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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2933-2021

Date of decision:04.05.2023

VIDYA WATI AND ORS

...Petitioners

Versus

STATE OF HARYANA AND ORS

...Respondents

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

Present: Mr. Sanjiv Gupta, Advocate for the petitioners.

Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. R.S. Budhwar, Advocate for respondent No.4.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioners herein instituted as plaintiffs case No.66/Declaration on 12.07.2005, before the learned Collector concerned. In the case (supra), the plaintiffs, petitioners herein claimed the making of a declaratory decree, that they be declared, as owners in possession of the petition lands. Through a decision made thereons, on 20.12.2012 (Annexure P-7) the case (supra) was dismissed. The making of Annexure P-7 resulted in the aggrieved therefrom instituting an appeal thereagainst before the learned Appellate Authority concerned. However, through Annexure P-9, the Appellate Authority dismissed the apposite statutory appeal, thus leading the aggrieved therefrom to institute thereagainst a revision petition before the Competent Revisional Authority concerned, who likewise through Annexure P-11 rather dismissed the apposite revision.

2. It is but the above concurrently made orders, thus declining the declaratory relief to the petitioners, that has led them to access this Court.

3. The learned counsel appearing for the petitioners has, vehemently argued before this Court, that the concurrently made verdicts, against the petitioners are completely flawed, as they arise from a complete mis-reading, and, mis-appraisal of the evidence, as became adduced before them. In making the afore submission, he submits that even if a revenue entry has been made in the relevant column of the jamabandi, and, its displaying that the petition lands, being classified as *Banjar Qadim*, yet he submits that the said revenue entry, does not lead to a further inference, that the lands become covered, within the definition of *Shamlat Deh*. In making the said submission, he rests the same upon Section 2(g)(5) of The Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”), provisions whereof are extracted hereinafter.

“lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records”

4. Though a reading of the hereinabove extracted provisions, does reveal, that the lands described in the revenue records, as *Banjar Qadim* are *Shamlat Deh* lands, but since the word “and” intervenes the statutory coinage(s) “lands in any village described as *Banjar Qadim*”, thus occurring before “AND” besides when “AND” disjuncts the thereafter occurring statutory coinage(s) “common purposes of the village to revenue record”. Therefore, there was an imperative necessity, that irrespective of the description of the disputed lands in the revenue records, as *Banjar Qadim*, rather in term(s) of, the disjunct coinage “AND”, thus segregating the twin ingredients carried therein, thus revered emergence of cogent evidence, rather depicting that the petition lands were not used for common purposes of the village. In the above event alone the *Banjar*

Qadim lands would be construable to be *Shamlat Deh* lands. Therefore, the revenue entry designating the disputed lands *Banjar Qadim*, per se thus would not make them *Shamlat Deh* lands, rather they would become *Shamlat Deh* lands, only when the statutory ingredient(s) occurring subsequent to the coinage “AND” became also satisfied. Therefore, reiteratedly evidence was necessarily required to become adduced, that irrespective of the disputed lands being described in the revenue records, as *Banjar Qadim*, that they became also evidently recorded in the revenue records to be used for the common purposes of the village or they became declared in the revenue records to become used for the common purposes of the village. He submits that since, the trite evidence in terms of the additional requirement, as carried in Section 2g(5) of the Act, inasmuch as, the *Banjar Qadim* lands, being used for the common purposes of the village, thus is amiss. Therefore, he submits that the petition lands, are not *Shamlat Deh* lands, rather they are saved from being covered within the definition of *Shamlat Deh* lands. Resultantly, he argues that the petitioners are entitled to seek the annulment of the impugned orders.

REASONS FOR REJECTING THE ABOVE SUBMISSION

5. The prime reason for rejecting the above submission, is rested upon the fact, that the word “and” disjuncts the prior thereto coinages, and, the subsequent thereto coinages, and, but in the instant situation, yet does not make it imperative, upon the Gram Panchayat concerned, to adduce evidence, that even in respect of the lands described, as *Banjar Qadim*, they were as a matter of fact thus used for common purposes of the village. Contrarily, in the factual situation prevailing in the instant case, especially when the benefit of the above statutory ingredient occurring after the statutory disjunct “AND”, as carried in the provisions (supra), is strived to be assigned to the plaintiffs-petitioners herein. Therefore, onus became cast upon the plaintiffs petitioners to adduce

evidence in proof thereof. In other words, yet the onus to prove the said fact, was completely rested, upon the petitioners in the civil suit, as they claimed the benefit of the said definition. However, the above onus remained completely undischarged, inasmuch as, no record has been brought forth, thus reflecting that even qua the lands described in the revenue records, as *Banjar Qadim*, yet they were used, but in terms of the apposite *wajib ul arz*, thus for the common purposes, rather by the *Bartan Darans*, as reflected in the list of *Bartan Darans*. Since the above evidence remains unadduced, therefore, thus the disputed lands are construed to be as such used for the common purposes of the village. As a sequel, the disputed lands, described as *Banjar Qadim* in the revenue records, thus are covered within the definition of *Shamlat Deh* lands. Resultantly, when both the twin statutory ingredients, as, carried in the provisions (supra), are thus satisfied. Therefore, reiteratedly the disputed lands are construed to be covered, thus within the definition of *Shamlat Deh* lands.

6. In the wake of the above inference, as becomes drawn by this Court, this Court is obviously led to make a further consequential conclusion, that since the petition lands, were not amenable to cultivation, therefore, but obviously, even if any of the predecessors in interest of the petitioners herein, were purportedly holding apposite cultivating possession thereof, yet such uncultivable categories of lands, rather makes the petitioners to not ably claim the benefit of Section 2g(5)(viii) of the Act, as thereby they became also disabled to prove, that they are holding the imperative independent cultivating possession of the petition lands, but prior to 1950.

7. Be that as it may, some of the numbers of the petition lands, become reflected in the column of cultivation of the relevant revenue records, to be under the cultivation of those individual cultivators, who belong to the Muslim Community, who but hence are to deemed to migrate to Pakistan, after

the partition of India. Resultantly, in view of the mandate recorded by the Hon'ble Apex Court in case titled "***Gram Panchayat of village Jamalpur versus Malwinder Singh***", to which Civil Appeal No. 1401(N) of 1973, is assigned, whereby in respect of such lands no vestige of right, title or interest vests qua their successor(s) cultivators, or in those who assume possession from such Muslim migrants, rather than the lands left behind, as such by Muslim migrants, become vested in the Panchayat concerned.

8. This Court finds no merits in the instant petition, and, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

04.05.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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