes the fact that the land in dispute is a 'gair-mumkin johar' (pond), which is being used by the inhabitants of the village for their common needs. As per the revenue record, the Gram Panchayat continues to be in possession of the land in dispute and no individual or any proprietor of the Thola/village is recorded to be in possession of the said land. Going by the definition of *shamlat deh*, as provided under Section 2 (g) (3) of the 1961 Act, it includes land described in the revenue records as shamilat, tarafs, patties, pannas and tholas and used according to the revenue records for the benefit of the village community or a part thereof or for any purpose of the village.

In the light of the nature of the land being 'johar' i.e. pond, it cannot be disputed that the same was not meant for common purpose of the village and use of the village community nor can it be said that the same was for the use of an individual as this is not the pleaded case of the petitioners. The factum of the johar (pond) being in existence has not been disputed by the petitioners. The land in question falls within the ambit of *shamlat deh* as defined under Section 2 (g) (3) (4) of the 1961 Act and thus, vests in the Gram Panchayat.

10. It is required to be mentioned here that no revenue record has been placed on record by the petitioners to substantiate their claim with regard to they being individual owners in possession of the land as per their respective shares nor has it been established on the basis of the revenue record that the findings recorded in the impugned orders are not sustainable or are not based on the records.

11. Further, it is not in dispute and has been settled that the Civil Court does not have jurisdiction to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not *shamlat deh* vested or deemed to have been vested in a Panchayat. The Collector is the sole authority having the power to decide the same. Reference in this regard may be made to Section 13 of the 1961 Act, which bars such jurisdiction in Civil Court. It is also not in dispute that under the 1961 Act, suit for declaration with regard to the right, title or interest in the land is maintainable under Section 13AA of the 1961 Act. The suit, therefore, preferred by respondents No.4 to 8 is maintainable.

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

(AUGUSTINE GEORGE MASIH)
JUDGE

10.02.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

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