IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-11643-2022
Reserved on: 02.11.2023
Pronounced on: 07.11.2023

BALDEV SINGH .....Petitioner

Versus

STATE OF PUNJAB AND ORS. ....Respondents

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

Argued by: Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. C.L.Premy, Advocate with
Mrs. Raman Rekhi, Advocate
Ms. Amarjit Kaur, Advocate and
Ms. Navjot Kaur, Advocate
for respondent No. 5 – Gram Panchayat.

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SURESHWAR THAKUR, J.

1. The present petitioner instituted on 28.12.2012 a petition under Section 11 of the Punjab Village Common Lands Act, 1961 (hereinafter for short called as the 'Act of 1961'). In the said petition, the petitioner claimed the making of a declaratory decree rather for his becoming declared to be the owner in possession of the land, bearing Khewat No. 246/233, comprised in,Khasra No. 449, 453, Rect. 5, Killa No. 16/2, 25 Rect. 6, Killa No. 20/2, 21, Rect. - 6, Killa No. 20/2, 21 Rect. No. - 8 Killa No. 5, Rect. No. 7 Killa No. 2/2, 3, 9, 10/1, 11/1, 12, 13 total land measuring 67 kanals, as per Jamabandi for the year 2006-07, situated in village Ramgarh Sivian, Tehsil Raikot, District

Ludhiana.

2. The learned Collector concerned after striking issues on the contested pleadings of the litigants concerned, thus through a decision made thereons on 23.04.2015 (Annexure P-4), came to a conclusion, that the petitioner failing to adduce convincing discharging evidence, in satiation, of the apposite savings clause, to the definition of *shamlat deh* land, as engrafted in Section 2 (g) (viii) of the 'Act of 1961'. Therefore, through Annexure P-4, an inference became recorded, that resultantly the petitioner, is not entitled to become bestowed with the beneficent grace of the hereinafter extracted savings clause.

> *2. In this Act, unless the context otherwise requires-*
> *xxxxxxx*
> *(g) 'shamilat deh' includes -*
> *(1)*
> *(2)*
> *(3)*
> *(4)*
> *(5)*
> *but does not include land which -*
> *(i) xxxxx*
> *(ii) xxxxx*
> *(iii) xxxxx*
> *(iv) xxxxx*
> *(v) xxxxx*
> *(vi) xxxxx*
> *(vii) xxxxx*
> ***(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950 ; or***

(ix) xxxxx

3. The above dismissal of the plaintiff's suit caused pain to the petitioner and led him to institute an appeal thereagainst, bearing appeal No. 148 of 2015, thus before the Appellate Authority concerned.

4. The Appellate Authority concerned, through a decision made thereons (Annexure P-6) on 21.06.2019, concurred with the decision as became earlier recorded by the Collector concerned (Annexure P-4).

5. The concurrently made decisions (supra), led the petitioners to, on the ground that the verdict of the Appellate Court (Annnexure P-6), becoming drawn without an opportunity of hearing becoming granted to the aggrieved appellant, rather institute thereagainst CWP No. 30849-2019. However, through a decision made thereons (Annexure P-8), on 24.10.2019, decision whereof becomes extracted hereinafter, this Court on the request of the counsel for the petitioner, permitted him to withdraw the petition (supra), but with liberty to seek review of the order (Annexure P-6), as, passed by the Appellate Authority concerned.

> *"Counsel for the petitioners prays for withdrawal of this petition with liberty to file an application seeking review of the impugned order passed by the Joint Development Commissioner, S.A.S. Nagar (Mohali).*
>
> *Dismissed as withdrawn.*
>
> *Liberty granted."*

6. In pursuance to the making of Annexure P-8, the Appellate Authority concerned, proceeded to draw Annexure P-9, with a clear speaking therein, that not only the contesting litigants, were granted the fullest opportunity of hearing, but also declined to review the decision

recorded in Annexure P-6, thus on the ground, that no statutory jurisdiction is vested in him to make review of the order comprised in Annexure P-6.

Submissions of the learned counsel for the petitioner.

7. The learned counsel for the petitioner has argued that since the Appellate Authority who drew Annexure P-9 has failed to comply with the mandate as became pronounced by this Court in Annexure P-8. Therefore, the *lis* be remanded to the Appellate Authority concerned, to make review of Annexure P-6.

8. The learned counsel for the petitioner has also argued, that since the entire revenue records, remained incompletely un-analyzed by the statutory authorities below. Therefore, the decisions as made against the appellant by the statutory authorities below are required to be interfered with.

Reasons for rejecting the submissions of the learned counsel for the petitioner.

9. The argument as posed before this Court by the learned counsel for the petitioner, that the drawing of Annexure P-9, by the authority is in transgression of the mandate recorded by this Court in Annexure P-8, rather is not amenable for becoming accepted by this Court.

10. The reason for making the above conclusion, arises from the fact that, even if this Court, had on asking of the counsel for the petitioner permitted him to withdraw the writ petition (supra) and with a further liberty to seek review of the order (Annexure P-6), as became challenged in writ petition (supra), before this Court. Nonetheless, unless the said assigned liberty to the petitioner also fell within the

contours of any able statutory vesting of review jurisdiction in the Appellate Authority concerned, thus to make review of Annexure P-6, thereupon, the mandate recorded in Annexure P-8, but obviously was per-incuriam the relevant statutory provisions.

11. The imperative reasons for forming the above inference becomes sparked from the factum, that there is no able statutory bestowment of review jurisdiction, in the appellate authority concerned, rather in the special legislation (supra). Resultantly the drawing of Annexure P-9, whereby the statutory authority omitted to make review of the decision embodied in Annexure P-6, thus is not amenable for becoming faulted.

12. Though, the learned counsel for the petitioner has also argued that no fullest opportunity became granted to the appellant, by the statutory authority, who drew Annexure P-6, yet even the above submission, does not capsized, in the wake of their occurring a clear voicing in Annexure P-9, that the decision as became recorded on the statutory appeal (supra) (Annexure P-6) rather became recorded on the granting of the fullest opportunity of hearing to all concerned.

13. The above made speaking occurring in Annexure P-9, appears to become enveloped in an aura of truth, especially when irrespective of Annexure P-6, making an echoing, that only the counsel for the respondent was present, but since the said voicing occurs on the date when Annexure P-6 was pronounced. Consequently, unless cogent material became placed, as comprised in the zimni orders relating to the date when the arguments on the said appeal, were heard and theirs making palpable echoings, that on the said date, the counsel for the appellant was not heard and/or was not present, thereupon, a mere

reference in Annexure P-6, that on the date of making of Annexure P-6, only the counsel(s) for the respondent was present, does not lead, to any further conclusion, that on the date when the arguments were heard, on the apposite statutory appeals, thus then too, the counsel for the appellant, was neither present nor was heard.

14. In sequel, the above made argument looses its sheen and is liable to be rejected as such.

15. Even otherwise on merits, when a perusal of the jamabandis relating to the suit lands, especially the ones drawn prior to the year 1950, do cogently reveal, that the cultivating possession, if any, as became assumed, on the suit lands rather was not an independent cultivating possession. The reason being that the cultivating possession of the cultivators concerned, as occurs in the apposite column of cultivators, is rather depicted thereins, to be in a limited capacity of theirs being *Gair Marusi*.

16. Therefore, when for bestowing the apposite beneficent grace of the savings clause (supra), upon, the present petitioner, thus through his predecessors-in-interest, who even otherwise are not evidently proven to be his lawful predecessors-in-interest, rather required, theirs thus evidently holding independent cultivation possession of the suit lands, but prior to 1950. Contrarily, when the jamabandis relating to the suit lands, especially the ones prior to 1950, reflect that the cultivators concerned, were cultivating the suit lands but in a limited capacity as *Gair Marusi*. Therefore, the cultivations of the suit lands as made by the cultivators concerned, thus in the above limited capacity, is not co-equal, to theirs holding independent cultivating possession of the suit lands, thus prior to 1950 nor thereby

as aptly concluded by both the statutory authorities below, they were entitled to receive the beneficent grace of the savings clause (Supra).

<u>Final order of this Court.</u>

17. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders/annexures are maintained and affirmed.

18. No order as to costs.

19. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

07.11.2023
kavneet singh

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