

CWP No. 6408 of 2019

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 6408 of 2019

Date of decision : August 24, 2023

SARABJIT SINGH AND OTHERS

....PETITIONERS

VERSUS

DIRECTOR, DEPARTMENT OF RURAL DEVELOPMENT AND
PANCHAYAT, PUNJAB AND ANOTHER

....RESPONDENTS

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

Present : Mr. J.S. Bhandohal, Advocate, for the petitioners
Ms. Monika Jalota, Sr. DAG Punjab, for respondent no. 1
Mr. Vijay Rana, Advocate, for respondent no. 2.

KULDEEP TIWARI, J.

1. The petitioners have filed the instant petition seeking quashing of order dated 31.5.2018, Annexure P/1 passed by learned Collector and order dated 11.1.2019, Annexure P/2, passed by learned Commissioner in the title suit filed by respondent-Gram Panchayat under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as 'the Act of 1961').

2. The respondent-Gram Panchayat, filed petition under Section 11 of the Act of 1961, for declaring Gram Panchayat, Garhi Baksha, as owner of the petition land(s) and for declaring sale deed No. 306 dated 18.6.1993, sale deed no. 265 dated 4.6.1993 and sale deed nos. 281-282 dated 11.6.1993, registered with the Sub Registrar, Bhogpur, as null and void, on the premise that the executant of the sale deeds has no right to

transfer the land in favour of the petitioners. The above application was allowed vide order dated 31.5.2018 by the learned Collector concerned. Feeling aggrieved with the aforesaid impugned order, the petitioners made unsuccessful challenge by filing a statutory appeal under Section 11(2) of the Act of 1961, which was dismissed by the learned Commissioner concerned vide order dated 11.1.2019. The petitioners have now assailed both the orders before this Court on the ground that the predecessor-in-interest of the petitioners was owner in possession of the petition land(s) as they have purchased the land in question from the original vendor, who had earlier purchased the same from the persons, who were in independent cultivating possession of the said petition land(s), as shown in the jamabandi for the year 1945-46. It is further pleaded that the Collector concerned has ignored the claim of petitioners' qua possession on petition land(s) through their predecessor-in-interest, which was established on record prior to the year 1950 and the findings of Collector that Pritam Dass, who is shown to be in possession prior to 26.1.1950 rather had no right to sell the petition land(s), is contrary to the record by ignoring the principle that possessory right is amenable to transfer. It is further pleaded that the appellate authority has summarily dismissed the appeal, without even summoning the record and without dealing with the grounds of appeal, as raised by the petitioners.

3. Before adjudicating the legality and sustainability of the impugned orders, it is apt, at this juncture, to deal with the brief facts of the present case. The respondent-Gram Panchayat had earlier filed eviction

petition under Section 7 of the Act of 1961, which was contested by the petitioners on the ground that they have purchased the petition land(s) by way of registered sale deed No. 306 dated 18.6.1993, sale deed no. 265 dated 4.6.1993 and sale deed nos. 281-282 dated 11.6.1993. Realizing that the issue of title is involved, the Collector concerned, ordered to adjourn sine-die, the eviction petition and an opportunity was given to the respondent-Gram Panchayat to get declared the ownership of the disputed land(s). This led the respondent-Gram Panchayat, Garhi Bakhsa to file a petition under Section 11 of the Act of 1961, before the learned Collector concerned. It was pleaded by the Gram Panchayat concerned that the petition land(s) is continuously shown as *shamlat deh* owned by village Panchayat and during the consolidation proceedings, the land was reserved for the use of Panchayat. In the *jamabandis* for the years 1965-66, 1975-76, 1980-81, 1985-86, 1990-91, 1995-96, 2000-01, 2005-06, 2010-11, in the column of ownership, the Gram Panchayat is shown to be the owner, whereas, the petitioners have no concern or connection with the disputed land. Petitioners in connivance with the previous officials of the Gram Panchayat got revenue entries changed in the record(s) and the sale deeds which had been executed, are result of collusion and therefore, are null and void and, therefore, not binding upon the rights of the respondent-Gram Panchayat. The petitioners contested the petition filed by the Gram Panchayat on the ground that the Gram Panchayat is neither the owner nor in possession of the disputed land and they have purchased the petition land from the previous owners, who have possessory right over the

petition land(s), therefore, the previous owner validly executed the sale deeds in favour of the petitioners. The mutation was also sanctioned in the name of the petitioners and they are in possession of petition land(s), as owners and they have full right over the disputed land. It is further pleaded that their right to property is protected under Section 41 of the Transfer of Property Act. In fact, the respondent-Gram Panchayat has concealed the fact that one Pritam Dass was owner in possession of this disputed land(s) as '*Mall Guzari*'. After this, the above mentioned disputed land was sold by Pritam Dass to Avtar Singh son of Sohan Singh and now they have become owners by virtue of the sale deeds in question.

4. Both the parties led their evidence and issues were framed, and, the suit was decreed in favour of the Gram Panchayat concerned vide order dated 31.5.2018. As recorded above, statutory appeal, filed by the petitioners was dismissed vide impugned order dated 11.1.2019. We have examined the entire case and the records as placed, by both the parties.

5. On analysis of the record, it shows that in the first *jamabandi* for the year 1940-41, Ex. R/2, placed on record before the court of learned Collector concerned, *Shamlat etc (Mazkur)* is recorded as owner in the column of ownership whereas Bakshish Singh Souzidar etc. were recorded as '*Gair Marusi*' in the column of cultivator. In the *jamabandi* for the year 1944-45, (Ex. R/11) there is no change in the column of ownership, whereas in the column of cultivator, one Mahant Rama Chela Moti Ram Faqir Udasi Sazidar is recorded as '*Gair Marusi*'. The above description as made in the revenue record categorically shows that the owner of the land

is *Shamlat Deh* whereas in the cultivator column, two different persons were recorded as '*Gair Marusi*' (non-occupant tenant). Further, the jamabandi for the year 1958-59, the Panchayat Deh was recorded as owner in the column of ownership whereas one Pritam Das Chela Sant Ram Chela Moti Ram is recorded as *Mall Guzar Saken Deh*. In the column of cultivator, there is entry of *Mall Guzar*. This entry continued upto the year 1990-91. However, strangely in the year 1995-96, an abrupt entry qua the predecessor-in-interest of the petitioners in the column of ownership along with Panchayat Deh was entered, whereas, in the column of cultivator, it is recorded as *Makbooja Mall Guzar* through Gurbaksh Singh son of Inder Singh as *Gair Marusi*. This entry continued upto the year 2010-11. However, in between names of petitioners became incorporated therein being descendant(s) of Amarjit Singh etc.

6. We have carefully evaluate the revenue record and have no hesitation to conclude that upto the year 1944-45, in the column of ownership, *Shamlat etc (Mazkur)* is recorded and thereafter, Panchayat Deh is recorded as owner and Panchayat had given this land to one Pritam Das Chela Sant Ram only for the purpose of his livelihood, whereas, the ownership of the Gram Panchayat remained intact. The predecessor-in-interest of the petitioners are recorded as *Gair Marusi* (non occupant tenant). There is nothing on record to suggest that the vendor of the petitioners are proprietor of the revenue estate concerned and have a lawful share in the *Shamlat Deh*. Apart from that, they are in possession of disputed land according to their share prior to 1.1.1950. In absence of any

of the record for the above, the vendor of the petitioners had no right, whatsoever to transfer the petition land(s) in their favour. There is nothing on record to suggest that the name of the vendor of the petitioners is recorded in the column of ownership in any of the revenue document. Rather entry of the predecessor-in-interest of the petitioners is recorded as *Gair Marusi* (non occupant tenant). A non occupant tenant cannot acquire the status and rights of *Marusi* and claim ownership. This Court, in ***CWP No.20563 of 2008***, titled “***Jaleb Khan and others V/s Commissioner, Gurgaon Division, Gurugaon and others***” decided on 20.7.2009, has held as under:-

“After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. The Gram Panchayat, Agon (respondent No.3) filed a petition under Section 7 of the Act seeking eviction of the petitioners. As per Jamabandis for the years 1962-63, 1967-68 and 1997-98 (Annexures P-7, P-8 and P9) respectively the ownership of the land in question is recorded in the name of Gram Panchayat. In the column of cultivation, Kallu son of Kale Khan son of Chhota Khan is recorded as 'Gair Marusi' in the three afore-referred Jamabandis. Therefore, the predecessor-in-interest of the petitioners having been recorded as 'Gair Marusi' he cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) as contended by the learned counsel for the petitioners. The fact that the petitioners acquired rights of ownership being an occupancy tenant is clearly misconceived.”

7. The next argument which was raised by counsel for the petitioners is that the sale deeds which have been declared as null and void

CWP No. 6408 of 2019

are protected under Section 41 of the Transfer of Property Act, 1882. However, we find that the argument raised by the counsel for the petitioners is highly misplaced. It was not the case of the petitioners that they have purchased the land after taking reasonable care and acted in a good faith, whereas from the record it is clear that during the cross-examination of RW1-Sarabjit Singh, before the Collector, a specific question was put to him as to whether he had made any inquiry from the Revenue Department prior to the purchase of the disputed land, to which, his answer was negative. So, once it is admitted by the petitioners that no due diligence was exercised by the petitioners before entering into the sale deeds, therefore, they cannot later on take to vindicate the transfer, thus, as ostensible owners. As mentioned above, the revenue record starting from the year 1950, Panchayat Deh is recorded as owner, therefore, it seems that the present sale deeds were result of collusiveness and were not entered in good faith.

8. In view of the aforesaid reasons, we do not find any illegality or perversity in the impugned orders and the same are upheld. The instant writ petition is, accordingly, dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 24, 2023

'dalbir'

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No