

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-13691-2017 (O & M)

Reserved on: 19.04.2023

Pronounced on: 26.04.2023

Sukhbir and others

.....Petitioners

Versus

The Commissioner, Rohtak Division, Rohtak and Ors

...Respondents

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

Argued by: Ms. Ritu Pathak, Advocate
for the petitioners.

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

Mr. Vikas Mohan Gupta, Advocate
for respondents No. 4 to 9.

None for respondent No. 10.

SURESHWAR THAKUR, J.

Factual Background.

1. Hari and others instituted on 09.05.2008 case No. 14/SDO before the Assistant Collector concerned. In the said case, Sukhbir Singh and others, petitioners herein, became impleaded as respondents therein. The said case was filed under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act 1961, (As applicable to the State of Haryana) hereinafter for short called 'the PVCL Act' and thereins a relief was claimed for the making of an order of eviction, against the impleaded therein respondents.

2. In the said petition, it was averred that the Gram

Panchayat, Pehladpur, was the owner of plot/Khasra No. 3864, 3831 and 3829. Furthermore, it was also averred that in the revenue records, a reflection occurs qua, on khasra No. 3864, a *Gora Deh* exists, qua on khasra No. 3829, an entry of *sare aam rasta* exists, whereas, in the revenue records appertaining to khasra no.3831, the same is entered/shown as *shamlat deh*. The respondents therein are averred to make encroachments, upon, the said khasra numbers, and, the said encroachments, as made on the khasra numbers (supra), by the respondents therein, was averred to be made through construction of boundary walls rather skirting the said khasra numbers.

3. As apparent on a reading of the order, as enclosed in Annexure P-4, the respondents in the *misl* (supra), raised a dispute in respect of title qua the above khasra numbers, vesting in the panchayat concerned, besides obviously asserted title over the said khasra numbers. However, it appears, on a reading of the apposite decision, as made on 28.12.2012, that the said raised assertion by the respondents qua theirs holding title to the khasra numbers (supra), did not result, in the Assistant Collector concerned, to, in terms of Section 7 of 'the PVCL Act', provisions whereof are extracted hereinafter, thus making a decision (Annexure P-4), whether as a matter of fact, the said assertion of title to the said khasra numbers (supra), was a genuinely raised assertion, nor, also obviously he made an objective speaking decision in respect of the said assertion. Moreover, obviously he did not also, on discerning the said assertion to be truthful, but on his making an incisive examination(s) of the records, deem it fit to refer the said question of title, thus, for its determination being made rather by the competent statutory adjudicatory authority concerned.

Powers to put panchayats in possession of certain lands-

[7. (1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and Put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887 :

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the question of title under provision to sub-section (1), shall be the same as laid

down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorized possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.....”

4. On the other hand, the Assistant Collector concerned, through a decision made on 28.12.2012, as enclosed in Annexure P-4, merely on the basis of his making a spot inspection, and, without his ensuring that a valid demarcation is made of the disputed khasra numbers rather by an empowered revenue officer concerned, thus, proceeded to make an order of eviction, upon, the petitioners, in respect of the disputed khasra numbers (Supra).

5. The aggrieved from the decision enclosed in Annexure P-4, instituted thereagainst executive appeal No. 13/DC of 2013, before the Competent Appellate Authority concerned, but the latter also through a decision made on 26.05.2015, on the executive appeal (supra), decision whereof becomes enclosed in Annexure P-5, thus, dismissed the said executive appeal. The above led the aggrieved to institute thereagainst a revision/monitoring petition before the Commissioner, Rohtak, who also through a decision made on 23.12.2016, upon executive petition No. 95, declined the espoused relief to the aggrieved-revisionist concerned. Therefore, the petitioners become aggrieved from the concurrently made decisions (supra) against

them, thus, are led to institute thereagainst the instant writ petition before this Court.

Question of title, as raised by the petitioners not decided in terms of Section 7 of 'the PVCL Act'. Therefore, the impugned decisions are flawed and require that they be quashed and order of remand be made to the Remandee Court for its making a determination in respect of the said assertion.

6. As above stated, in Annexure P-4, there is a reference about the assertion before the Collector concerned, of title qua the khasra numbers (supra) vesting in the petitioners herein. Moreover, there is also reference in Annexure P-4, that the petition khasra numbers are located inside the *lal dora*, and or, are within the four corners of the *abadi deh* land. The effect of the above alluded facts, in Annexure P-4, is that, thereupon, the Assistant Collector concerned, who tried misl No. 14/SDO, and who made a decision in favour of the petitioners therein, was thus required to, after permitting the respondents therein, petitioners herein, to adduce documentary evidence, but suggestive that their assertion of title to the disputed khasra numbers, thus, was a genuinely made assertion besides thereafter was also required to make an objective decision, that such an assertion was truthful, or not. Moreover, the Assistant Collector concerned, was subsequently enjoined to record a finding that the *lis* (supra), especially when the same involved a valid assertion of title by the petitioners herein, in respect of disputed khasra numbers (supra), thus, required an adjudication being made thereons by the competent adjudicatory authority concerned, and, if the competent adjudicatory authority rather was the Assistant Collector, thus, the latter was to try the *lis* as a civil suit. However, the above has not been done, whereas,

if the above exercise was embarked, upon, by the Assistant Collector concerned, and which for reason (supra), became so necessitated, thus, the petitioners herein, may not have suffered concurrent verdicts of eviction, as made against them, through the impugned Annexures. Contrarily, they may have been able to save themselves from their eviction being ordered from the disputed khasra numbers. It is only because of the above enjoined statutory duty, not becoming complied with, by the statutory authorities below, that the petitioners herein become encumbered with a grave injustice, which but has pre-empted them to assert title to the disputed khasra numbers, but on the anvil of the revenue entries though suggesting, that the *sharae aam rasta* which though existed within the *abadi deh* or *gorah deh*, though did, extantly prima facie, fall within the inclusionary definition of *shamlat deh* lands, as defined in Section 2(g)(4a) of the Act (supra), provisions whereof are extracted hereinafter. Nonetheless, theirs' yet, on the basis of the said *sharae aam rasta* being unlawfully entered as such, in the revenue records, could thus claim since their ancestors, but a title to the said *sharae aam rasta* or open space within the *abadi deh*.

“(g) "***shamilat deh***" includes-

(1) *lands described in the revenue records as [shamilat deh or Charand]excluding abadi deh;*

(2) *shamilat tikkas;*

(3) *lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*

[(4) lands used or reserved for the benefit of the village community including streets, lanes, playgrounds, schools, drinking wells, or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of

the Punjab Gram Panchayat Act, 1952 excluding lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act;]

[(4a) vacant land situate in abadi deh or gorah deh not owned by any person;]

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

7. Moreover, they yet may have been well facilitated to also, in respect of khasra No.3864, whereons purportedly exists a *gorah deh*, rather well endeavour to make even the said *gorah deh*, to if yet falling within the ambit of the apposite inclusionary clause, to the definition of *shamlat deh*, as carried in terms of Section 2(g)(4a) of 'the PVCL Act', rather contend that prima facie, such assigned description to the said khasra numbers, in the revenue records, is not a credit worthy designation thereto. Further, also the petitioners herein may then have become assigned an able opportunity to further contend that the petition khasra number 3831, but purportedly entered as *shamlat deh*, was yet amenable for its becoming saved from its vestment in the *panchayat deh*. Thus, on the basis of the exclusionary clause, to the definition of *shamlat deh*, as becomes carried in Section 2(g)(viii) of 'the PVCL Act', provisions whereof are extracted hereinafter, whereby in respect of *shamlat deh* lands, which are evidently, in the cultivating possession of the predecessors in interest of the co-sharers concerned, and, such possession is evidently before 26th January, 1950, there occurs a statutory prohibition against vestment of such *shamlat deh* lands in the

panchayat deh.

“(g) ***“shamilat deh”*** includes-

- (1) xxxxxxxxxx;
- (2) xxxxxxxxxx;
- (3) xxxxxxxxxx;
- [(4) xxxxxxxxxx;]
- [(4a) xxxxxxxxxx;]
- (5) xxxxxxxxxx;”

“but does not include land which:-

(i) becomes or has become shamlat deh due to river action or has been reserved as shamlat in villages subject to river action except shamlat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi-permanent basis to a displaced person;

[(ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act but on or before the 9th day of July, 1985;]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamlat deh and is so recorded in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamlat taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village

(vi) lies outside the abadi deh and is used as gitwar, bara, manure pit or house or for cottage industry, immediately before the commencement of this Act;]

(vii) [-----]

(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

(ix) is used as a place of worship or for purposes subservient thereto;”

8. Be that as it may, it is purely on account of the above well necessitated opportunity not being assigned to the petitioners herein, by the statutory authorities below, obviously despite theirs' raising an assertion of title to the khasra numbers (supra), and which opportunity may have been ably assigned to the petitioners, only when the said assertion of title rather in terms of Section 7 of 'the PVCL Act', thus, became objectively decided, to become truthfully raised. However, the said assertion of title neither became objectively considered, nor, any speaking decision became made thereons. Therefore, the petitioners have been completely pre-empted to save the petition lands from becoming owned or possessed by the Gram panchayat concerned, and or, theirs' becoming saveable from their vestment in the *panchayat deh* concerned.

9. Even otherwise, there is no discussion in respect of the said assertions, as made in petition, nor there is any reference whether the said assertion(s) are planked upon any corresponding revenue entries, in respect thereof, as occurring in the relevant jamabandis, as appertaining to the petition lands. Therefore, the impugned orders are made sketchly and in a haphazard manner, but obviously suffer from the vice of grossest non application of mind to the *lis* at hand.

10. In addition, the spot inspection, as made of the disputed khasra numbers, is not but a sufficient substitute to a valid demarcation of the sites concerned, thus, being made by the competent revenue

officer concerned. Therefore, merely on the basis of spot inspection, no conclusion could be ably drawn by the competent authority, that as such the petitioners herein are encroachers upon the disputed khasra numbers, but yet subject to whether they had been able to prima facie, establish, their assertion of title over the disputed khasra numbers (supra), whereas, their assertion of title, though was required to be adjudicated upon, but in terms of Section 7 of 'the PVCL Act', which however, has also not been done. Therefore, cumulatively, this Court finds reason to interfere with the impugned orders. In consequence, the writ petition is allowed.

11. In consequence, the *lis* is remanded to the learned Assistant Collector concerned, to initially make an objective determination in respect of the assertion of title, as made by the petitioners herein, qua the disputed khasra numbers, but on his making prima facie analysis of the documentary evidence, as become adduced before him, by the petitioners herein, and if such a decision constrains him to omit to make further progresses upon the above misl, he shall ensure that an apt determination, in accordance with law, be made by the competent adjudicatory statutory authority, upon the title, as asserted to the petition lands, by the petitioners. If the Assistant Collector is the competent adjudicatory authority to determine the question of title, he shall make such determination in the manner, alike the one, as done by a Civil Court, upon, a civil suit concerned.

12. However, in case the Assistant Collector concerned, rejects the said assertion of title, but through an objective decision being made, thereupon, he shall proceed to draw a fresh decision, in accordance with

law, on case no.14/SDO (Annexure P-4), but after granting of

opportunity of hearing to all concerned, and, after ensuring that a valid demarcation of the petition lands, is made by the competent revenue officer concerned, besides the said demarcation becoming lawfully proven by the author concerned.

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

(SURESHWAR THAKUR)
JUDGE

26.04.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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