

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) CWP-6832-1999 (O&M)
Date of Decision: 03.03.2023

GURMUKH SINGH & ORS.

-Petitioners

Versus

THE JOINT DEVELOPMENT COMMISSIONER, PUNJAB,
CHANDIGARH & ORS.

-Respondents

(ii) CWP-18150-1999 (O&M)

GURMUKH SINGH & ORS.

-Petitioners

Versus

THE JOINT DEVELOPMENT COMMISSIONER, PUNJAB,
CHANDIGARH & ORS.

-Respondents

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

Argued by: Mr. Vikas Singh, Advocate with
Mr. A.S. Pannu, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. A.S. Dhindsa, Advocate
for the respondent No.3 (in CWP-6832-1999) and
for the respondent No.3 (in CWP-18150-1999).

KULDEEP TIWARI, J.

1. This order shall dispose of both these writ petitions, i.e. CWP-6832-1999, and, CWP-18150-1999, as they arise out of the same order dated 09.04.1999, passed by the respondent No.1. For brevity, the facts are

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being extracted from CWP-6832-1999.

2. The respondent No.3- Gram Panchayat of Village Chamaru, Tehsil Rajpura, District Patiala, through its then Sarpanch, had filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961' for short), before the respondent No.2, seeking eviction of the present petitioners from agricultural land, measuring 14 Biswas, comprised in Khasra No.326 (5-13), 327 (5-13), 328 (2-19), situated within the revenue estate of Village Chamaru, Tehsil Rajpura, District Patiala, on the averments that, as per Jamabandi for the year 1991-1992, the suit land is the ownership of the Gram Panchayat concerned, which is used for common purpose(s) of the village, by the village propriety body. Prior to 1995-1996, the petitioners had taken the suit land on lease for a period of two years, however, after expiry of the stipulated term of lease, the petitioners did not surrender their possession over the suit land, rather, refused to vacate the suit land, which led the respondent No.3- Gram Panchayat to institute the eviction proceedings against the petitioners.

3. The petitioners contested the petition (supra) by filing reply, inter alia, disputing the maintainability of the petition (supra), on account of existence of a decree of civil court concerned in their favour qua the suit land. It was further asserted by them, in their reply, that the suit land is owned by them and the rightholders of the village concerned, and, that their houses have been constructed thereon for more than 40 years. The suit land had never been used for any agricultural, or, common purpose(s) of the village, and, that it had never remained in the possession of the Gram

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Panchayat concerned. After adduction of evidence by both the parties, the respondent No.2, vide order dated 28.10.1998, had ordered the eviction of the present petitioners from the suit land, with the findings that the petitioners have no concern, whatsoever, with the suit land, especially on account of them not being able to produce any revenue record to prove their old and continuous possession thereon since, or, prior to 1950.

4. Aggrieved by the eviction order dated 28.10.1998, as passed by the respondent No.2, the petitioners preferred a statutory appeal before the statutory appellate authority concerned, however, the appeal could not reap any positive result, and, was dismissed by the respondent No.1, vide order dated 09.04.1999. Therefore, the petitioners are now before this Court, in the instant writ petition, seeking quashing of the orders dated 28.10.1998, and, 09.04.1999.

5. The learned counsel for the petitioners has argued that, at an earlier point of time, the petitioners had instituted a suit for permanent injunction, however, upon a statement being made by the then Sarpanch of the Gram Panchayat concerned that the Gram Panchayat will not forcibly take possession of the land from the petitioners, the petitioners withdrew the said suit on 03.05.1988. Thereafter, when the Gram Panchayat concerned again resorted to interfere in the possession of the petitioners, it led the petitioners to file a fresh suit for permanent injunction on 22.07.1994, which was decreed by the civil court concerned on 02.05.1998, whereby the respondent- Gram Panchayat concerned was restrained from dispossessing the petitioners from the suit land, except in due course of law. The learned counsel for the petitioners has further relied upon the Jamabandi for the year

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1957-1958, of Village Chamaru, Tehsil Rajpura, District Patiala, wherein, in the column of ownership, it is recorded as “*Shamlat Deh Hasab Hisis of owners as follows: Taraf Gabli Hasab Rasad Khewat-1/3rd share. Taraf Sajawar Khan Hasab Hisis-1/3rd share. Taraf Dav Purian Hasab Hisis Khewat-1/3rd share*”, and, in the column describing nature of land, “*Banjar Qadim*” is recorded. By making a reference to Section 2(g)(5) of the Act of 1961, he stated that the suit land does not fall within the inclusionary clause of *shamlat deh*, as defined in Section 2(g)(5) of the Act of 1961, as it had never been reserved, or, used for any common purpose(s) of the village, hence, does not vest in the Gram Panchayat concerned. He further stated that the petitioners had migrated from Pakistan, during partition, in the year 1947, and since then, they have been in continuous possession of the suit land, without there being payment of any rent to the Gram Panchayat concerned.

6. We have examined both the impugned orders, as passed by the authorities below, as well as, the Jamabandi for the year 1957-1958, as available on record. Before advertizing to decide the validity of the impugned orders, it would be apt to first examine Section 2(g)(5) of the Act of 1961, which becomes extracted hereunder:-

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

xx xx xx

(g) “shamilat deh” includes--

xx xx xx

(5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;

xx xx xx”

7. Perusal of the above extracted Section, leaves no room for any doubt that the suit land, as per the entries recorded in the Jamabandi for the year 1957-1958, as relied upon by the learned counsel for the petitioners, is “*Shamlat Deh*” land. In our considered opinion, the petitioners have not been able to establish, by adducing any revenue record, that they hold any share in the suit land, which is otherwise *shamlat deh* land, or, that they are Tarfdars of the revenue estate of Village Chamaru, or, that they or their forefathers have been in continuous possession thereof since 1950. Moreover, as per the findings of the authorities below concerned, in Khasra Girdawari for the year 1966-1967, possession was entered in the name of “*Makbuza Baqtaram*”, and, not in the name of the petitioners, or, their forefathers. Even in the Jamabandi for the year 1976-1977, the name of Sukhchain Singh, i.e. one of the present petitioners, is recorded as “*Gair Marusi*”, but, in the Jamabandi for the year 1981-1982, his name is recorded in column No.9 thereof, as “*Bila Lagan Bawajah Kabja*”, and, this same entry continues up to the Jamabandi for the years 1986-1987, and, 1991-1992. All these entries go on to belie the stand of the petitioners that they, or, their forefathers had been in continuous possession of the suit land since 1950. The entries in the revenue record concerned, clearly displays that the suit land has been recorded in name of Gram Panchayat concerned, and, there is no evidence on record to rebut these revenue entries, to which a presumption of truth is otherwise attached. Moreover, the reliance, as placed by the learned counsel for the petitioners, upon the judgment and decree of the civil court concerned, dated 02.05.1998, is of no help. First of all, the

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civil court concerned had no competent jurisdiction to decide the dispute qua title about *shamlat deh* land, in view of a specific statutory bar, as imposed by Section 13 of the Act of 1961. Secondly, it was a simpliciter suit for injunction, whereby the civil court concerned passed a decree restraining the respondent- Gram Panchayat concerned from dispossessing the petitioners from the suit land, except in due course of law. Now, the Gram Panchayat concerned had sought eviction of the petitioners by following due course of law, by filing an apposite petition under the provisions of the Act of 1961, and, in such circumstances, the plea raised by the petitioners is highly misplaced, and, is therefore rejected.

8. Therefore, the petitioners have miserably failed to prove on record that they have been in continuous possession of the suit land since 1950, rather, there is no material brought on record to, even remotely, suggest that the petitioners hold any share in the Tarf of the Mohal concerned. Therefore, we find no merit in the present writ petitions, and, the same are accordingly dismissed. There is no infirmity or illegality in the impugned orders dated 28.10.1998, and, 09.04.1999, passed by the competent jurisdictional authorities concerned, therefore, the same are hereby upheld.

9. All pending application(s), if any, also stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

03.03.2023
devinder

(KULDEEP TIWARI)
JUDGE

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