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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-4828-2020 (O&M)
Date of Decision : May 09, 2023

JASMER SINGH THROUGH HIS LRS & ANR.

-Petitioners

V/S

THE JOINT DEVELOPMENT COMMISSIONER (I.R.D.) PUNJAB
AND ORS.

-Respondents

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

Present : Mr. B.S. Seemar, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. A.P. Kaushal, Advocate
for the respondent No.3- Gram Panchayat.

SURESHWAR THAKUR, J.(ORAL)

1. The petitioners herein instituted, on 06.02.2012, a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter referred to the 'Act of 1961') before the learned Collector concerned. In the said petition, the Gram Panchayat Sarari, Tehsil and District Rupnagar, became impleaded as respondent. Through a decision drawn thereon, on 26.12.2012 (Annexure P2), the learned Collector concerned, after making a studied perusal of the column of possession, as borne in the Jamabandi, relating to the disputed land(s), and, appertaining to the year 1947-1948, but displaying therein, that the predecessor-in-interest of the petitioners became recorded therein, to be in cultivating possession, thus proceeded to grant the asked for declaratory decree to the petitioners.

2. The drawing of Annexure P-2 caused grievance to the Gram

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Panchayat concerned, and thus led it to make an appeal bearing No.35/2013, before the competent appellate authority concerned, who through drawing Annexure P-4, on 06.02.2019, after accepting the above statutory appeal, proceeded to annul Annexure P-2.

3. The drawing of Annexure P-4 caused grievance to the respondents in the said appeal, and, thus led them to institute thereagainst, the instant writ petition before this Court.

For the reasons to be assigned hereinafter, this Court does not accept the instant writ petition challenging Annexure P-4

4. The reason for drawing the above conclusion, becomes rested upon the factum, that though Annexure P-5, which is the Jamabandi relating to the disputed land(s), and, appertains to the years 1945-1948, thus is made prior to 1950, and, though in its column of ownership, it records the name of Panchayat Deh, and, though also in the column of possession thereof, the predecessor-in-interest of the present petitioners, one Lachhman Singh, is depicted therein, but as custodian of all the co-cultivators, to thus hold cultivating possession of the disputed land(s). However, the learned Collector concerned appears to, on the basis of the cultivating possession of the disputed land(s), by the predecessor-in-interest of the petitioners, and, also on the basis of such cultivating possession, thus evidently being prior to 1950. Resultantly thereupon he appears to, on the basis of the apposite savings clause, as carried in Section 2(g)(viii) of the Act of 1961, provisions whereof are extracted hereinafter, thus assign the declaratory decree to the petitioners. However, the application of the said savings clause to the above made depictions, in the Jamabandi, is a complete misapplication thereto(s) of the apposite savings clause.

“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 on or before the 26th January, 1950, or
XX XX XX”

5. The reason for forming the above inference stems, from the factum, that Section 2(g) of the Act of 1961 relates to the definition of “shamlat deh”, and, also carries therein, thus the relevant inclusionary clauses to the statutory definition of “shamlat deh” lands, besides carries the apposite exclusionary clauses, thus making such excluded lands, from theirs falling within the ambit of “shamlat deh” lands. The relevance of the above statutory definition assigned to “shamlat deh” lands, as occurring in the Act of 1961, is of extreme importance, as the said definition is engrafted, but on the basis of the consolidation scheme concerned, as becomes finalized by the consolidation officer concerned. It is also but on the premise of the finalized consolidation scheme, wherein lands are reserved for the benefit of the village proprietary body, and, to which lands the revenue term Makbuja Malkan becomes assigned, thus in the column of cultivation of the records of rights, thereby rather permitting the landowners concerned/enlisted Bartandarans to, in terms of the reserved common user of such reserved common lands, for the benefit of the village proprietary body concerned, that such enlisted Bartandarans rather become privileged, to make common or joint user of “shamlat deh” lands, reserved as such, for the benefit of the village proprietary body concerned, and, which are thus reflected in the column of possession as “Makbuja Malkan”. However, the said statute, i.e. the Act of 1961, nowhere deals with the column of ownership, as carried in the record of rights, whereby the disputed lands

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become spoken to become owned by the Panchayat Deh.

6. The omission in the statute (supra), in respect of lands described in the column of ownership, to be owned by the Panchayat Deh, is that, the Panchayat Deh alone, without any vestige of right, title or interest, inhering in the enlisted Bartandarans of the village concerned, or thus vesting in such members of the village proprietary body, rather to make any lawful joint or common user of lands, which are rather detailed in the Jamabandi to be thus exclusively owned by the Panchayat deh concerned, rather has exclusivity of title as owner of such lands. Therefore, but obviously, the column of cultivation, as carried in the Jamabandi for the years 1945-1948, depicting therein, the predecessor-in-interest of the present petitioners, thus to be holding cultivating possession, of the petition land(s) for himself and on behalf of the other co-cultivators, thus does not make him well enabled to draw any leverage from the apposite savings clause (supra). Reiteratedly, since the lands in the column of ownership, are echoed to be owned by the Panchayat Deh, and, to be not owned by the shamlat deh, nor when in the column of cultivation, an entry of "Makbuja Malkan" exists, thereby assigning to the predecessor-in-interest of the present petitioners, nor to the present petitioners, any right of common user thereof, along with the other members of the village proprietary body concerned, to, in terms of the Wazib Ul Arz, thus make lawful joint or common user of the petition land(s). In aftermath, the exclusivity of right, title or interest over the petition land(s), thus vesting singularly in the Panchayat deh concerned, and, not in the predecessor-in-interest of the petitioners, does obviously render insignificant rather the above entry in the column of cultivation.

7. Even though, the said entry occurs in the Jamabandi drawn for the year 1945-1948, but in the subsequent thereto entries, the predecessor-in-

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interest of the present petitioners, as also the present petitioners, are revealed to be holding cultivating possession of the petition land(s), thus as “Gair Marusi”. The said entry post the Jamabandis for the years 1945-1948, remains unchallenged on the permissible ground, that it is erroneously or fallaciously drawn, thus without any valid order being made by the competent revenue officer concerned. Therefore, the presumption of truth attached to the said entry acquires conclusivity. More so, when the aura of presumption of truth as assignable thereto rather remains undislodged, through any cogent rebuttal evidence thereto becoming adduced, at the instance of the petitioners, before the learned Collector concerned.

8. In the wake of the above, the decision (Annexure P-4) as recorded by the learned Commissioner concerned, thus reversing the decision as carried in Annexure P-2 is well merited, whereas, the order made by the learned Collector (Annexure P-2) arises from a gross misappraisal of the documentary evidence, besides from gross misapplication of law. In sequel, the writ petition is dismissed, and, the order (Annexure P-4) as made by the learned Commissioner is affirmed and maintained.

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

10. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 09, 2023
devinder

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