

104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CWP-15842-2015 (O&M)
Date of decision:30.05.2023

RAM PHAL

...Petitioner

Versus

STATE OF PUNJAB AND ORS.

...Respondents

(2) CWP-15935-2015

AJAIB SINGH

...Petitioner

Versus

STATE OF PUNJAB AND ORS.

...Respondents

(3) CWP-16184-2015

KARNAIL SINGH

...Petitioner

Versus

STATE OF PUNJAB AND ORS.

...Respondents

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

Present: Mr. Sandeep Arora, Advocate
for the petitioner (in all cases).

Mr. Maninder Singh, DAG, Punjab

Mr. Raj Kumar Garg, Advocate
for respondent No.4-Gram Panchayat

SURESHWAR THAKUR, J. (ORAL)

1. Since all the writ petitions arise from a common thereto orders embodied in Annexure P-7, therefore, all the writ petitions are amenable for being decided through a common verdict.

2. Jagdev Singh son of Mal Singh, Ram Phal son of Nikka Singh, and, Jagdev Singh son of Nikka Singh, all respectively constituted cases bearing Nos.1046/DDPO, 1047/DDPO, and, 1048/DDPO, thus before the learned Collector. The above cases were filed under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”). In the suit (supra), the plaintiffs claimed the making of a declaratory decree of ownership in their favour in respect of the suit khasra numbers.

2. The learned Collector concerned, through a common order drawn, on 26.10.1998 (Annexure P-4), on the above cases, thus proceeded to decree the plaintiffs’ suit, thereby declared them to be owner in possession of the suit property.

3. The basis for making the above decision became founded, upon the factum, that though in the jamabandis pertaining to the suit lands, and, relating to the year 1961, the disputed lands were reflected as *Shamlat Deh*, and, in the column of ownership, the Gram Panchayat concerned, was reflected to be the owner of the said lands. However, since in the subsequent jamabandis an entry in the column of ownership, thus reflecting *Mushtarka Malkan* was made therein. Therefore, it was concluded, especially when there is no evidence existing on record, thus suggestive, that the plaintiffs are *Chakotedars* over the disputed lands, that thereupon they are entitled to the espoused declaratory decree of title as owners over the disputed lands.

4. Feeling aggrieved from the above, the Gram Panchayat concerned, instituted separate appeals, respectively bearing Nos.32, 34, and, 35 of 1999, before the competent Appellate Authority concerned. The said appeal(s) was decided, on 09.11.2001, and, thereby the competent Appellate Authority, after reversing the assigning of a declaratory decree, thus by the learned Collector

concerned, rather proceeded to allow the Gram Panchayat's appeal, hence dismissed the plaintiff's suit.

5. Feeling aggrieved, against the order of the competent Appellate Authority, the petitioners approached this Court through filing CWPs-4855, 4918 and 5080 of 2002. This Court through an order made, on 08.10.2012, set aside the order (supra) of the Appellate Authority, and, remitted the *lis* to the Director, Rural Development and Panchayat Department, Punjab to decide the appeal afresh, in accordance with law, within three months.

6. The parties appeared before the learned Joint Development Commissioner IRD Punjab, Vikas Bhawan Sector 62 Ajitgarh (Mohali), thus the exercising the powers of Commissioner) (hereinafter referred to as "the Commissioner"). The Commissioner through an order made, on 14.05.2015 (Annexure P-7) again allowed the appeal of the Gram Panchayat concerned, and, dismissed the plaintiff's suit.

7. Plaintiffs are aggrieved from the dismissal of their suit, through (Annexure P-7) by the Commissioner concerned, and, thus cast a challenge thereto, through their instituting the instant writ petition(s) before this Court.

8. For brevity, the learned counsel for the petitioners has vehemently argued, that the entries in the jamabandis reflecting the petitioners or their respective predecessors in interest to be *Chakotedars* over the disputed lands rather are false or fictitious entries. Therefore, he argues that no sanctity, and/or, no presumption of truth is to be assigned thereto. Contrarily, he submits that the presumption of truth, if any, as attachable to the said entry becomes belied, from lack of adduction of cogent evidence by the Gram Panchayat concerned, thus in personification, that as a matter of fact, thus rent or *chakota*, was either determined or was tendered by the cultivators concerned.

9. Apparently, the said entry in the jamabandi, does carry a presumption of truth, and, the said presumption of truth, unless belied thus hold(s) an aura of conclusivity. Therefore, the discharging onus was always cast, upon the plaintiffs to, as such adduce cogent evidence, rather for dislodging the said presumption of truth, as, attached to the revenue entry (supra). However, the said presumption of truth remains undislodged, as the discharging onus, as became cast, upon the plaintiffs rather remained completely undischarged, inasmuch as, no evidence became adduced by the plaintiffs, but suggestive that the said entry, in the jamabandis, rather reflecting the petitioners or their predecessors in interest, to be *Chakotedars* of the petition lands, hence was ideally or fictitiously made. Therefore, in the absence of discharging(s) of the said onus, the presumption of truth attached to the said entries, hence acquires an aura of conclusivity. The sequel thereof, is that, if the petitioners or their respective predecessors in interest were *Chakotedars*, over the disputed lands, as such, they were not entitled to claim a status, other than theirs being *Chakotedars*, and/or, were barred from claiming any status as lawful title holders over the disputed lands.

10. Be that as it may, even otherwise in the classification column of the jamabandi rather the suit lands, are described as *Banjar Qadim*. Therefore, the said categorization assigned in the revenue records, to the suit lands, obviously made them unfit or unamenable for cultivation. In consequence, even after assuming that there is some *iota* of evidence, to dislodge the presumption of truth attached to an entry in the revenue records, reflecting the petitioners or their respective predecessors in interest to be *Chakotedars*, over the disputed lands, yet given the above assigned classification to the disputed lands, when thus makes them unamenable or unfit for cultivation. Resultantly, neither the petitioners nor their predecessors in interest were entitled to claim, that in terms

of Section 2(g)(5) of the Act, provisions whereof becomes extracted hereinafter, especially when thereby land(s) entered in the revenue records, as *Banjar Qadim*, but used for common purposes of the village according to revenue records, are statutorily designated, to fall within the realm of *Shamlat Deh* lands, thus yet the disputed lands cannot be said to be *Shamlat Deh* lands.

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

11. Therefore, unless evidence became adduced but suggestive, that irrespective of the said classification, as, assigned to the disputed lands, inasmuch as, theirs being described as *Banjar Qadim* land, that yet they were not used for common purposes, of the village according to the revenue records, thus then the plaintiffs rather may have become entitled to claim, that since yet there was such evident non user of the said lands for common purposes of the village according to the revenue records, thereby the disputed lands, did not fall within the ambit of *Shamlat Deh*. Even in the above regard, there is no evidence, as, comprised in adduction into evidence, thus of the *Wajib-ul-arz* concerned, rather reflecting that the petition lands, were not used for the common purposes of the village. Therefore, the legal consequence thereof, is that, with the disputed lands being entered in the revenue records, as, *Banjar Qadim*, thus they were as such used for the common purposes of the village according to revenue records, and, thereby they fell within the domain of *Shamlat Deh* lands, rather within the purview of Section 2(g)(5) of the Act.

12. Lastly, the learned counsel for the petitioners herein, argued that, the petitioners or their respective predecessors in interest, were *Pattidars* over the petition lands. Therefore, irrespective of entries (*supra*) in the *jamabandis*, yet the said entry(ies), cannot stand in the way nor can any stop them from asserting that they were lawful *Pattidars* over the disputed lands. The above argument

would appeal to the judicial conscience of this Court, only if cogent evidence became adduced, as, comprised in the list of *Bartan Darans*, and, carrying reflections therein, that either the petitioners or their respective predecessors in interest, were *Pattidars* over the disputed lands, and, further that such *patti* lands, were evidently not used for the common purposes of the village, but were evidently exclusively meant for user of the *Pattidars*, who but evidently are only the petitioners or their respective predecessors in interest. Even the above evidence has again remained unadduced.

13. In aftermath, this Court finds no merit in the writ petitions. Consequently, all the writ petitions are dismissed, and, the impugned order enclosed in Annexure P-7 is affirmed, and, maintained.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, stand(s), disposed of.

16. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

30.05.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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