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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-14955-2016

Date of Decision : 09.05.2023

GRAM PANCHAYAT MAVI SAPPAN

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

....Respondents

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

Present : Ms. Raman Rekhi, Advocate
Mr. C.L.Premy, Advocate and
Ms. Navjot Kaur, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Kanwaljit Singh, Sr. Advocate
with Mr. Robin Gill, Advocate
for respondents No. 4 and 5.

SURESHWAR THAKUR, J. (Oral)

Factual Background

1. One Darshan Lal and another instituted a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, (for short hereinafter referred to as 'the PVCL Act'), wherein Gram Panchayat/Gram Sabha Village Mavi Sappan, Tehsil and District Patiala through its Sarpanch thus became impleaded as a defendant-respondent. In the title suit (supra), the plaintiffs claimed the making of a declaratory decree, in their favour, to the effect, that they be declared as valid owners in possession of the suit khasra numbers.

The learned Collector concerned, through an verdict made on

the said civil suit, on 15.02.2005 (Annexure P-14), rather declined the espoused declaratory relief to the plaintiffs, respondents herein. The aggrieved therefrom plaintiffs instituted thereagainst a statutory appeal bearing No. 114/2005, before the Competent Appellate Authority concerned, but through an order made thereons on 28.02.2007 (Annexure P-15), the appellate authority, after accepting the said statutory appeal, proceeded to annul the verdict, as became initially recorded by the learned Collector concerned (Annexure P-14), whereby a dismissal verdict thus became made on the plaintiffs suit, rather by the learned Collector concerned.

3. The Gram Panchayat concerned, becoming aggrieved from the making of Annexure P-15, thus has assailed it, through its instituting Civil Writ Petition No. 15279 of 2007 before this Court. This Court through an order drawn on 25.01.2013 (Annexure P-17), on the writ petition (*supra*), remitted the *lis* to the Director, Rural Development and Panchayat, Punjab, for adjudicating the appeal afresh, as, been filed by the appellants-plaintiffs, respondents herein.

4. Through an order drawn on 04.02.2016 (Annexure P-18), upon the remanded *lis*, the competent appellate authority accepted the appeal filed by the appellants-plaintiffs, respondents herein.

5. The above made decision (Annexures P-18), accepting the plaintiffs appeal, has caused pain to the petitioner-Gram Panchayat and has led it to institute thereagainst, the instant petition before this Court.

Facts relevant for adjudication of the instant writ petition.

6. The learned Collector concerned, in his making a dismissal verdict, upon, the plaintiffs suit, had founded the same on the premise, that

the respondents herein, plaintiffs in the civil suit, became completely

incapacitated to well rest any claim for any declaratory decree, thus becoming passed in their favour, thereby, declaring them to be valid owners with valid possession over the petition lands. The said premise become rested, upon, the anvil that the respondents before this Court, rather entering upon the petition lands, through a lease deed, becoming accorded in their favour, by the Gram Panchayat concerned. The above conclusion became rested, upon, the lease registers, Exhibit R-2 and Exhibit R-4, as became tendered before the learned Collector concerned.

7. Despite the above reason becoming assigned by the learned Collector concerned, for non suiting the plaintiffs, who are respondents before this Court, the learned Appellate Authority concerned, proceeded to through its drawing Annexure P-18, assigned reverence to an entry in the record of rights, relating to the petition lands thus commencing from the year 1951 onwards, wherein in the column of ownership whereof, the petition lands became designated as '*shamlat deh hasab rasab arazi khewat*', and, in the column of classification thereof, the entry of '*Maqbooja Malkan*' became displayed. On the basis of the above entries, the competent Appellate Authority concerned, drew a further conclusion, that despite the petition lands becoming designated in the column of classification, as *Gair Mumkin*, yet since in terms of Section 2(g)(5) of 'the PVCL Act', provisions whereof become extracted hereinafter, there existing no evidence on record but displaying that the petition lands, became reserved for common purposes of the village according to the revenue records. Resultantly, the Appellate Authority made a conclusion that the plaintiffs in the civil suit, respondents herein, were able to save the petition lands from theirs falling within the ambit of *shamlat deh*

lands.

“2(g) ‘shamilat deh’ includes-

(1) xxxxxxxx;

(2) xxxxxxxx;

(3) xxxxxxxx;

(4) xxxxxxxx;

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

Reasons for rejecting the conclusion drawn by the Appellate Authority.

8. For the reasons to be assigned hereinafter, the above made conclusion by the appellate authority rather is completely infirm. The above inference becomes secured, from the factum, that even though the above extracted provisions of Section 2 (g)(5), as carried in 'the PVCL Act', thereby do bring those lands described in the classification column, of the jamabandis concerned, as *banjar qadim*, thus within the ambit of the definition of *shamlat deh* lands, but yet since the word 'and' intervenes the prior thereto statutory coinage “*lands in any village described as banjar qadim*” and the subsequent thereto statutory coinage “*used for common purposes of the village according to revenue records.*” Thus, obviously for rendering *banjar quadim* lands, to fall within the ambit of the definition of *shamlat deh* lands, did not merely require, hence theirs becoming designated in the apposite classification column as *banjar qadim lands*, but also required that evidence becomes adduced that they were, as such, evidently used for the common purposes of the village. Therefore, since the plaintiffs in the civil suit, respondents herein before this Court rather claimed the benefit of the said clause, thus, it became incumbent upon the plaintiffs therein, respondents herein, to discharge the onus of proving,

that despite in the classification column of the apposite jamabandi, the

disputed lands being described as *banjar qadim*, yet they were not used for the common purposes of the village. However, the above onus, as become cast upon the plaintiffs, and, which was to be discharged by them, through adduction of cogent evidence, as became comprised in the apposite *wazib ul arz*, thus becoming placed on record, and, in making the above displays, besides became comprised in the factum that the respondents, before this Court, were in the apposite list of *bartan darans*, assigned the benefit to alongwith the other members of the village propriety body, thus make common users thereof, imperatively alongwith the other enlisted *bartan darans*. Resultantly only in the above event, the above extracted savings clause to the definition of *shamlat deh* lands, would come to the fore and would protect the petition lands, thus from becoming amenable to be construed to be *shamlat deh* lands.

9. Reiteratedly, the above onus remains undischarged. Therefore, the above made reasoning by the learned Appellate Authority, is completely infirm, and, as arises from a complete mis-reading of the definition of Section 2(g)(5) of 'the PVCL Act', besides is made in complete derogation of the requisite onus, though becoming cast, upon, the plaintiffs, especially as they intended to derive the benefit thereof, yet the said onus remaining completely undischarged.

10. Be that as it may, the competent Appellate Authority concerned, has completely irrevered the creditworthiness of the lease registers, which but openly displays that the plaintiffs in the civil suit, respondents before this Court, were assigned leases over the petition lands, thereby the plaintiffs in the civil suit, thus became completely debarred besides became estopped, from claiming that they were within

the ambit of Section 2(g)(viii) of 'the PVCL Act', provisions whereof become extracted hereinafter, thus amenable to become assigned the benefit thereof.

“2(g) ‘shamilat deh’ includes-

(1) xxxxxxxx;

(2) xxxxxxxx;

(3) xxxxxxxx;

(4) xxxxxxxx;

(5) xxxxxxxx;

“but does not include land which:-

(i) xxxxxxxxx

(ii) xxxxxxxxxxxx;

(iii) xxxxxxxxx

(iv) xxxxxxxxxxxxxx;

(v) xxxxxxxxxxxxxx

(vi) xxxxxxxxxxxx

(vii) xxxxxxxxx

(viii) was shamlat 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 shamlat deh on or before the 26th January, 1950; or

11. Though a reading of the provision of Section 2(g)(viii) of 'the PVCL Act', as become extracted hereinabove reveals, that in respect of the lands described in the column of ownership as *shamlat deh hasab rasab arazi khewat*, and, in the column of classification thereof, theirs thus becoming described as *Maqbooja Malkan Khewatdar*, yet in case the individual cultivators' concerned, are able to prove that they or their predecessors in interest rather were in individual cultivating possession of the petition lands, besides also proving that such independent cultivating possession occurred on or prior to 26.01.1950. Resultantly then too, the plaintiffs may have saved the petition lands from their vestment in the *shamlat deh* concerned. However, even the above discharging onus in

respect of the beneficent grace of Section 2(g)(viii) of 'the PVCL Act' thus being assignable to the plaintiffs, rather also remained completely undischarged by the plaintiffs therein. The reason is that they were not able to produce any genealogical table, but revealing that they derived their interest in the disputed lands, from their valid predecessors in interest. Even the above would have happened only when their predecessors in interest, were recorded, in the column of cultivation of the jamabandis drawn in respect of the petition lands, thus relating to the years', prior to 1950, rather to be holding independent cultivating possession of the petition lands.

12. Since the above evidence remained unadduced, therefore, it was completely legally inapt for the learned Appellate Authority concerned, to assign to the respondents before this Court, thus the benefit of the said saving clause. As above stated, even if assumingly, the benefit of the said savings clause was assignable to the plaintiffs in the civil suit, but yet the mandate of Section 2(g)(5) was to be read harmoniously and alongwith, the provisions of Section 2(g)(viii). Therefore, unless the plaintiffs had proved, that despite, the petition lands becoming described in the classification column, as *banjar qadim*, yet the said designation of the petition lands as *banjar qadim*, rather not per-se making them fall, within the ambit of the definition of *shamlat deh*, especially unless the secondary ingredient, as carried in the second portion of the said statutory provision, becoming proven, through cogent evidence surging forth, rather suggestive, that the petition lands became not used for the benefit of the common purpose of the village, thus according to revenue records.

13. Since for the above stated reason, the said discharging onus

remains completely undischarged at the instance of the plaintiffs in the civil suit. Therefore, when both the said statutory provisions are to be read combinedly and conjunctively and not independently of each other. Therefore, as such, it is to be concluded, that the benefit neither of Section 2(g)(5) nor of Section 2(g)(viii), was to be assigned to the plaintiffs in the civil suit, who are the respondents herein.

14. Emphasizingly, it is but clear and candid that the plaintiffs were assigned leases of the petition lands. Therefore, as above stated, the plaintiffs were completely estopped to claim right, title or interest, over the petition lands, thus as owners thereof.

Submissions of the learned counsel for respondents No. 4 and 5.

14. Though the learned counsel for the respondents before this Court argues that the drawing of mutation No. 427 viz-a-viz, the petition lands whereby they became transferred to the Nagar Panchayat concerned, is an invalidly drawn mutation, as it is not supported by any document of title. However, even the above submission is completely frail, as the necessity of existence of a document of title, thus supporting the order of mutation arises only, when there is no statutory provision, thus mandating that unless any of the apposite exclusionary clause(s) to the definition of *shamlat deh lands* rather evidently come to the forefront, so as to save the petition lands from their becoming vested in the *shamlat deh* concerned, thereupon, alone the order of mutation would become invalid.

15. Since the special Act (Supra), contemplates both the inclusionary clauses to the definition of *shamlat deh*, as also the exclusionary clauses theretos. Therefore, when the order of mutation was planked upon the relevant inclusionary definition to the *shamlat deh*

lands, and when for the reasons above stated, the respondents herein are completely unable to bring forth evidence but suggestive that the apposite exclusionary clause(s) to the definition of *shamlat deh* lands rather is available to them. Resultantly the making of the order of mutation No. 427, by the Competent Revenue Officer concerned, even if it is not supported by any document of title, but when it is well supported from the revenue record, which completely displays, for the reasons (supra), to make the petition lands to fall within the inclusionary definition of *shamlat deh*. Therefore, the drawing of the order of mutation is valid.

Final Order of this Court.

16. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed. The impugned order Annexure P-18, is quashed and set aside. The order passed by the learned Collector concerned (Annexure P-14), is maintained and affirmed.
17. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

09.05.2023
kavneet singh

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