

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Civil Writ Petition No.19299 of 2021

Date of Decision: April 27th, 2022

Gram Panchayat Karmuwala, Block Chohla Sahib, Tehsil and District
Tarn Taran and another

...Petitioners

Versus

State of Punjab and others

...Respondents

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

Present: Mr. Nakul Sharma, Advocate
for the petitioners.

Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

Mr. Harsh Bungar, Advocate
for respondent No.5.

AUGUSTINE GEORGE MASIH, J.

This writ petition has been preferred by Gram Panchayat, Karmuwala, challenging the order dated 25.06.2021 (Annexure P-38) passed by the Director, Rural Development and Panchayat exercising the powers of the Commissioner, Punjab-respondent No.2, whereby appeal of respondents No.4 and 5 Dharamshala Udasian, Village Gharka, Tehsil and District Tarn Taran and Jasvir Singh son of Pritam Dass has been allowed setting aside the order dated 26.03.2015 (Annexure P-36) passed by the Additional Deputy Commissioner (Development) exercising the powers of the Collector-respondent No.3 dismissing the petition filed by respondents No.4 and 5 under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the '1961 Act') for declaring them as owners of the land in dispute measuring 119 *kanal* 19 *marla*.

2. It is the contention of the learned counsel for the petitioners that

the Commissioner while passing the impugned order dated 26.03.2015 (Annexure P-36) has erred in law and facts while setting aside the well reasoned and well considered order passed by the Collector which is based upon the records dismissing the petition for declaration preferred under Section 11 of the 1961 Act. The claim of respondents No.4 and 5 is based upon the fact that the suit land had been gifted as Dharmarth (religious place) and use for religious and charitable purposes by Dharamshala Udasian-respondent No.4. He asserts that it is because of the office bearers of the Gram Panchayat, Gharka, at the time when the said petition had been filed, failed to protect the interest of the Gram Panchayat and in connivance with respondents No.4 and 5 had virtually admitted their case in the written statement which was filed on behalf of the Gram Panchayat, unjust benefit has been conferred on the respondents. This, he asserts by stating that no witness was produced by the Gram Panchayat in defence and further the witnesses, which were produced by respondents No.4 and 5, were not even cross-examined as it has been recorded as 'nil'. Only DW-1, the Sarpanch of the village, at that relevant time, appeared and merely made a statement therein without producing any documentary evidence to prove that the land belong to the Gram Panchayat. In the affidavit, it was virtually admitted that respondents No.4 and 5 were owners of the land.

He asserts that in the year 1998, Gram Panchayat, Karmuwala, was carved out of the Gram Panchayat Gharka and it is at this stage that the Sarpanch of the Gram Panchayat Karmuwala filed an application for being impleaded as a party. The statements of the then Sarpanch and other members of the village were recorded which have been placed on record as Annexures P-31 and P-35. It is thereafter that the Collector after going

through the entire evidence and hearing the parties, had returned a finding that the land belong to the Gram Panchayat vide order dated 26.03.2015 (Annexure P-36). Challenge has also been posed to the findings which have been recorded by the Appellate Authority i.e. the Commissioner vide impugned order dated 25.06.2021 (Annexure P-38). Counsel has made an effort to refer to the revenue record to assert that the entry in the *jamabandis* reflects the land to be in the nature of *shamlat deh* and belong to the Gram Panchayat. He on this basis submits that the impugned order passed by the Appellate Authority cannot sustain and deserves to be set aside.

3 On the other hand, learned counsel for the caveator has contended that on the basis of the revenue record which has been produced by respondents No.4 and 5, it is apparent that the suit land has been gifted as Dharmarth (religious place) for religious and charitable purposes i.e. Dharamshala Udasian. The *chelas*, who have been appointed, continued to be in possession thereof. In this regard, he has referred to the *jamabandi* for the year 1865, wherein in the column of ownership, it is mentioned as *Shamlat Deh Mafi Mantak* and in the column of cultivator, it is mentioned as Punjab Dass Chela Prem Dass caste Sadh through Wazir Singh son of Dost Singh, caste Jat. Even *missal haqiat* for the year 1891 indicates in the column of cultivator as Rikhi Ram Chela Kishan Dayal, caste Sadh being *Gair Dakhilkar Sabin Deh* and in the column of ownership as *shamlat deh majqur*. Similarly in the *jamabandi* for the year 1911-12 and in the subsequent *jamabandis*, the entries *panchayat deh majqur* with the cultivator being the *chela* of the Dharamshala Udasian. Since there was a continuous possession in the *jamabandis* from the year 1865 onwards which

fact was also admitted by the Gram Panchayat, Gharka, in their reply dated 20.01.2012 as also the affidavit of the Sarpanch regarding possession of respondents No.4 and 5 since the year 1865, the claim of respondents No.4 and 5 stood established.

4. As regards the assertion with regard to the Gram Panchayat, Karmuwala, being carved out and impleaded as a party in the year 1998, he asserts that after the impleadment of the party, no reply to the petition under Section 11 of the Act has been filed. In any case, he asserts that the said Gram Panchayat has no right as of now as petition for partition/claim of its due share on carving out of a new Gram Panchayat out of the parent Gram Panchayat, Gharka was pending consideration under Section 3 of the Punjab Panchayati Raj Act, 1994 before the competent authority, with there being no decision thereon. He contends that as per Section 2 (g)(5)(iv) of the 1961 Act, the said land does not come under the definition of *shamlat deh* as respondents No.4 and 5 have been in continuous running possession since 1865 without any interruption and the possession and right stands protected under Section 4(3)(ii)(iii) of the 1961 Act and as also under Section 2(g)(v)(ix) of the 1961 Act for the reason that the land being a religious place does not come under the definition of *shamlat deh*. He on this basis contends that the order dated 25.06.2021 passed by the Commissioner being based upon the revenue record and in accordance with the provisions of the statute do not call for any interference by this Court.

5. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

6. A perusal of the impugned order dated 25.06.2021

(Annexure P-38) passed by the Commissioner would clearly show and that too on the basis of the revenue record which has been produced by respondents No.4 and 5 that the said respondents are in continuous uninterrupted possession of the land since the year 1865. The revenue record support not only the factum of the land being a religious place and being used for the said purpose but also that the possession all through had been of respondent No.4 through its *chela*. Nothing has been produced on record by the petitioners/Gram Panchayat which would show that the said land has been earmarked/reserved for any common purpose(s) or that it has been used for any common purpose.

Learned counsel for the petitioner could not dispute the fact that the allegations with regard to the connivance with the Sarpanch of the Village Gharka even if as stated is taken to be correct, with the impleadment of the Gram Panchayat, Karmuwala, as a party which has been carved out of the Gharka, no reply has been filed to the petition under Section 11 of the 1961 Act by respondents No.4 and 5. Nothing has come on record which would show that the Gram Panchayat, Karmuwala, had been assigned the said land as due share from the land which was to be distributed amongst the Gram Panchayat, Karmuwala and Gram Panchayat, Gharka. The connivance also of the earlier Sarpanch has not been established in the light of the above.

In the given facts and circumstances of the present case, the findings as recorded by the Commissioner being based upon the unrebutted revenue record, cannot be faulted with. The consequence thereof is that respondents No.4 and 5 being in continuous possession over the said land since the year 1865 which is much prior to the cut off date i.e. 26.01.1950,

their possession was required to be protected under Section 4(3)(ii)(iii) and Section 2 (g)(5)(ix) of the 1961 Act being a religious place. It being so would not fall within the definition of shamlat deh as provided for under Section 2 (g)(5)(iv) of the 1961 Act.

7. Finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 27th, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No