

CWP No.22528 of 2020

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

CWP No.22528 of 2020
Date of decision : 29.03.2022

Kali Ram

.....Petitioner

VERSUS

Financial Commissioner, Haryana & others

....Respondents

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

Present: Mr. R.S. Sheoran, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana
for respondents No.1 to 4 and 6.

Mr. Vikram Singh, Advocate
for respondent No.5 – Gram Panchayat.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 27.11.2019 (Annexure P-13) passed by the Financial Commissioner, Haryana – respondent No.1, order dated 02.03.2017 (Annexure P-11) passed by the Commissioner, Hisar Division, Hisar and judgment and decree dated 18.10.2016 (Annexures P-9 and P-10) passed by the Collector Bhiwani, District Bhiwani, vide which mutation No.373, dated 12.07.1980 (Annexure P-4) sanctioned by the Assistant Collector 1st Grade, Charkhi Dadri, had been upheld and the suit preferred by the petitioner under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961, had been

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dismissed, where the petitioner had sought declaration being co-sharer on behalf of the Panna as owner of the same and not the Gram Panchayat.

2. The facts of the case are that the land in dispute measuring 40 kanals and 8 marlas has all through been recorded in the revenue record as 'Shamlat Panna Kapooran Hasab Rasad Rakba Khewat' till the sanction of mutation No.373 dated 12.07.1980 (Annexure P-4) by the Assistant Collector 1st Grade, Charkhi Dadri – respondent No.4 on the basis of the Government letter No.S1-75/58228-38 dated 11.12.1975. He contends that as per the revenue record including jamabandi for the year 1938-39, land in question was recorded in Khatoni No.181 as 'Shamlat Panna Kapooran Hasab Rasad Rakba Khewat' and in the cultivation column, it was mentioned as Shish Ram shareholder through Ram Parsad son of Teka Jaat of village Gair Morusi in Khasra No.62, 8 Bigha and 3 Biswas Rosli Barani. Consolidation took place in the village in the year 1954 and in the khatoni paimaish, the land was mentioned as Shamlat Panna Kapooran Hasab Rasad Rakba Khewat and in the column of cultivation, it was mentioned as Hardey Ram son of Shish Ram, who was recorded as shareholder and the land was allotted in Khasra No.10/12, 13, 18/2, 19, 22, 23/1 Kite 6 total 40 kanals and 8 marlas, copy of Khatoni Paimaish is appended as Annexure P-3.

3. On 12.07.1980, entry from Shamlat Panna Kapooran Hasab Rasad Rakba Khewat was changed to Gram Panchayat on the basis of the letter received from the Government of Punjab, dated 11.12.1975. Jage Ram, one of the co-sharers had challenged the said mutation on the ground of adverse possession but the same was dismissed. It is, thereafter, on 11.11.1983, Amar Singh, father of the petitioner, filed a suit for declaration

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under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961, being co-sharer on behalf of the Panna that the land is of Panna Kapooran and does not fall in the definition of shamlat deh, apart from challenging the mutation sanctioned in favour of the Gram Panchayat. Copy of the plaint has been appended as Annexure P-5. Written statement was filed by the Gram Panchayat denying the averments given in the plaint.

During the proceedings before the Collector Bhiwani, District Bhiwani, evidence was led by the parties. Sarpanch of the Gram Panchayat, Shri Giani Ram, appeared as DW-3 and in his cross-examination, admitted the possession of legal representatives of Jage Ram. He further admitted that the Gram Panchayat had never been in possession of the land. Ownership of Panna Kapooran prior to the mutation sanctioned on 12.07.1980 was also admitted, so was the fact that the predecessors-in-interest of the petitioner i.e. Amar Singh was the share-holder of Panna Kapooran. The said suit was dismissed by the Assistant Collector 1st Grade on 25.05.1988 relying upon the order dated 03.03.1983 passed in the case of Jage Ram, in which neither the father of the petitioner nor the share-holders were a party. Amar Singh filed an appeal before the Collector Bhiwani, District Bhiwani, but the same was dismissed on 16.08.1988 on the same ground. The Commissioner, Hisar Division, Hisar, also dismissed the revision petition on 14.03.1989.

These orders were challenged by the petitioner by filing CWP No.7931 of 1989, which was decided by this Court vide order dated 15.12.2004 (Annexure P-8), holding therein that the suit filed by Amar Singh, father of the petitioner, was in a representative capacity and had not

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been decided on merit. It was just decided because one Jage Ram had claimed ownership by adverse possession and suit had been dismissed. When the said Jage Ram has not filed the suit in the representative capacity and had filed the same in his individual capacity claiming ownership on the basis of the adverse possession, the same cannot be taken as a bar for filing the suit by the other co-sharers when they were not a party to the said suit. It was incumbent upon the Courts below to find out exactly and hold as to whether this land was shamlat deh or it was that of the proprietors of the village and as to whether it vested in the Gram Panchayat or not, or as to whether mutation could be entered in favour of the Gram Panchayat or not. With these observations, the said writ petition was allowed and the orders passed by the revenue authorities set aside and the matter remanded to the Assistant Collector 1st Grade, Chakhi Dadri, to decide the same afresh as expeditiously as possible. Date was also fixed for appearance of the parties before the said authority.

It is, thereafter, that the suit was further proceeded with once again, but the same was dismissed again by the Assistant Collector 1st Grade, Charkhi Dadri, vide order dated 28.07.2010. An appeal was preferred against the said order before the Collector Bhiwani, District Bhiwani, which was transferred to the Commissioner, Hisar Division, Hisar, vide order dated 01.02.2011. The Commissioner, Hisar Division, Hisar, after hearing both the parties remanded the case to the Collector Bhiwani, District Bhiwani, by setting aside the order dated 28.07.2010 passed by the Assistant Collector 1st Grade, on the ground that the Assistant Collector 1st grade had no jurisdiction to decide the suit under Section 13-A of the

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Punjab Village Common Lands (Regulation) Act, 1961 and the Collector was the Competent Authority to decide the said suit. The Collector Bhiwani, District Bhiwani, again relying upon the judgment in the case of Jage Ram, dismissed the suit vide judgment and decree dated 18.10.2016 (Annexures P-9 and P-10 respectively). This led to the filing of the appeal by the petitioner which was dismissed by the Commissioner, Hisar Division, Hisar on the same ground vide order dated 02.03.2017 (Annexure P-11). The fate of the revision petition preferred by the petitioner before the Financial Commissioner, Haryana, met with the same result as the revision was dismissed on 27.11.2019 (Annexure P-13). These orders have been challenged by the petitioner in the present writ petition.

4. Learned counsel for the petitioner contends that the revenue authorities have failed to take into consideration the records produced during proceedings which clearly depicted that the land did not fall within the definition of shamlat deh as defined in Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961, rather it belongs to the co-sharers not only on the basis of the land having been always shown in the revenue records as Shamlat Panna Kapooran Hasab Rasad Rakba Khewat but the possession has all through been of the petitioner. The Gram Panchayat has never been in possession nor has the land been earmarked or used for common purpose ever. He, on this basis, prays for setting aside the impugned orders dated 27.11.2019 (Annexure P-13) passed by the Financial Commissioner, Haryana – respondent No.1, order dated 02.03.2017 (Annexure P-11) passed by the Commissioner, Hisar Division, Hisar and judgment and decree dated 18.10.2016 (Annexures P-9 and P-10) passed by

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the Collector Bhiwani, District Bhiwani, including the mutation No.373 dated 12.07.1980 (Annexure P-4).

5. Learned counsel for respondent No.5 – Gram Panchayat has submitted that once the land has been mentioned as shamlat deh, it would automatically fall within the definition of shamlat deh. His assertion is that the mutation which has been sanctioned in favour of the Gram Panchayat is based upon the letter of the Government of Punjab, which is in accordance with the provisions of the statute, which does not call for any interference by this Court. He, however, could not dispute the entries in the revenue record on which reliance has been placed by the petitioner.

6. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned orders as well as records of the case.

7. The Courts below have failed to appreciate the entries which have been existing in the revenue record i.e. jamabandis from 1938-39 onwards which was followed in the subsequent years as well. i.e. 1946-47 (Annexure P-1) and 1956-57 (Annexure P-2). In the Khatoni Paimaish of village Khatiwas, Tehsil Dadri (Annexure P-3), the entry remain the same i.e. 'Patti Kapooran Shamlat Panna Kapooran Hasab Rasad Rakba Khewat' and name of the cultivator was Hirdey Ram son of Shish Ram Jaat, shareholder Sakinde. It is not in dispute that all through, the revenue record had been depicting ownership of Shamlat Panna Kapooran Hasab Rasad Rakba Khewat and the possession has been of the predecessors-in-interest of the petitioner. It is for the first time that the mutation dated 12.07.1980 (Annexure P-4), which is based upon a letter of the Government of Punjab

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bearing No.S1-75/58228-38 dated 11.12.1975, was sanctioned and the entry in the revenue record was changed from Shamlat Panna Kapooran Hasab Rasad Rakba Khewat to Gram Panchayat as per the evidence which has been brought on the file during proceedings including the revenue record. Even the Sarpanch of the Gram Panchayat, Khatiwas, who appeared as DW-3, namely, Giani Ram, admitted the possession of the legal representatives of Jage Ram as also ownership of Panna Kapooran prior to the mutation. The predecessors-in-interest of the petitioner being a share-holder of Panna Kapooran has also been admitted by him.

This shows that all through the land was/is in possession of predecessors-in-interest of the petitioner as also the fact that the ownership was of the share-holders of the land. Even after the consolidation proceedings, khatoni Paimaish showed the possession of the predecessors-in-interest of the petitioner, who were share-holders and Shamlat Panna Kapooran Hasab Rasad Rakba Khewat in the column of ownership. The land has not been earmarked for any common purpose nor is any document depicting so prior in time including during or after the consolidation proceedings having been finalized. All these clearly show that the revenue authorities despite there being overwhelming documentary evidence (revenue record) as well as oral evidence proving the land to be in ownership of the co-sharers and in possession of the co-sharers with the land having been not earmarked or used for common purpose or that it would fall within the meaning of shamlat deh of the Punjab Village Common Lands (Regulation) Act, 1961, as provided under Section 2 (g) thereof.

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8. In view of the above, we have no hesitation in setting aside the impugned orders dated 27.11.2019 (Annexure P-13) passed by the Financial Commissioner, Haryana – respondent No.1, order dated 02.03.2017 (Annexure P-11) passed by the Commissioner, Hisar Division, Hisar and judgment and decree dated 18.10.2016 (Annexures P-9 and P-10) passed by the Collector Bhiwani, District Bhiwani including the mutation No.373 dated 12.07.1980 (Annexure P-4) and declaring the land in dispute to be the ownership of the properties as co-sharers. Accordingly, impugned orders dated 27.11.2019 (Annexure P-13) passed by the Financial Commissioner, Haryana – respondent No.1, order dated 02.03.2017 (Annexure P-11) passed by the Commissioner, Hisar Division, Hisar and judgment and decree dated 18.10.2016 (Annexures P-9 and P-10) passed by the Collector Bhiwani, District Bhiwani including the mutation No.373 dated 12.07.1980 (Annexure P-4) are hereby set aside.

9. The writ petition stands allowed in above terms.

(AUGUSTINE GEORGE MASIH)
JUDGE

29.03.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No