

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-14946-2022

Date of Decision: 03.05.2023

BADLE (SINCE DECEASED THROUGH HIS LRS) & ORS.

-Petitioners

Versus

DIVISIONAL COMMISSIONER ROHTAK DIVISION & ORS.

-Respondents

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

Argued by: Mr. M.S. Dhami, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. Sandeep Parkash Chahar, Advocate
for the respondent No.4.

Mr. Rajesh Malik, Advocate
for the respondent No.5.

SURESHWAR THAKUR, J.

1. One Dalip Singh (since deceased), through his LRs, and, others instituted Case No.44 on 16.04.2003, before the Assistant Collector concerned. In the case (supra), the petitioners impleaded Gram Panchayat Village Saidpur, Tehsil Kharkhoda, District Sonapat, through its Sarpanch, as respondent No.1, and, also impleaded one Kartar Singh as co-respondent No.2. The case (supra) was assigned the above number, only in pursuance to an order of remand being made, on 25.03.2003, by the learned Collector, Sonapat.

2. Through a decision made, on 25.08.2003 (Annexure P-2), upon case (supra), by the Assistant Collector concerned, thereby the petitioners' claim for a declaratory relief being granted, in respect of the petition Khasra numbers, thus became allowed. The aggrieved therefrom, became led to institute thereagainst, an executive appeal bearing No.7 of 2003, before the learned Collector, Sonapat, who however, through a decision made thereon, on 29.07.2004 (Annexure P-3), allowed the appeal and set aside the decision as carried in Annexure P-2. Thereafter, the petitioners instituted case No.7/DC before the learned Collector, Sonapat, who vide order dated 30.03.2021 (Annexure P-4), dismissed the said case holding that the petitioners failed to establish that they are in possession/ cultivation of the disputed land(s), as per their share. The making of Annexure P-4, led the aggrieved therefrom, to institute thereagainst, an executive appeal bearing No.192, before the learned revisional authority concerned, who yet, through a decision made thereon, on 13.01.2022 (Annexure P-5), also after declining relief to the revisionist therein, thus upheld the order, as carried in Annexure P-4. Therefore, the above made concurrent orders against the petitioners, have led them to institute thereagainst, the instant writ petition before this Court.

Reasons for dismissing the instant writ petition

3. In the ownership column of the Jamabandis relating to the petition land(s), an entry of “*Shamlat Har Char Pana Hasab Rasad Raqba Khewat*” occurs. Though in terms of Rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, the above revenue entry, as occurs in the ownership column of the

Jamabandis, though carries the import, that management and control of the land(s) thus with the said entry hence vests in the Gram Panchayat concerned, but yet ownership of such land(s) continues to vest in the proprietors. Therefore, but obviously, evidence, but clear and cogent, was required to become adduced, thus displaying that within the ambit of the apposite savings clause, as carried in Section 2(g)(viii) of the Punjab Village Common Lands (Regulation) Act, 1961, provisions whereof are extracted hereinafter, the petitioners, through their predecessors-in-interest rather were holding independent cultivating possession of the petition land(s), but evidently prior to 1950.

“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”

4. The statutory authorities below, on a perusal of the documentary evidence, concluded that the above evidence in support of the ingredients, as carried in the apposite savings clause (supra), rather was completely wanting. Therefore, they made concurrent conclusions, that the benefit of the savings clause (supra) was not available to be validly assigned to the petitioners.

5. Even if assuming, that the said concurrent conclusions are frail, and, may be also assuming, that in the column of cultivation

occurring in the Jamabandis, appertaining to the petition land(s), and, also assuming that such Jamabandis are drawn assumingly prior to 1950. Moreover even if assumingly, the said Jamabandis, do not unfold, that the purported predecessors-in-interest of the petitioners, thus were purportedly not holding possession of the petition land(s), as Chakotedars, rather purportedly were holding possession thereon, thus in an individual and an independent capacity, or without any encumbrance or liability to pay rent to the land owners concerned.

6. Be that as it may, the entries in the classification column of the relevant Jamabandis, rather is of utmost importance. A reading of the classification column of the relevant Jamabandis, as are discussed at length, in the concurrently made decisions against the petitioners, by the authorities below, thus reveal that therein, an entry of "*Gair Mumkin Dharamshala & Chah Pukhta*" besides an entry of "*Dakar Baag*" rather exists. Therefore, the said revenue entries in the relevant Jamabandis, do partake a trait or a character, which but obviously did not render them to become amenable for cultivation. If so, obviously even if assumingly, in the column of cultivation concerned, may be the predecessors-in-interest of the petitioners were, but prior to 1950, recorded to be holding, thus purportedly independent cultivating possession of the petition land(s). Nonetheless, since the said land(s), given theirs in the classification columns thereof, being reflected to be rather per se uncultivable. Therefore, the factum of may be the predecessors-in-interest of the petitioners becoming entered in the column of cultivation, to be as such purportedly, thus holding independent cultivating possession of the

petition land(s), but prior to 1950, rather is but a stray, or, an inconsequential entry. In sequel, it does not support the petitioners' argument, that as such they were entitled to receive beneficent grace of the apposite savings clause, which however, has therein, the above stated ingredients.

7. Moreover, in the classification column of the Jamabandi drawn for the year 1983-1984, though therein, in substitution of an earlier entry of "*Baag Rousli*", an entry of "*Chahi*", thus manifesting. Resultantly, when otherwise, for the petitioners becoming enabled to become valid recipients of the apposite savings clause, they were required to establish theirs cultivating the petition land(s), prior to 1950, and, not subsequent to 1983-1984, whereas, the entry of "*Chahi*" occurring much belatedly from 1950, rather it occurring only in the year 1983-1984. Therefore the requirement, as envisaged, in the apposite savings clause, thus asking for evidence being adduced, that the plaintiffs cogently establish, that they were holding cultivating possession of the petition land(s), prior to 1950, thus reiteratedly remains completely unestablished.

8. In addition, in the Jamabandi drawn for the year 1968-1969, does carry in the column of ownership thereof, the name of the Gram Panchayat concerned. However, the substitution of the Gram Panchayat in the said column of ownership, but in place of the earlier thereto entries, reflecting the owner of the petition land(s) to be "*Shamlat Har Char Pana Hasab Rasad Raqba Khewat*", has remained unchallenged, on the ground, that it was unauthorizedly drawn, and/or, is fallacious. In the wake of the said challenge not being made to the Gram Panchayat, being entered in

the column of ownership, in the Jamabandi drawn for the year 1968-1969, thus enable this Court, to draw an inference, that thereby the petitioners are estopped to challenge the recorded title, as, owner over the petition land(s) of the Gram Panchayat concerned. Since, in the column of cultivation thereof, the petitioners are shown as “*Gair Marusi*”, which but is a conferment of a limited status upon them, and/or, is terminable through institution of an eviction petition against them. Therefore, the effect of the above unchallenged entries existing in the Jamabandi relating to the petition land(s), and, as become drawn for the year 1968-1969, is that, the petitioners have no right to claim a declaratory relief qua theirs being declared as owners in possession of the petition land(s), yet especially when they only have an unchallenged recorded limited status, as “*Gair Marusi*” over the petition land(s).

Final Order

9. In aftermath, this Court does not find any merit in the instant writ petition, and, with the above observations, the same is dismissed. The impugned orders are affirmed and maintained.

10. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

03.05.2023
devinder

(KULDEEP TIWARI)
JUDGE

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