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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13420-1998 (O&M)

Date of Decision : May 04, 2023

MOHINDER SINGH AND ORS.

-Petitioners

V/S

JOINT DEVELOPMENT COMMISSIONER, PUNJAB, CHANDIGARH
AND ANOTHER

-Respondents

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

Present: Mr. Mandeep Singh Bedi, Sr. Advocate with
Mr. Manpreet Singh, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. Paramjit Singh Goraya, Advocate with
Mr. Shahnaz Singh Goraya, Advocate,
Mr. A.S. Manaise, Advocate and
Ms. Ravinder Kaur Manaise, Advocate
for the respondent No.2.

SURESHWAR THAKUR, J.(ORAL)

1. On oral request of the counsels appearing for the parties, the main case is taken up on board, today itself, for hearing.

2. The Gram Panchayat, Kotli Shahpur, Tehsil and District Gurdaspur, through its Sarpanch, instituted on 27.8.1995, an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), impleading therein, (i) Mohinder Singh, (ii) Jagir Singh, (iii) Wassan Singh, (4) Dalip Kaur, as party/respondents. Through a decision made on the application (supra), on 05.03.1996, the learned Collector concerned, allowed the said eviction application.

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The assigning of the above affirmative decree on the application

(supra) of the Gram Panchayat, led the respondents therein, to institute thereagainst an appeal bearing No.56 of 1997, before the competent appellate authority concerned. The competent appellate authority concerned, through a decision made thereons, vide Annexure P-5, after dismissing the above appeal, affirmed the previously made order by the Collector. The above concurrently made orders of eviction against the present petitioners led them to institute thereagainst, the instant writ petition before this Court.

4. The learned counsel appearing for the petitioners has argued, that though in the column of ownership, in the Jamabandi appertaining to the petition land(s), there occurs the name of “Shamilat Deh Hasab Zarurat Mal Gujar”, but yet, when in the column of cultivation thereof, the name of the predecessor-in-interest of the petitioners, rather occurs. Therefore, he argues that the said entry in the column of cultivation, in the Jamabandi relating to the petition land(s), is to be deemed to be lawfully borrowed from the Jamabandis appertaining to the petition land(s), and, as became drawn prior to 1950. Consequently, he argues that as such, the cultivating possession assumed by the petitioners’ predecessor-in-interest rather was saved in terms of the apposite savings clause, as carried in Section 2(g)(viii) of the Act of 1961, provisions whereof are extracted hereinafter, from vestment in the shamilat deh or in the panchayat deh, irrespective of the name of “Shamilat Deh Hasab Zarurat Mal Gujar” occurring in the column of ownership in the revenue record.

“2. Definition- In this Act, unless the context otherwise requires.

XX XX XX

(g) “Shamilat deh” includes

XX XX XX

(viii) was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh

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on or before the 26th January, 1950, or
XX XX XX''

5. However, the above argument does not appeal to the judicial conscience of this Court, and, thus is straightaway rejected. The reason is that only when, the Jamabandis prior to 1950 become adduced, and, with theirs carrying reflections therein, in complete consonance with the ones, as carried in Annexure P-6, which is but the Jamabandi for the year 1953-54, that a conclusion would become gained, that the entries in Annexure P-6 are lawfully borrowed from the prior thereto Jamabandis, and/or, such entries in Annexure P-6 are not stray or unauthorizedly made entries.

6. The above burden was to be discharged at the instance of the petitioners, as they espoused before the authority below, that the possession of their predecessor-in-interest over the disputed land(s), thus became assumed rather in the above manner, therefore saved the vestment of the petition land(s) in panchayat deh, and that subsequently on his demise, they are not amenable to be evicted from the petition land(s), as they alike their predecessor-in-interest are clothed with the protection assigned to them by the apposite savings clause (supra). However, the above burden remains undischarged, whereas, only on the above documentary evidence becoming adduced, thereby it could be construed, that the entries in Annexure P-6, thus became lawfully borrowed from the Jamabandis, as became drawn prior to 1950. Moreover, the effect of the said burden becoming undischarged, at the instance of the petitioners herein, is that, the entries in Annexure P-6, are unlawful or are stray entries, or, are not lawfully borrowed from the prior thereto entries occurring in the Jamabandis prior to 1950.

7. In aftermath, this Court does not find any merit in the instant writ

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petition and the same is dismissed. The impugned orders are affirmed and maintained. Also, the learned Collector concerned is directed to draw the warrants of possession, in respect of the petition land(s), and to also, in terms of decision made by this Court on 07.02.2001, upon CM No.17631 of 2000, ensure that the determined therein mesne profits are ensured to be realized from the estates of the present petitioners, in the manner ordained by law.

8. All pending application(s) stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 04, 2023
devinder

Whether speaking/reasoned. : Yes/No
Whether Reportable : Yes/No