

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

CWP-20623-2014

Reserved on: 02.12.2022

Pronounced on: 05.12.2022

Darshan Singh and others

.....Petitioners

Versus

Director Rural Development and Panchayat Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Ms. Eliza Gupta, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. C.L.Premy, Advocate
for respondent No. 3- Gram Panchayat.

SURESHWAR THAKUR, J.

Factual Background

1. The forefathers of the petitioners were in possession, as right holders/cultivators, of the petition land bearing Khasra Nos. 706, 717, 803, situated in village Mavi Sapan. The above fact is depicted in the Jamabandi, qua the petition land, as becomes drawn for the years 1951-52 and 1955-56. The petition land therein is described as *Shamlat Deh Hasab Rasad Jar Khewat*. The forefathers of the petitioners were allegedly continuing in possession thereof, as revealed in the subsequent thereto jamabandis, and, their possession thereons was allegedly not disturbed at any point of time. Thereafter, Bachan Singh, forefather of petitioners filed a civil suit before the learned civil Court,

which was decreed in his favour on 18.02.1965. On the basis of the said decree of civil Court, the forefather of the petitioners were shown to be owner of the land in dispute hence in the subsequent revenue record, as carried in jamabandis Annexure P-7 to Annexure P-13.

Petition filed by the Gram Panchayat

2. The Gram Panchayat Mavi Sapan, through its Sarpanch one Taranjit Kaur instituted a petition on 01.06.1981 against the respondents/forefathers of the petitioners claiming therein ownership qua the petition land. The above petition was instituted under the provisions of Sections 11 and 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short call 'the Act'). The learned Collector concerned through an order recorded on 26.08.1983, and, as becomes embodied in Annexure P-14, proceeded to allow the said petition.

3. However, the aggrieved therefrom one Bachan Singh and Ujaggar Singh, who are forefathers of the petitioners preferred an appeal thereagainst before the learned Appellate Authority concerned. The learned Appellate Authority concerned through an order of 09.02.1988, as becomes embodied in Annexure P-15, dismissed the appeal of the appellants/petitioners herein.

Writ Petition before this High Court.

4. Being dissatisfied by the orders passed by the authorities below, the forefathers of the petitioners Bachan Singh and Ujaggar Singh filed/instituted CWP No. 5015 of 1988, titled as 'Bachan Singh and another Vs. Joint Director and others' hence before this Court. After hearing both the parties, this Court, through its order made on 26.11.2010, remanded the *lis* to the Appellate Authority concerned, to

decide afresh, the appeal, but in accordance with law, and, after recording a finding, whether the decree of 18.02.1965 did become obtained by collusion or fraud between the decree holder and the then Sarpanch of the Gram Panchayat. The parties concerned were also given an opportunity to lead additional evidence in support of their respective pleas.

5. However, during pendency of the litigation, Bachan Singh and Ujjagar Singh died, therefore the present petitioners No. 1 to 8 were brought on record as legal heirs of Bachan Singh, whereas, petitioners No. 9 and 10 were brought on record as legal heirs of Ujaggar Singh.

Verdict passed by the Remandee Court/Appellate Authority.

6. Through an order, as comprised in Annexure P-17, the learned Remandee Court, after giving an opportunity to all the litigants concerned, and, also after perusing all the relevant records, rather dismissed the appeal preferred by the appellants/petitioners herein.

7. The legal heirs of Bachan Singh and Ujaggar Singh, the petitioners herein become aggrieved from the order made by the Appellate Authority concerned, as becomes embodied in Annexure P-17. Resultantly they constitute thereagainst the instant petition before this Court.

Submissions of the learned counsel for the petitioners

8. The learned counsel for the petitioners, has submitted that since in an earlier *lis* bearing No. CWP No. 5015 of 1988, this Court had thereins on 26.11.2010, made a decision, as comprised in Annexure P-16, wherethrough the land owners concerned were permitted, to lead

additional evidence qua the judgment and decree of 18.02.1965, not becoming obtained by collusion or fraud, besides irrespective of the above, a further liberty was reserved qua the petitioners concerned, to even irrespective of the judgment and decree of 18.02.1965, hence prove that the lands concerned, did not vest in the Panchayat, nor were vestable in the Gram Panchayat concerned. She therefore argues, that the judgments challenged before this Court rather are infirm, as there is no reference therein about the judgment and decree, as became rendered by the Civil Court in the year 1965, nor there is any discussion about the same not being obtained by fraud or collusion, nor there is any discussion with respect to lands concerned being not vestable in the Gram Panchayat concerned. Therefore, she contends that the impugned verdict requires an interference.

Reasons for rejecting the submission of the learned counsel for the petitioners.

9. Before rejecting the above made submission, it is important to bear in mind, the trite factum, that the petitioners had claimed ownership in respect of the petition lands, on the basis of their' forefathers imperatively prior to 26, January, 1950, rather holding cultivating possession of the petition lands rather described in the column of ownership, as *shamlat deh hasab rasad jar khewat*. Thus, when the above description is assigned to the petition lands, hence does statutorily save them from vestment in the panchayat *deh*. Therefore, the above factual foundation, has led the counsel for the petitioners, to argue that the petitioners claim against the vestment of the petition lands, in the panchayat *deh*, rather was legally sound. Moreover, it has also led the counsel for the petitioners to further contend, that the

impugned orders are liable to be quashed and set aside.

10. Now bearing in mind the above, it is relevant to mention here, that the foundation of the above claim is rested upon the entry as relates to the petition lands, and, as becomes carried in the jamabandi prepared prior to 26.01.1950. However, a perusal of the jamabandis for the year 1951-52 and 1955-56, shows that though certain khasra numbers i.e. 706 chahi, 717 chahi and 803 Nahri, became assigned to the lands mentioned therein, but in the subsequent thereto drawn jamabandis, and, to which Annexures P-3 and P-4 are assigned, the predecessors of the petitioners though have been shown in the cultivating column, but in the ownership column thereof, palpably there exists the entry of *shamlat deh*. Thus, the impact of the above entry is that, the ownership of petition lands being validly vested in the Panchayat concerned. Further, a perusal of Annexure P-17, annexure whereof is the order of the Appellate Authority, reveals qua an unrebutted entry, as reflected in the jamabandi for the year 1959-60, hence becoming detailed therein, inasmuch as, in the column of rent thereof, there occurring an entry of '*without paying rent, bewaja kabja*'. Though, as but a natural sequel thereof, the petition lands, if so, carrying the above entries may not prima facie become saved from vestment in the *panchayat deh*, unless evidence surged forth displaying, that the said entries were unlawfully substituted.

11. However, in case, the said entries were unlawfully substituted, thereupon, the claim made in the instant writ petition may succeed.

12. Be that as it may, before proceeding to make any adjudication upon the above contention, it is necessary to bear in mind

that in the jamabandis, as became drawn subsequent to the drawings of Annexures P-3 and P-4, wherein, the coinage *Panchayat Deh* has been recorded, both in the column of ownership, as well as, in the cultivating possession of the petition lands. Nonetheless, though, the above alteration, did happen, but yet evidence was to emerge qua the said alteration or substitution of the predecessors of the petitioners rather by the Panchayat, rather being evidently unlawful. The above evidence though is grossly amiss. However, the above for the reasons assigned hereinafter, does not at all grant any leverage to the petitioners, to claim any relief in respect of the petition lands. The reason for forming the above conclusion becomes embodied in the factum, that the khasra numbers assigned to the lands as referred in the jamabandis prepared prior to the year 1956-57, and, also the assignment of khasra numbers to those lands, as find reflection in the jamabandis drawn subsequent to the year 1951-52, and, 1955-56, rather conspicuously does not become cogently substantiated, to be hence reference(s) to the very same or similar khasra numbers.

12. Moreover, the said purported unauthorized substitution of the entries from the ones, which occurred in the relevant records prior to 1956-57, did also reiteratedly require, that the khasra numbers occurring in the entries prior to 1956-57, were the same as were entered in the revenue records rather in the years subsequent to 1951-52 and 1955-56. However, reiteratedly the above evidence is amiss. The effect of lack of above evidence, is that, the entries, if any, in the revenue records prepared prior to 1956-57, were with respect to those khasra numbers, which are completely unrelated or are completely distinct from the khasra numbers, as became assigned to the lands as

mentioned, in the revenue records, as became drawn subsequent to the year 1955-56. Therefore, when the subsequent thereto entries, rather are not related to the earlier thereto entries. Thus, they do acquire conclusive and binding effect nor it can be ever contended, that there is any unlawful substitution or replacement, rather of the forefathers of the petitioners, by the *Panchayat Deh*, in respect of the same or similar khasra numbers, as became referred in the jamabandis respectively for the year 1951-52 and 1955-56.

Non production of decree of Civil Court

13. It has also been candidly recorded in the orders challenged before this Court, that though in compliance with the verdict (*supra*), as made by this Court, the statutory authorities concerned, did ask, for production of the judgment and decree, as made by the learned Civil Court concerned, for determining whether the said decree is collusive or fraudulent, but since the above decree was never produced. Therefore as aptly concluded by both the authorities below, an adverse inference, that the same was not stained by fraud, rather was amenable to become drawn. As but a natural corollary, the decree if any, as rendered by the civil Court concerned, is completely meaningless and does not at all affect the reflections in the records of rights, wherein, the panchayat concerned, has been recorded to be the owner of the petition lands.

FINAL ORDER

14. In consequence, this Court does not find any merit in the writ petition and is constrained to dismiss it. Accordingly, the writ petition is dismissed. The impugned orders as made by the Authorities

below are maintained and affirmed.

15. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

05.12.2022

kavneet singh

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