

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

CWP-15988-1997

Reserved on: 21.11.2023

Date of decision: 07.12.2023

**KARAN SINGH (SINCE DECEASED) THROUGH HIS LRs AND
OTHERS**

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Susheel Gautam, Advocate for
Mr. S.K. Bawa, Advocate
for the petitioners.

Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana

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

SURESHWAR THAKUR, J.

1. The instant writ petition is directed against the concurrently made impugned orders Annexures P-6 to P-8, whereby the statutory Authorities below, decreed the Gram Panchayat's petition for eviction of the respondents therein-petitioners before this Court, thus from the petition lands, rather purportedly owned and possessed by the Gram Panchayat concerned.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE
PETITIONERS**

2. Learned counsel for the petitioners has argued, that in the revenue records, the petition lands became recorded as "*Shamlat Thola Makbuja Malkan*", but yet when in terms of Section 2(g)(v) of The

Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”), provisions whereof becomes extracted hereinafter, the petition lands became never used according to the revenue records for the benefit of the village community or a part thereof, thus for common purpose of the village.

“**Section 2(g)** xxx

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;”

3. Therefore, he contends that when in respect thereof, it was pleaded in the reply of the respondents, that they are entitled to receive, the beneficent grace, of the savings clause (supra), to the definition of shalmat deh. Resultantly, learned Assistant Collector concerned, was required to, in terms of the proviso of Section 11 of the Act, which becomes extracted hereinafter, rather relegate the parties to file a suit before the learned Collector concerned, and/or, was thus required to stay the holdings of further proceedings, on the petition cast under Section 7 of the Act, thus uptill a decision is recorded on the said title suit, by the learned Collector concerned.

“[Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh].”

4. He further argues that since the mandate of the provisions (supra), becomes breached, thereby the concurrently made impugned orders, thus by the statutory Authorities below, through their exercising jurisdiction under Section 7 of the Act of 1961, rather are liable to be quashed, and, set aside.

REASONS FOR REJECTING THE ABOVE SUBMISSION

5. For the reasons to be assigned hereinafter the above made argument is idly raised, and, is thus rejected.

6. The disputed lands are entered in the jamabandi relating to the year 1990-91 (Annexure P-3) to be comprised in Khasra No.131 measuring 15 Kanals 14 Marla. The classification assigned to the petition lands, is *Banjar Kadim*, and, as of now they have been donated by the Haryana Government vide order dated 30.12.1991, thus to the Health Department, for the construction of a primary health centre.

7. Moreover, when the learned Collector concerned, through his order drawn, on 11.09.1996 has also made a declaration therein, that the petition lands rather were reserved in the consolidation scheme, thus for the benefit of the village proprietary body, thus thereby the Gram Panchayat concerned, becomes the able controller and manager thereof(s).

8. The above reservation, as made vis-a-vis the Gram Panchayat concerned, qua the disputed lands, rather never became successfully challenged. Therefore, when the State government in terms

of the relevant statutory provisions, has donated the petition lands, to one of its department(s). In consequence, besides when the said alienation has also remained unchallenged, thereby but brings forth an inference, that the above arguments are completely rudderless.

9. Though prima-facie the learned Assistant Collector concerned, on the said question of title becoming raised before him, was thus, enjoined to adopt the above re-courses. However, even if the said re-courses have not been made, yet when in Annexure P-8, there is a discussion, that when apart from the purported question of title, to the petition lands being raised, but only in the reply to the writ petition being filed by the respondents, rather no cogent documentary evidence becoming adduced, for thereby the learned Collector concerned, being led, to make a judicial contemplation, whether thereby any disputed question, of title arises, for his thereby refraining to make an adjudication, upon, the petition laid under Section 7 of the Act, rather uptill a decision, is made on a declaratory suit, thus with his leave becoming filed by the petitioner. Therefore, when as a matter of fact rather no cogent documentary material became placed on record by the respondents before the learned Collector concerned, thus to lead him to make the above judicial contemplation, thereby the said raised contention, in the reply, but unsupported by credible documentary evidence, thus could not lead the learned Collector concerned, to adopt the above re-courses.

10. The sequel of the above, is that, there was no breach to the mandate occurring in the proviso (supra), besides thereby nor the impugned orders are liable to be quashed, and, set aside.

11. Conspicuously when trite evidence has emerged, in display that the petition lands became owned by the Gram Panchayat concerned, and, besides when they were lawfully alienated by the Government of Haryana, to one of its departments. Therefore too, the above made argument also does not hold any legal worth.

12. Even in respect to the facet encroachments, it is revealed that the petitioners herein own plot No.130 and 73/68, measuring 1 kanal comprised in Khata No.89, and it appears that the said owned plot by the petitioners herein, but abuts the disputed plot owned by the department concerned.

13. In relation to the said encroachments being made by the petitioners, upon the disputed lands, thus reliance was placed , upon, the demarcation report concerned. Since no valid challenge became made by the present petitioners vis-a-vis the validity of the said made demarcation report. Therefore, the said demarcation report, thus revealing therein qua encroachments becoming made on the disputed lands, rather cannot be faulted.

FINAL ORDER

14. This Court finds no merit in the writ petition, and, the same is dismissed. The concurrently made orders of eviction against the petitioners by the Authorities below are maintained, and, affirmed.

(SURESHWAR THAKUR)
JUDGE

07.12.2023

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(SUDEEPTI SHARMA)
JUDGE