

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

CWP-5274-2016

Reserved on: 22.09.2022

Pronounced on: 27.09.2022

Gram Panchayat Kot Kalan

.....Petitioner

Versus

The State of Punjab and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Argued by: Mr. Ish Puneet Singh, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Satya Pal Jain, Senior Advocate with
Mr. Dheeraj Jain, Advocate and
Mr. Sahil Garg, Advocate and
Ms. Shivani Khareedi, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.

1. The facts relevant to decide the instant petition, are that, the Gram Panchayat Kot Kalan, through its Sarpanch one Sh. Som Lal instituted a petition on 17.04.2014 against the respondent Inder Singh. The above petition was instituted under the provisions of Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called 'the Act'). The learned Collector concerned through an order recorded thereons on 26.03.2015, and, as becomes embodied in Annexure P-13, proceeded to allow the above petition.

2. However, the aggrieved Inder Singh preferred an appeal thereagainst before the learned Appellate Authority concerned. The learned Appellate Authority concerned through an order of 06.10.2015, and, as becomes embodied in Annexure P-14, allowed the aggrieved appellant's appeal, besides reversed the affirmative order, as, made on the petition of the Gram Panchayat concerned, by the learned Collector concerned.

3. The Gram Panchayat Kot Kalan, becomes aggrieved from the order, as made by the Appellate Authority concerned, as becomes embodied in Annexure P-14. Thus, it has constituted thereagainst the instant petition before this Court.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

4. The learned counsel appearing for the petitioner, has contended that since in the Jamabandi for the year 1916, though in the cultivator's column, the name of the cultivators' exists therein, but yet he submits that in the rent column, they are reflected to be *Saunjidaran Basara* owner. Therefore, he submits that the above reflection carried in the column of rent appertaining to the then revenue records relevant to the extant lis, though convey that the cultivators' concerned, rather were made a restrictive grant. He therefore submits that the above grant, as *Saunjidar*, when is thus a restrictive grant, or is a rent free grant for the benefit of temple, mosque or shrine or to a person for religious purposes. Thus, he submits that the tenure of such restricted grant would enure, only till the grantee continues to perform the duties of his office, and, but would terminate on his failure to carry out the requisite duties. He also further submits, that there is a complete bar

against alienation by a restrictive grantee, qua lands which describe the restrictive grantee as a *Saunjidar*. Moreover he also submits that even under Section 4 (3) (i) of 'the Act', there is a complete bar against alienation of lands by grantees, who are made a restrictive grant as *Saunjidar*. In making the above submissions, he makes reliances upon judgments “**Sundar Versus Ram Chand**” ; “**Om Prakash and Another Versus Commissioner Ambala Division, Ambala and Others**” ; “**Durga Dass alias Dwarka Dass Chela Versus Commissioner, Hisar Division, Hisar and Others**” ; “**Mohan Lal and Others Versus Gram Panchayat Jarthal and Others**” and “**Ram Singh deceased through his LR's Versus Nawal Singh deceased through his LR's and Others**”, respectively reported in AIR 1929 Lahore 77 ; 2016 (1) RCR (Civil) 613 ; 2012 (4) RCR (Civil) 751; 2016 (2) RCR (Civil) 683 and 2014 (43) RCR (Civil) 420.

**ANALYSES OF THE SUBMISSIONS OF THE LEARNED
COUNSEL FOR THE PETITIONER.**

5. Before proceeding to analyze the afore made submissions of the learned counsel for the petitioner, it is deemed necessary, to refer to the relevant entries, as carried in the Jamabandi(s) relating to the writ lands. In the Jamabandi for the year 1916-1917, in the column of ownership thereof, the writ lands are described as *Shamlat Deh Hasab Rasad Khewat*. However, in the relevant cultivator's column, Nand Lal, Hukam Chand, Charanji Lal sons of Raja Ram caste Brahman, are declared to be holding cultivating possession of the writ lands. Moreover, in the column of rent, the cultivator's are described to be *Sonjidaran Basara owner*, but on payment of *chakota* comprised in a sum of Rs. 20/-. In the subsequent thereto Jamabandi(s) though in the

column of ownership thereof, the writ lands are described as *shamlat Deh*, but in the column of cultivation, the above persons yet are described to be in cultivating possession of the writ lands. However, in the column of *lagaan*, the cultivators are detailed to pay *lagaan*/land revenue to the Government. Moreover, only in the jamabandi for the year 1916-17, the cultivators are described in the column of rent to be *Saunjidaran Basara* owner, but in the subsequent thereto Jamabandi(s), they are not described to be *Saunjidaran Basara* owner, rather as above stated, they are described to be holding cultivating possession of the writ lands but on payment of land revenue to the Government. They are also in the above revenue records rather not recorded to pay any rent or *chakota* to the Government. In addition, only in the Jamabandi for the year 1986-87, the name of one Inder Singh appears as a cultivating co-sharer in the writ lands, but on the basis of an alienation being made in his favour by the other apposite co-sharers. The above alienation remains unchallenged before the competent Civil Court. It is the above acquisition of rights from the co-sharers concerned, by one Inder Singh hence through a sale deed, rather as a co-sharing cultivator in the writ lands, that has pained the Gram Panchayat Kot Kalan.

ANALYSES OF STATUTORY PROVISIONS

6. The relevant provisions as contained in the Act, are carried in Section 4 thereof, provisions whereof are extracted hereinafter.

“4. Vesting of rights in Panchayat and non-proprietors-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,----

(a) which is included in the *shamilat deh* of any village and which has not vested in a panchayat

under the *shamilat* law shall, at the commencement of this Act, vest in panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the *abadi deh* of a village and which is under the house owned by a non-proprietor, shall on the commencement of the *shamilat* law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the *shamilat* law shall be deemed to have been vested in the panchayat under this Act.

(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—

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons who were in cultivating possession of *shamilat deh* for more than twelve years [immediately preceding the commencement of this Act] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

7. Though, in respect of lands which are but not saved from vestment in the panchayat concerned, the provisions of clause (a) of Sub-Section (1) of Section 4 of 'the Act', do enjoin the vesting of such lands in the panchayat. However, since sub section (3) of Section 4 of 'the Act', opens with a non obstante clause, thus, yet it does work as an exception to the provisions, as, carried in the preceding thereto Sub Sections, and or, saves those lands mentioned therein(s) from their vestment in the panchayat concerned. The relevant clause (i) of sub section (3) which protects or does not affect the rights of the persons

mentioned therein, makes speakings, about the existing rights title or interest of persons, who though are not entered as occupancy tenants, in the revenue records, but are accorded a similar status by custom or otherwise rather as *Dholidars*, *Bhondedars*, *Butimars*, *Basikhopohus*, *Saunjidars*, *Muqarrirdars*, that rather than their apposite rights, titles or interests becoming protected or remaining undisturbed by the relevant vesting provisions. Therefore, clause (i) of Sub section (3) of Section 4, does protect or save from vestment in the panchayat concerned, the rights, title or interests, of *Dholidars*, *Bhondedars*, *Butimars*, *Basikhopohus*, *Saunjidars*, *Muqarrirdars*, who are not entered as occupancy tenants, in the revenue records, but are assigned the above office(s). Therefore, the fine rubric of the legislative intent in engrafting clause (i) of Sub Section (3) in Section 4 of 'the Act', is that, the statutorily protected existing rights, title or interest of such *Dholidars*, *Bhondedars*, *Butimars*, *Basikhopohus*, *Saunjidars*, *Muqarrirdars*, over *shamlat* lands, and, who were not entered as occupancy tenants, in the revenue records, besides who do not pay *chakota* to the Government, rather being construed merely as restrictive rights or only conferring restrictive grants qua them over the lands concerned. The reason being that the above offices', make such offices' to be grantees, and but obviously, the persons who holds such offices' are required to be performing the duties of such offices'. Resultantly the grant as made to the apposite offices' is but a restrictive grant. The above restrictive grant obviously enures only uptill such above recorded persons, perform the duties of their office. If they cease to perform the duties of their offices', then the grants ceases or does not enure. Moreover,

obviously, no lawful alienation can be made by a *Saunjidar* qua his recorded share as a *Saunjidar*, in the panchayat lands.

8. Even the judgments (*supra*), as relied upon by the counsel for the petitioner suggest that the above fine rubric, is carried, in clause (i) of sub section (3) of Section 4 of 'the Act'. However, in the judgments (*supra*), it also becomes expostulated qua the restricted grant has to be imperatively rent free or in other words in the column of rent, any *Saunjidar*, is not required to be reflected to pay rent or any land revenue, or other cess to the Government. Moreover, the therein expostulated offices' require the persons who adorn them, to perform the duties of their offices' concerned, so as to keep intact the grant as made qua them.

ANALYSES OF THE REVENUE RECORDS

9. Therefore, it but becomes incumbent upon this Court to determine whether the purported restrictive grant as made to the cultivator's concerned, was with or without rent, and or, was without theirs' being encumbered to pay any land revenue to the Government. A reading of the relevant revenue records relating to the year 1916-17, suggests that in the ownership column, the writ lands, are described as *shamlat deh hasab rasad khewat*, with but the necessary implication, that such lands are saved from their vestment in the panchayat concerned. Moreover, in the column of rent, the persons described in the column of cultivation, are declared to be paying land revenue/*chakota*, to the Government rather comprised in a sum of Rs. 20/-. Thus, a reading of the entry (*supra*) in the column of ownership alongwith the entry in the column of cultivators' besides alongwith the entry (*supra*) in the column

of rent, makes this Court to conclude, that irrespective of the fact, that in the column of rent, the cultivators' are also described as *Saunjidars Basara owner*, but yet when they also are reflected therein to pay *chakota* to the Government, that resultantly when otherwise any grant of panchayat land to a *Saunjidar*, is rather a rent free grant. Moreover, when only in respect of a rent free grant, it can be easily concluded, that it is but a restrictive grant whose term enures only uptill the stage whereupto, the grantee continues to perform the duties of his office as *Saunjidar*, and, but such grant ceases on dis-continuation(s) in the performance of the duties appertaining to his office as a *Saunjidar*. Moreover, when the above restrictive grant, also requires that it being a rent free grant, and, rather not a grant on payment of land revenue or other cesses, whereas, when it is clearly manifested in the column of *lagaan*, as carried in the relevant revenue records, that the cultivators' were either initially only upto 1916-17 paying *chakota*, and, were subsequently paying land revenue to the Government. Thus, the effect of an entry (supra) in the column of *lagaan*, more specifically, with respect to lands described in the column of ownership, as *shamlat deh hasab rasad khewat/shamlat deh*, is that, it makes the said lands to become saved from vestment. Thus, when even in the column of rent, qua the Jamabandi for the year 1916-17, the cultivators' are described as *Saunjidar*, but are also reflected to be paying *chakota* comprised in a sum of Rs. 20/- to the Government. Therefore, the above payment of rent by the cultivator's qua land described as *shamlat deh hasab rasad khewat* in the revenue record appertaining to the year 1916-17, did not even then make them restrictive grantees.

JAMABANDI ENTRIES AFTER 1916

10. The entries relating to the writ lands, as occur in the revenue records subsequent to the year 1916-17, do carry reflections that in the column of ownership, the writ lands are described as *shamlat deh*, but in the column relating to payment of land revenue, though there is an entry of the cultivators' paying land revenue to the Government, but conspicuously yet there is no entry therein rather describing the cultivators' to be *Saunjidars*. Therefore, the cultivators' are evidently not described in the revenue records subsequent to 1916-17, rather as *Saunjidars*, but strikingly when in the column of *lagaan* thereof, they are yet described to be paying land revenue to the Government. Thus, the non existence of any entry of *Saunjidars* in the relevant revenue records subsequent to the year 1916-17, does make this Court to conclude, that the above entry was lawfully deleted. The reason is but simple that a presumption of truth is attached to the revenue entries as occur in the revenue records. Though, the above presumption of truth is rebuttable, but since evidence to rebut the above presumption of truth, obviously in relation to purported unlawfulness of non existence of an entry qua the cultivators' as *Saunjidars*, in the revenue records, subsequent to the year 1916-17, is rather not available on records. Therefore, the non existence of an entry of *Saunjidars*, in respect of the writ lands in the Jamabandi(s), as, drawn subsequent to the year 1916-17, become rather concluded to be carrying an aura of truth, besides the earlier thereto entry of *Saunjidars*, is also to be concluded, to be lawfully deleted from the relevant revenue records. Reiteratedly, the further inference therefrom, is that, the cultivators'

were not cultivating the *shamlat deh* land, as *Saunjidars*, but were cultivating such lands on payment of land revenue to the Government.

INFERENCES FROM THE ABOVE CONCLUSION

11. The inferences which are to be drawn from the above conjoint interpretation, as, made to the revenue entries (*supra*), as carried in the relevant revenue records, is that, the grant was not a restrictive grant, but was a grant on payment of *lagaan* to the Government, besides also the persons detailed in the column of cultivation, becoming construable to be occupancy tenants qua the lands concerned. Moreover, obviously they were, irrespective of theirs' being described as *Saunjidars*, only in the revenue records relating to the year 1916-17, rather not holders of the lands concerned, for a restrictive tenure. However, since as above stated in the Jamabandis subsequent to the year 1916-17, there is no entry describing the cultivators' to be *Saunjidars*. Thus, the effect of the above, is that, neither the judgements (*supra*), which rather relate to an interpretation being made of clause (i) of Sub Section (3) of Section 4, are applicable, to the above revenue entries, but also the provisions of clause (i) of Sub Section (3) of Section 4 of 'the Act', are also not applicable, to the revenue entries (*supra*) as appertain to the writ lands. Contrarily, the provisions of clause (ii) of Sub Section (3) of Section 4 of 'the Act' are applicable.

12. **The reasons for drawing the above conclusions, flows from the mandate carried in clause (ii) of Sub Section (3) of Section 4 of 'the Act'.** Provisions whereof have already been extracted above.

13. A reading of the provisions (*supra*) clearly reveals, that the

rights of persons in cultivating possession of land described in the relevant revenue records as *shamlat deh hasab rasad khewat* or described as *shamlat deh*, besides when such possession lasts for more than twelve years immediately preceding the commencement of 'the Act', and, who though do not make payment of rent, but in the alternative are paying charges not exceeding the land revenue and cesses payable thereons, rather making such cultivators', to, in consonance with the non obstante clause, occurring in Sub Section (3) of 'the Act', hence become leveraged to protect or save from vestment such lands in the panchayat. Moreover, besides the rights of cultivating possession of such persons over lands described as *shamlat deh hasab rasad khewat* or *shamlat deh* also are not affected. The reason being that Sub Section (3) is succeeded by clause (i) and clause (ii) thereof. Since Sub Section (3) opens with a non obstante clause, and as such works as an exception to the preceding therewith provisions rather casting a mandate for vestment in the panchayat concerned of the lands mentioned therein. Thus, when the conditions carried in clause (ii) are satisfied, resultantly the above revenue entries, may subject to the relevant cultivating possession rather evidently lasting for a period of more than twelve years immediately preceding the commencement of 'the Act', but would may save such lands from their vestment in the panchayat concerned.

CONDITION PRECEDENT(S) IN CLAUSE (ii) OF SUB SECTION (3) OF SECTION 4 OF 'THE ACT' FOR SAVING THE LAND FROM VESTMENT.

14. Therefore, reiteratedly the apposite condition precedent(s) for saving from vestment the cultivator's cultivating possession of lands

described in the relevant revenue records as *shamlat deh hasab rasad khewat* or as *shamlat deh*, is that, such cultivating possession evidently lasting for a period of more than twelve years immediately preceding the commencement of 'the Act', besides also is qua, the cultivators' concerned, evidently though not required to pay *chakota*/rent, but since the statutory coinage therein "without payment of rent", is succeeded by "or" with further succeeding coinages, "by payment of charges not exceeding the land revenue and cesses payable thereon." Thus, the statutory coinage "or" is an alternate to the preceding statutory coinage "without payment of rent". In other words, even if the cultivators' concerned who pay rent to the Government are barred from claiming the benefit of clause (ii), but yet the above deterrence, is restricted only to those land owners who pay rent. Obviously, it does not operate qua those cultivators' of *shamlat* land, who pay charges not exceeding the land revenue or cesses payable thereons to the Government, as the coinage 'or' but obviously segregates the preceding coinage(s), but also carves an alternative to the cultivators' of *shamlat* land, to upon their paying land revenue to the Government, theirs saving hence the apposite lands from vestment.

DISCUSSION WHETHER THE ABOVE CONDITIONS ARE SATISFIED.

15. For determining whether the above condition precedent(s) became accomplished by the concerned, it is relevant to reallude, to the column of *lagaan*, as existing qua the writ lands, in the relevant revenue records, commencing after the year 1916-17, and lasting uptill 1986-87, wherein, in the column of *lagaan*, the cultivators' are described to be paying the relevant charge or cess equivalent to the land

revenue to the Government. Therefore, when the cultivators', were as required by the statute, hence paying charges not exceeding the land revenue and or were paying land revenue to the Government. Obviously, when they were not paying any rent to the Government. Thus, when they were also by clause (ii) of Sub Section (3) of Section 4 of 'the Act', required not to be paying rent to the Government, for theirs' holding the apposite possession over *Shamlat* land. Consequently, they do not fall, within the ambit of the apposite statutory prohibition (supra), as cast in clause (ii) of Sub Section (3) of Section 4 of 'the Act'. Thus, they become occupancy tenants over *shamlat* lands. The reason being that the Act came into force in the year 1961. Thus, the apposite contemplated period of twelve years immediately preceding the commencement of 'the Act', is to be computed from the year 1961. Resultantly when in the relevant twelve years preceding 1961, the Jamabandi(s) candidly speak about the land owners paying *lagaan* to the Government besides consistently speak about such *lagaan* being paid in respect of *shamlat lands*. If so, with the condition precedent (supra), as carried in clause (ii) of Sub Section (3) of Section 4 of 'the Act', being qua the writ lands rather becoming completely satisfied from the revenue records. Thus, the cultivators' become privileged, to draw the benefits carved qua them in clause (ii) of Sub Section (3) of Section 4 of 'the Act'. Therefore, their rights in the lands concerned described in the revenue records as *shamlat deh hasab rasad khewat/shamlat deh*, are resultantly but in the least affected, by theirs' being yet described in the column of rent as *Saunjidars*, entry whereof is existing only in the Jamabandi for the year 1916-17, and, not

thereafter. Moreover, the same is thus a stay entry, given it being thereafter lawfully deleted, and, does not, thus really affect the privileges bestowed upon the cultivator's concerned, by the provisions of clause (ii) of Sub Section (3) of Section 4 of 'the Act'.

16. As but a natural corollary, the cultivator's concerned, fall within the ambit of clause (ii) of Sub Section (3) of Section 4 of 'the Act', and they do not enjoy a restrictive grant qua *shamlat* lands, but enjoy unrestricted rights over *shamlat* lands. Therefore, they become empowered to make lawful alienations.

CONCLUSIONS

17. In view of the above, this Court has in depth analyzed the verdicts made by Hon'ble Apex Court, and finds, that they relate only to an interpretation to clause (i) of Sub Section (3) of Section 4 of 'the Act' and do not relate to an interpretation being made to clause (ii) of Sub Section (3) of Section 4 of 'the Act'. Since for the reason (supra), the facts of the case do not become covered by clause (i) but rather are covered by clause (ii) of Sub Section (3) of Section 4 of 'the Act'. Thus, also the verdict(s) (supra) are not applicable to the facts of the present case.

SUMMARIZATIONS OF PRINCIPLES

18. 1) Clause (i) of Sub Section (3) of Section 4 of 'the Act' relates to grants made to the Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars. The grants made within the ambit of clause (ii) are restrictive grants as they relate to grants to the above offices. Resultantly the persons adorning the offices (supra) are

required to for ensuring the continuance of the grants, to continue to perform the duties of their offices. If they cease to perform the duties of their offices, then the grants ceases. Moreover, the grant as falls within the ambit of clause (i) does disable the restrictive grantees to make any lawful alienations.

2) Clause (ii) of Sub Section (3) of 'the Act' relates to cultivating possession of *shamlat deh*. However, such cultivating possession has to be proven to be lasting for more than twelve years immediately preceding the commencement of 'the Act'. Moreover, such cultivating possession though is to be without payment of rent, but is required to be on payment of charges not exceeding the land revenue and cesses payable thereons.

3) In making the conclusion whether clause (ii) of Sub Section (3) of Section 4 of 'the Act' is applicable, the column of *lagaan* is to be read. The column of *lagaan* has to carry reflections that the cultivators' concerned were paying charges not exceeding the land revenue or were paying land revenue and cesses payable thereons. If the above is proven then they can derive the benefit of clause (ii) but obviously if the above is not proven, rather there is evidence qua theirs' paying rent to the Government, in respect of their cultivating possession, then they do not become leveraged to draw the benefit of clause (ii) of Sub Section (3) of Section 4 of 'the Act', but may fall within the

ambit of clause (i) of Sub Section (3) of Section 4 of 'the Act', if, the grant is also to the categories of offices' described therein.

FINAL ORDER

19. In consequence, this Court does not find, any infirmity in the verdict made by the learned Appellate Authority concerned, either in the evaluation of the documentary evidence, nor is their any infirmity in the applications thereons of the relevant laws.
20. In aftermath, 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 order as made by the learned Appellate Authority is maintained and affirmed.
21. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

27.09.2022

kavneet singh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No