IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Writ Petition No.9879 of 2019
Date of Decision: August 2nd, 2022

Tej Ram (deceased) through his LRs and others

...Petitioners

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Ajay Jain, Advocates
for the petitioners.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

<u>AUGUSTINE GEORGE MASIH, J.</u>

This writ petition has been preferred challenging the judgment and decree/orders dated 19.06.2012 (Annexure P-1) passed by the Deputy Commissioner-cum-Collector, District Rewari, vide which suit preferred under Section 13-A of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '1961 Act') praying for declaration of the petitioners as owners in possession of the land as detailed in the head note of the suit on the ground that the entry in column No.4 of the revenue record in the name of *shamlat deh* has been wrongly mentioned which is against the law and facts, has been dismissed, appeal against which preferred has been dismissed by the Commissioner, Gurgaon Division, Gurgaon, vide order dated 13.03.2014 (Annexure P-3) and revision dismissed by the Financial Commissioner, Haryana, vide order dated 26.09.2018 (Annexure P-4) upholding the orders passed by the authorities below.

2. Counsel for the petitioners has submitted that the petitioners are the owners in possession of the land in question as they have stepped into

the shoes of the ex-owner of the property in dispute, where the co-sharers Ruria, Shish Ram, Budhia sons of Bhajni son of Bodan and Smt. Vidhya, Smt. Maya daughters of Moji, Raja Ram son of Sarbati daughter of Bhajni in pursuance to an exchange deed qua which mutation No.205 was entered into on 15.11.1968 and thereafter, mutation No.373 dated 20.08.1981. It is asserted that a mutation entered in the name of *shamlat deh* in column No.4 in the revenue record is thus unsustainable. His contention is that the findings as have been recorded by the authorities below are not sustainable as they have not appreciated the evidence which has been produced by the petitioners. Referring to *Fahrist Asmae Malkan* Village Khijuri, Tehsil Bawal, District Rewari (Annexure P-5), he has made an effort to project as if the land falls in the share of the petitioners and their predecessors. Counsel on this basis has contended that the findings as have been recorded by the authorities below deserve to be set aside and the entries in the revenue record need to be corrected. Referring to Exhibit P-2 mutation No.68 which is in favour of Bhajni and Bodan etc., he contends that they were in cultivating possession of the land. Accordingly he asserts that the petitioners have been able to establish their possession over the land as also their ownership and the shares in the *shamlat deh* entitling them to the claim as has been made in the suit preferred under Section 13-A of the 1961 Act.

3. We have considered the submissions made by the counsel for the petitioners and with his assistance, have gone through the impugned orders, the pleadings and the documents which have been placed on record but do not find ourselves in a position to accept his submissions.

4. As per the *jamabandis* which have been produced before the

revenue authorities, it is apparent that *shamlat deh* has been mentioned in the ownership column of the *jamabandi*. To come within the exception of Section 2(g) of the 1961 Act, a claimant has to come in the exclusion category as provided thereunder. The said aspect having not been proved on the part of the petitioners, their claim cannot be accepted. It may be stated here that the revenue record which has been placed on record do not establish the claim as has been sought to be projected by the counsel for the petitioners. It is not in dispute that the land in question has been recorded in the revenue record as '*shamlat'* on and after the commencement of the *shamlat law*, therefore, *prime facie* falls within the definition of *shamlat deh*. For carving out an exception for exclusion within the definition of *shamlat deh*, the said exclusion clause would be 2 (g) (viii) which provides that the *shamlat deh* does not include the land which were assessed to land revenue and has been in individual cultivating possession of co-sharers not being in excess of their respective shares in the said *shamlat deh* on or before 26.01.1950. Petitioners have not only failed to prove on record as to how much was the total *shamlat* land which was in possession of their predecessor-in-interest on the relevant date as also their respective shares in the *shamlat deh* but have also failed to prove the ingredients as provided under Section 4 (3) (ii) of the 1961 Act, which reads as follows:-

> *"(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the:--*
>
> *(ii) rights of persons in cultivating possession of shamilat deh, for more than twelve years without payment of rent or by payment of charges nor exceeding the land revenue and cesses payable thereon;"*

5. In the light of the above, we do not find any illegality in the orders passed by the authorities under the 1961 Act, which would call for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India as we do not see any patent error apparent on the record or illegality therein.

6. The writ petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

August 2nd, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: ~~Yes~~/No