

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

CWP-11677-1995

Reserved on: 03.11.2023

Pronounced on: 30.11.2023

GRAM PANCHAYAT MEHNGROWAL

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

....Respondents

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

Argued by: Mr. Arun Takhi, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. G.S.Jaswal, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.

1. The instant writ petition is directed against Annexure P-3, whereby the Joint Development Commissioner accepted appeal No. 301 of 1990, whereby the order (Annexure P-1), as, made by the Collector concerned, thus accepting the application of the Gram Panchayat concerned, for attesting the mutation in respect of the petition lands, rather was quashed and set aside.

2. In consequence, through Annexure P-3, the mutation made in respect of the disputed lands, became attested in favour, of the predecessors-in-interest of the respondents concerned.

3. A reading of the impugned Annexure P-3, reveals that it

of Holdings whereby he partitioned the lands, vis-a-vis, the private respondents concerned.

4. The learned counsel for the private respondents concerned also contends that the impugned Annexure is liable to be sustained, as it is made in pursuance to decrees, made by the Civil Court concerned, thus prior to the ouster of jurisdiction of the Civil Courts, as became created through incorporation of Section 13 in the Punjab Village Common Lands (Regulation) Act, 1961, through the Amending Act No.19 of 1976.

5. Therefore, the evidentiary vigor of Annexure P-3 has to be assessed, besides it has also to be determined as to whether the order passed by the Consolidation Authorities, does hold any vigor, the same being based upon a decree of the Civil Court concerned. Resultantly, the evidentiary tenacity of the decree of the Civil Court is also required to be gauged.

6. It is apt to mention here that Gram Panchayat Mehargarwal, challenged the order passed by the Consolidation Authorities, before this Court through its filing CWP-11320-1991. The said petition became decided on 22.08.2023. The concluding paragraphs of the verdict (supra) are extracted hereinafter.

“xxxxxx xxxxxx

26. *Therefore, also it appears that the private estate holders concerned, who claim right, title and interest over the disputed lands thus on the basis of the civil court decree, which however has not been assigned any credence, by a binding and conclusive verdict, as enclosed in Annexure P-7, thereby the respondents concerned were not entitled to, as declared in Annexure P-7, derive any leverage from the decree of the civil court*

concerned. Therefore, it appears that the impugned annexures are drawn through the respondents therein suppressing from the authority(ies) concerned, both Annexure P-7 and also the conclusive and binding verdicts of eviction, as became made against them in petitions cast under Section 7 of the 'Act of 1961'.

27. *In summa, it appears that the respondents in the lis (supra), rather than placing all the above material before the authority(ies) concerned, who drew the impugned annexures P-10 and P-11, thus took to solitarily place before her only the decree of the civil Court concerned. In case all the relevant material (supra) became placed before the authority concerned, thereby she may not have proceeded to make any reliance upon the decree of civil Court concerned, rather would have granted relief to the petitioner Gram Panchayat. Resultantly it appears that the above withholdings or suppressions from the author of Annexures P-10 and P-11, rather by the respondents in the misl concerned, is but manifestative of prima facie, theirs practicing before her thus vices of suppressio veri or suggestio falsi, which are required to be deprecated.*

XXXXX XXXXXX XXXXX.....”

7. However, before proceeding to make any order on the instant writ petition rather in terms of the decision (supra), it is deemed necessary to extract the averments made in the instant writ petition, besides it is deemed necessary to discern, whether the facts of the said case, are similar to the facts at hand, so as to thereby enable this Court to draw a decision in tandem with the decision made in the writ petition CWP-11320-1991.

Averments made in the writ petition.

8. The petitioner Gram Panchayat is owner in possession of

land measuring 60625 kanals 18 marlas in village Mehngrowal. Vide mutation No. 903 dated 29.08.1957, the area of *shamilat deh* was mutated in the name of Gram Panchayat. That one Baldev Chand (Respondent No. 4), Ex Sarpanch was in unauthorized possession on the Panchayat land.

9. Gram Panchayat filed petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as the 'Act of 1961'). Through an order drawn thereons on 06.09.1990 (Annexure P-1), the Collector concerned held, that the land in dispute is *gair mumkin pahar, Banjar Qadim*, and, is not fit for cultivation. Therefore, he ordered for the eviction of the respondent concerned. Mutation No. 903 was sanctioned on 29.08.1957 in favour of the petitioner-Gram Panchayat rather in view of the above decree.

10. Aggrieved against the order (Annexure P-1), the respondent No. 4 filed an appeal before the Joint Development Commissioner (IRD) Punjab, exercising the powers of Commissioner. Through an order made thereons on 08.02.1995 (Annexure P-3), the appeal (*supra*) became allowed.

11. The making of the afore order (Annexure P-3), had caused pain to the petitioner-Gram Panchayat and has led it to file the instant writ petition before this Court.

12. In para No. 9 of the writ petition, it has been averred that Mutation No. 1234 pertaining to village Mehngrowal rather was entered in the revenue record but on the basis of a Civil Court decree dated 27.04.1967. The said mutation was contested by Gram Panchayat, and, the same was rejected by the Assistant Collector concerned

through an order made on 31.12.1985.

13. Harkishan Dass and others including respondent No. 4, filed an appeal thereagainst before the Collector concerned, which was allowed through an order drawn on 25.06.1986, whereby, the order passed by the Assistant Collector First Grade rather became set aside.

14. Feeling aggrieved, the Gram Panchayat preferred an appeal against the order passed by the Collector concerned, thus before the learned Commissioner (Appeals) Jalandhar Division, Jalandhar. However, the said appeal became dismissed through an order drawn on 05.12.1988.

15. Feeling dis-satisfied from the afore, the Gram Panchayat concerned filed revision petition bearing No. 320 of 1988-89 before the learned Financial Commissioner (Appeals) Punjab. Through an order drawn thereons on 19.12.1990 (Annexure P-6), the said revision petition became accepted and the order passed by the Commissioner Jalandhar Division, as well as, by the Collector were set aside, and, the order passed by the Assistant Collector First Grade, regarding rejection of mutation No.1234 thus became restored.

Reply of respondent No. 4

16. The respondent contends that he is owner in possession of land through his predecessors-in-interest by purchase of mortgagee rights in the year 1911 and 1914, as such, his case is covered under the provisions of Section 4(3)(iii) of the 'Act of 1961', provisions whereof are extracted hereinafter.

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

(1) xxxx

(2) xxxx

(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) xxxx

(ii) xxxx

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

17. He further contends that the present mortgage is of the year 1871 and that the rights of mortgagee(s) were sold to him but through his predecessors-in-interest in the year 1911 and in 1914, thus vide two separate sale deeds and since then he is in continuous possession of the suit lands.

18. Further, the *shamlat deh* is owned and possessed by the proprietors and their names are also recorded in the column of ownership. The said fact is clear from a perusal of jamabandi for the year 1967-68.

19. Mutation No. 903 was sanctioned on enactment of earlier Act of 1953, when there was no exemption, but the new Act gives exemption from vesting of *shamlat land* in the Panchayat. Thus, he contents that the case of the respondent squarely falls within the ambit of the exemption mentioned in Section 4(3)(iii) of the 'Act of 1961' (supra).

20. Even the jamabandis pertaining to the year 1981-82 and 1976-77 are recording the answering respondents as mortgagee(s), thus to the extent of their share(s) in the suit lands.

Analysis of the submissions, as respectively made before this Court by the learned counsel for the petitioner and the learned counsel for the respondent.

21. Initially this Court would not be led to apply the verdict, as

reason is comprised in the factum that the decision, as, made in the case (supra) was squarely on the facts as were carried therein.

22. However, the revenue records which become relied, upon, by the learned Joint Development Commissioner (IRD) (exercising the powers of Commissioner) disclose that irrespective of the classification of the petition lands rather respectively as *gair mumkin pahar* and *banjar qadim*, yet they were entered in the ownership of the proprietors concerned, who thereafter in the year 1911 and in 1914, proceeded to mortgage the said lands vis-a-vis the purported predecessors in interest of respondent No. 4. Therefore, there was no occasion for any allusion being made to any of the savings clause, to the definition of *shamlat deh* especially to Section 4(3)(iii) of the 'Act of 1961' provisions whereof stand extracted hereinabove.

23. The reason being that since the purported predecessors-in-interest of respondent no. 4, became assigned rights as mortgagee(s) over the disputed lands by the lawful owners thereof. Resultantly the above prima facie evident fact, did not, prima facie, make the disputed lands, to be either *shamlat deh* or lands to be owned by the panchayat nor thereby on coming into force of the 'Act of 1961', there was any necessity of theirs becoming vested in the Gram panchayat concerned, unless the respondent No. 4 was not entitled to the beneficent grace of the savings clause (supra). Naturally, so, when in the face of the jamabandis prior to 1950, as discussed in the order Annexure P-3, thus the lands were owned by the *shamlat deh*, but yet in the cultivation column, respondent No. 4-Baldev Chand was entered as to be making cultivation thereof, besides persons wherefroms whom the purported predecessors-in-interest of respondent No. 4 acquired rights as

mortgagors thereons.

24. Though the predecessors-in-interest of respondent No. 4, purportedly acquired the rights as mortgagees thereons, thus prior to 1950. Resultantly when thereby respondent No. 4 through his predecessors-in-interest, was, prima facie, entitled to become bestowed with the beneficent grace of the savings clause (supra), to the definition of *shamlat deh*. Therefore, irrespective of any entry being made in the revenue records declaring the suit lands to be *shamlat lands*, yet in the face of the purported predecessors-in-interest of respondent No. 4, becoming entitled to become bestowed the beneficent grace of the savings clause (supra), thereby the suit lands, thus could not be deemed to become vested in the *shamlat deh*.

25. Be that as it may, the order made by the Joint Development Commissioner, appears to have been made but without his making any reference to any genealogical table, whereby respondent No. 4, did ably prove, that their predecessors-in-interest were the mortgagee(s) over the suit lands.

26. The adduction into evidence of the genealogical table rather was but most important, as thereby alone respondent No. 4, rather could claim that thereby he had acquired from his lawful predecessors-in-interest, their acquired rights as mortgagees on the suit lands, besides could claim that till redemption is made of the mortgage money, thus by the successors-in-interest of the mortgagors, thereupto, they are entitled to retain valid possession and title as mortgagee(s) over the disputed lands.

27. Furthermore, but naturally in the above event, prima facie, there was no right, title and interest over the suit lands, thus vesting in

the Gram Panchayat concerned, nor thereby the Assistant Collector concerned concerned rather could reject the claim qua attestation of the mutation, thus through an order made on 06.09.1990 (Annexure P-1), whereby, mutation was ordered to be entered in the name of the Gram Panchayat concerned.

28. The reason being that the above order (Anneuxre P-1) is to be regulated by the decision made in Annexure P-3, which is now challenged before this Court.

29. Be that as it may, since this Court for reason (Supra) concludes that the impugned order (Annexure P-3), though declares the purported predecessors-in-interest of the present petitioners, to become assigned valid rights as mortgagees over the petition lands, but since this Court has also hereinabove observed, that without any genealogical table rather becoming adduced before the Assistant Collector concerned, thus the learned Joint Development Commissioner, could not well conclude, that the mortgagees were the predecessors-in-interest of respondent No. 4. Therefore, for the said reason the impugned order (Annexure P-3), as passed by the learned Joint Development Commissioner concerned, but is liable to be quashed and set aside.

30. Nonetheless, in the larger interest of justice, merely for want of adduction of the above genealogical table, before the Assistant Collector concerned rather the claim of respondent no. 2 rather cannot be scuttled. Therefore, it is deemed fit and appropriate to remand the *lis* to ensure, that the relevant pedigree table, becomes adduced before the Assistant Collector concerned, for thereby his therebefore establishing that respondent No.4, thus is the successor-in-interest of his respective predecessors-in-interest.

FINAL ORDER OF THIS COURT.

31. In aftermath, the writ petition is allowed. The impugned order (Annexure P-3) is quashed and set aside and the *lis* for the afore purpose, is remanded to the Assistant Collector concerned, who shall direct the parties to adduce the relevant genealogical table, and, shall thereafter give an opportunity to the opposite party to adduce rebuttal thereto evidence.
32. The entire exercise(s) be ensured to be completed within six months and the decision on the remanded *lis* be made but after hearing all affected persons concerned.
33. It is clarified that the binding and conclusive decision, as made on the remanded *lis*, shall govern, whether respondent No. 4, is entitled to any order of mutation being made in his favour, thus by the revenue authorities concerned. In the above event, the relevant motion may become cast before the Authority concerned, but till then Annexure P-1 may hold force.
34. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

30.11.2023
kavneet singh

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