

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 4469 of 1996 (O&M)

Reserved on : 05.9.2023

Date of Decision: 12.9.2023

Gram Panchayat, Loharka Kalan

.....Petitioner

Versus

State of Punjab and others

....Respondents

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

Argued by: Mr. Vivek Salathia, Advocate and
Mr. Vivek Singla, Advocate for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Dr. Sukant Gupta, Advocate
for the applicants-respondents No. 3 and 3(i)

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner seeks quashing of the transfer of land measuring 71 kanals 11 marlas, owned by the Gram Panchayat, Loharka Kalan, Teshil and District Amritsar, in favour of respondent No. 3, and, also seeks a relief that respondent No. 3 be restrained from alienating or transferring the land in dispute.

2. The above made claim is founded, upon averments, as made in paras 4, 5 and 6 of the petition. The said averments are extracted hereinafter.

“4. That a complaint was made by Shri Darshan Singh son of Shri Teja Singh, Member Gram Panchayat Loharka Kalan at that time, along with Shri Gurmej Singh, MLA, Verka constituency at that time, r/o Village Guman Pura, Tehsil and District Amritsar, to the Government of Punjab and opposed the said exchange as it was not for the benefit of the Panchayat and placed complete facts and details before the Government.

As a consequence, the Secretary to Govt. of Punjab, Department of Development and after considering the relevant facts Panchayats revoked the communication granting approval to the resolution of the Gram Panchayat vide communication dated 24.9.1975.

Copy of communication dated 24.9.1975 is annexed as Annexure P-2.

5. *That this action was challenged by respondent No. 3 by of Civil Writ Petition No. 7319 of 1975 Natha Singh Vs. State of Punjab before this Hon'ble Court. The writ petition came up for hearing before this Hon'ble Court on 5.5.1977 and was dismissed with the following order:- it*

"In the return filed on behalf of the State it has been stated that the land belonging to the petitioner has been acquired and if he is aggrieved because of withdrawal of the sanction to the exchange proposal he should file a civil suit claiming damages, if so advised to do.

"I uphold the preliminary objection raised on behalf of the State and order that this petition be dismissed.

Sd/-M.R. Sharma,

Judge."

May 5, 1977.

6. *That in spite of the orders of the State of Punjab refusing to accord sanction to the exchange as well as dismissal of the writ petition, respondent No. 3 managed to have the mutation sanctioned in his favour on 13.6.1981 by concealing the fact that the exchange ordered by the Director Panchayats had been subsequently refused by the Secretary to the Government of Punjab. Respondent No.4 Sarpanch at the relevant time joined hands with respondent No.3 in this illegal design, although he was neither empowered nor authorised by the Gram Panchayat to get the mutation of exchange sanctioned in the name of respondent No. 3."*

his instituting a reply on affidavit. In the reply on affidavit, furnished by co-respondent No. 3, he strived to validate the resolution passed by the Gram Panchayat concerned, on 20.8.1974, whereby the relevant exchange became approved by the Gram Panchayat concerned. Moreover, he has also emphasized, upon the said resolution becoming reiterated by the Gram Panchayat concerned, through the passing of a resolution on 12.10.1980. Furthermore, it is contended in the reply, that since the parties have acted upon the exchange, and, that since the usufruct has been utilized by co-respondent No. 3. Therefore, co-respondent No. 3 contends, that the petitioner is estopped from asking for a mandamus, thus for enforcing Annexure P-2, whereby the resolutions (supra) became cancelled. In the alternative, co-respondent No. 3 has claimed, that since in the year 1974, he has been holding the possession of the writ lands, thus with an *animus possidendi*, thereby, since more than 12 years has elapsed since then uptil now, therefore, he contends that his possession over the writ lands, thus with the requisite *animus possidendi*, rather has matured into a perfect title over the writ lands.

4. The petitioner has also filed a replication to the written statement filed by respondent No. 3, wherein it is contended that once through Annexure P-2, the resolutions (supra), as made by the Gram Panchayat concerned, became cancelled, thereby respondent No. 3 has no right, title and interest over the petition lands. Therefore, it is contended that Annexure P-2 be enforced, and, respondent No. 3 be evicted from the petition lands. It is also contended, that the resolutions, if any, as became passed subsequent to Annexure P-2, especially when the said resolutions are also in respect of the same lands, thereupon the said resolutions rather are

invalid, and, thereons no reliance can be placed by respondent No. 3.

Furthermore, it is also contended that the plea of adverse possession is misconceived, and, is liable to be rejected. In addition, the making of mutation, in pursuance to the illegally passed resolution, thus does not confer any right, title and interest over the writ lands qua respondent No. 3, especially in view of Annexure P-2, whereby the resolutions concerned, became rescinded or cancelled. Moreover, the consequent thereto entries, as carried in the revenue records are also contended to be lacking in any aura of validity.

Analysis of the above averments made in the petition, and, the contentions raised in the reply filed by respondent No. 3, and, in the replication filed by the petitioner

5. Though, co-respondent No. 3 instituted CWP No. 7319 of 1975, before this Court. However, vide order dated 5.5.1977, order whereof stands extracted hereinafter, the said writ petition was dismissed.

“In the return filed on behalf of the State it has been stated that the land belonging to the petitioner has not been acquired and if he is aggrieved because of the withdrawal of the sanction to the exchange proposal he should file a civil suit claiming damages, if so advised to do.

I uphold the preliminary objection raised on behalf of the State and order that this petition be dismissed”

6. It appears that in the writ petition (supra), respondent No. 3 had made a challenge to Annexure P-2, whereby the resolutions (supra), as became passed by the Gram Panchayat concerned, rather were cancelled. A reading of the order (supra) reveals, that liberty became assigned to the said respondent-the petitioner, in the petition (supra), to qua his grievance relating to withdrawal of the sanction through Annexure P-2, thus institute a civil suit for damages.

No. 3-the petitioner in the writ petition (supra), the writ petition (supra), became dismissed.

8. Nonetheless, it appears that despite the above liberty becoming reserved to the petitioner therein, he did not avail the said liberty rather he appears to have ensured the making of a mutation on 13.6.1981, and that too, despite his challenge to Annexure P-2, as made in the writ petition (supra), thus visibly not becoming vindicated by this Court. Moreover, it also appears that post the drawing of Annexure P-2, by the competent authority, whereby the Gram Panchayat's resolutions passed respectively in the years 1974, and, 1975 rather became rescinded, yet respondent No. 3, in respect of the very same land, ensuring the passing(s) from the Gram Panchayat concerned, thus resolutions viz-a-viz, similar apposite exchanges. The making of mutation (supra) without respondent No. 3 availing the remedy, as became assigned to him, through the order (supra) made by this Court, on the writ petition (supra), does thereby make the relevant mutation, to obviously suffer(s) from a gross taint of invalidity.

9. The petitioner, has on the basis of mutation (supra), and, also on the basis of subsequent thereto revenue entries, has also raised a plea, that thereby his possession over the writ land, is thus with the requisite *animus possidendi*. Consequently, he has contended, that since more than 12 years has elapsed, since the drawing of mutation (supra), therefore, his possession with the requisite *animus possidendi*, rather has matured into a perfect title or an absolute title over the disputed land.

Reasons for rejecting the averments made in the petition

10. The relevant exchange, became rescinded through Annexure P-2, annexure whereof, however remains intact, thus for want of any valid challenge being drawn thereto. Moreover, when the liberty reserved to

respondent No. 3-the petitioner in the writ petition (supra), is confined to his instituting a suit for damages, arising from his becoming aggrieved, from the drawing of Annexure P-2, whereas, in the order (supra), there is no further liberty assigned to co-respondent No. 3 to raise in the civil suit a plea of adverse possession.

11. Therefore, for want of the above liberty became either claimed nor being granted to respondent No. 3, thereby he is barred from raising the above plea of adverse possession in the instant proceedings, nor can he claim, that since qua the disputed question of fact (supra), rather for a valid determination thereons, thus can be made only in a declaratory suit becoming instituted before the learned Civil Court concerned, that thereby the said liberty be assigned to him, nor can obviously the said liberty can become assigned to him. Contrarily, given the limited scope of the relief, as became granted to co-respondent No. 3 in the writ petition (supra), thus the petitioner is completely estopped from making a challenge either to Annexure P-2 or to raise a plea of his perfecting his title over the writ lands, through the prescription, arising from efflux of more than 12 years, rather happening, since the making of the tainted order of mutation. The effect of the above discussion devolving upon validity becoming assigned to Annexure P-2, is that, thereby the mutation, as became attested subsequent to Annexure P-2, rather in favour of respondent No. 3, thus is a flawed or a tainted order of mutation.

12. However, this Court cannot in the writ jurisdiction order for the eviction of respondent No. 3, from the disputed land, as the eviction of the respondent No. 3 can be lawfully ordered only through a verdict becoming drawn on a petition, under Section 7 of the Punjab Village Common Lands

(Regulation) Act, 1961 (for short 'the Act of 1961'), becoming cast, before

the Collector concerned, thus at the instance of the Sarpanch of the Gram Panchayat concerned.

13. Consequently, the Gram Panchayat concerned, may proceed to forthwith institute a petition under Section 7 of the Act of 1961, before the Collector concerned, who on receiving the said petition, shall make an expeditious, and, lawful decision thereons, but after hearing all the affected persons concerned. The relief relating to determination of mesne profits, is also left open to be decided by the Collector concerned, wherebefore whom, the said petition is laid, at the instance of the Gram Panchayat concerned. It is also clarified that since the liberty (supra), as became assigned to co-respondent No. 3 through a verdict (supra) is not yet availed. Therefore, when the relevant period of time for instituting the suit for damages has expired, resultantly respondent No. 3 is estopped from claiming the benefit of the liberty assigned to him, inasmuch as, he is barred from filing a suit for damages relating to his grievance arising, from the rescinding of the apposite resolution(s), thus through the drawing of Annexure P-2.

Final Order

14. With the afore observations, the instant petition is disposed of.

15. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 12th, 2023
Gurpreet

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