

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CWP-15100-2017

Date of Decision: 03.05.2023

RESHAM SINGH (SINCE DECEASED) THR. HIS LRS -Petitioner

Versus

STATE OF PUNJAB AND OTHERS -Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. R.S. Chauhan, Advocate with
Ms. Deepika Chauhan, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. H.P.S. Ishar, Advocate
for the respondent No.3.

SURESHWAR THAKUR, J.

1. The present petitioner instituted, on 08.05.2012, a suit under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), against Gram Panchayat Manjhwal, Block Kot Isse Khan, Tehsil Zira, District Ferozepur, through its Sarpanch. In the suit (supra), the plaintiff claimed a declaratory relief, that he be declared owner in possession of the suit Khasra numbers. Through a decision made on 31.05.2013 (Annexure P-6), upon the said suit, the learned Collector concerned declined the asked for declaratory relief to the plaintiff, petitioner herein.

2. The aggrieved plaintiff, petitioner herein, instituted thereagainst a statutory appeal bearing No.132 of 2013, before the learned

competent appellate authority concerned, but through a decision made thereon, on 19.05.2017 (Annexure P-7), the learned competent appellate authority dismissed the said appeal, and thus affirmed the order, as became earlier recorded on 31.05.2013, by the learned Collector concerned. Therefore, the petitioner becomes pained from the above concurrently recorded verdicts of dismissal, as became made, upon, his suit (supra), and, appeal (supra), and thus, is led to institute thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioner

3. The learned counsel appearing for the petitioner, has argued before this Court, that since the Gram Panchayat concerned had, earlier to the suit (supra) becoming instituted, by the plaintiff, petitioner herein, rather taken to file a petition under Sections 4, 5, and, 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the 'Act of 1973') before the learned Collector-cum-D.D.P.O. concerned, thus asking for the eviction of the respondent therein, petitioner herein, from the land(s) in dispute, but yet a disaffirmative verdict became recorded on the said petition on 27.3.1995. Since therein occurred a finding, that as per the Jamabandi for the year 1957-1958, the Gram Panchayat concerned has no connection with the petition land(s), given the same being entered as "*Jumla Malkan Va Digar Haqdaran Hasab Rasad Raqba*", nor also when it was proved before the said authority, that it is being used for common purposes. Moreover, when in an appeal, as became directed thereagainst by the Gram Panchayat concerned, before the learned Commissioner, Ferozepur Division, Ferozepur, resulted in the said appeal

becoming dismissed for default, on 06.12.1995, and thereafter, also on 29.09.1998, and, subsequently it not being ordered to be restored. Therefore, the learned counsel for the petitioner argues, that the binding and conclusive decision, as made on the petition cast under Sections 4, 5 and 7 of the Act of 1973, and, with the above findings, thus makes the findings (supra) to be binding and conclusive. Therefore, he argues, that findings contra to the said binding and conclusive findings, were not amenable to yet become concurrently made by the statutory authorities below.

Analysis of the above submissions, and, reasons for rejecting the same

4. Admittedly, in the Jamabandi drawn for the petition land(s), and, as relates to the year 1957-1958, an entry of “*Jumla Malkan Va Digar Haqdaran Hasab Rasad Raqba*” thus evidently occurs in the ownership column thereof. However, in the Jamabandis relating to the petition land(s), and, appertaining to the years 1986-1987 onwards, rather the petition land(s) are, in the column of ownership thereof, thus reflected to be owned by the Gram Panchayat Manjhwala. The above made entry, in favour of the Gram Panchayat concerned, but in the ownership column of the Jamabandi (supra), appears to have been made in sequel to Rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, whereby, qua the above made revenue designation to the petition land(s), thus the management and control thereof, became vested in the Panchayat deh, but yet its ownership has been accorded to continue in the proprietors of the village proprietary body concerned. Therefore, even if, with the above revenue designation as made to the petition land(s), and, resultantly when only the management and control in respect thereof, thus does vest, in the

Gram Panchayat concerned, though prima facie may not have well facilitated the Gram Panchayat concerned to secure an entry in the ownership column of the Jamabandis relating to the petition land(s), and, appertaining to the years 1986 onwards. However, the said entry was required to be ably challenged. In other words, it appears that the said entry, in the ownership column of the revenue records, has occurred, thus in sequel of there being reassignment of the disputed land(s) in the Panchayat deh, but after an admitted abandonment of claims over the disputed land(s) by the village proprietary body concerned. However, the above challenge was never cast in the petition, nor any able evidence to prove the said pleading, thus was adduced. Therefore it cannot be ably argued by the learned counsel for the petitioner, before this Court, that the above entry in the column of ownership, in the Jamabandi (supra), reflecting the Panchayat deh to be the owner of the petition land(s), is but a fallaciously, or, an unauthorizedly made entry.

5. In consequence, the said entry, thus enhances a conclusion, that the Panchayat deh, is the owner of the petition land(s). Therefore the decision (supra), binding and conclusive, if any, as was made by the learned Collector concerned while exercising jurisdiction, on a petition cast under Sections 4, 5 and 7 of the Act of 1973, as laid before him, appears to have been made in prima facie gross disregard, of the Jamabandis post 1957-1958. Therefore, no solemnity is to be assigned to the binding and conclusive verdict, as became made by the authority exercising jurisdiction under the Act of 1973, nor also any conclusions and inferences, as occur therein, thus reflecting that the Panchayat deh, rather has no connection with the petition

land(s), rather reflected in the revenue records to carry the description of “*Jumla Malkan Va Digar Haqdaran Hasab Rasad Raqba*”, nor thus can secure any further able conclusion, that the entry in the column of ownership in the subsequent thereto Jamabandis, hence reflecting the Panchayat to be the owner, rather are erroneous entries. Conspicuously, when reiteratedly no contest to the said entries was made, nor any evidence to prove the said contest was adduced by the plaintiff.

6. Even otherwise, the plaintiff was under a legal obligation, to thus become a valid recipient of the apposite savings clause, as occurs in Section 2(g)(viii) of the Act of 1961, provisions whereof are extracted hereunder, to not only plead, but also to substantiate the therein cast statutory ingredients, inasmuch as, his holding independent cultivating possession of the petition land(s) 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”

7. However, the above evidence is grossly amiss. Therefore even if assuming that an entry of “*Jumla Malkan Va Digar Haqdaran Hasab Rasad Raqba*” occurs in the ownership column of the Jamabandi drawn in respect of the petition land(s), for the year 1957-1958, but yet merely on its

anvil, the petitioner cannot well rest any valid claim, that he was a member of the village proprietary body, unless he had placed on record, the list of Bartandarans, wherein, his name occurs. However, the said list of Bartandarans never became placed on record. Therefore the petitioner cannot argue, that he was a member of the village proprietary body, and as such, was in that capacity, making cultivations of the petition land(s), and, that the Gram Panchayat concerned rather has no connection with the above designation, as made to the petition land(s), in the Jamabandi drawn for the year 1957-1958. Moreover, as above stated, even if the petitioner intended to challenge the said entry, and/or, intended to state, that irrespective of the above entry being validly recorded, yet within the ambit of the ingredients (supra), as carried in the savings clause (supra), he was holding independent cultivating possession of the petition land(s) prior to 1950. Emphasizingly also, when the proceedings drawn before the authority, exercising jurisdiction under the Act of 1973 are merely summary proceedings, nor when any evidence, able and sufficient, to contest the title of the Gram Panchayat became adduced, rather when it appears, that the said verdict was made, as stated above, in gross derogation of the Jamabandis post to 1957-1958. Therefore, the said verdict, as made by the authorities exercising jurisdiction under the Act of 1973, are completely inconsequential, nor any benefit can be derived from the conclusions and inferences, as become carried therein. However, reiteratedly since the above evidence, as above stated, is lacking. Therefore the petitioner cannot argue before this Court, that assumingly even if the revenue designation made to the petition land(s), in the Jamabandi for the year 1957-1958, inasmuch as, it being reflected

therein as “*Jumla Malkan Va Digar Haqdaran Hasab Rasad Raqba*”, thus is a false, or, an erroneous entry, specifically with respect to the petition Khasra numbers, given the same being entered in breach of the proven ingredients (supra), as carried in the savings clause (supra), nor he is entitled to receive the beneficent grace of the savings clause (supra).

8. Therefore, for want of the above evidence existing on record, the petitioner cannot at all argue, before this Court, that either the above designation made to the petition land(s), in the Jamabandi for the year 1957-1958, is a false designation thereto, nor can he argue, that the entries in the Jamabandis post 1957-1958, wherein, in the column of ownership qua the petition land(s), the Gram Panchayat is entered, is either unauthorizedly made, or, is unlawfully made.

9. The further reason for upholding the impugned orders, and, for dismissing the instant writ petition, becomes grooved in the factum, that a notice under Section 150 of the Punjab Land Revenue Act, 1887, became issued upon the petitioner, thus for seeking his vacating the land in dispute. However, the said notice was challenged by the petitioner, through his filing CWP-13250-1995, and, through an order made thereon, on 11.11.2011, the said petition was decided, but, with liberty to the petitioner to deposit rent qua the petition land(s). The above order, as made by learned Single Judge of this Court, when though resulted in a LPA being filed thereagainst, by the aggrieved Gram Panchayat concerned, but since the said LPA became dismissed. Therefore the order made on CWP (supra) reserving liberty to the petitioner to deposit rent in respect of the petition land(s), does acquire finality and conclusivity. However, the assigning of liberty to the petitioner,

to deposit rent, in respect of the petition land(s), since also resulted in his thereafter tendering rent, in respect of the petition land(s), before the authority concerned. Resultantly, the said deposit, thus forecloses any submission as made before this Court, by his counsel, that he had an independent cultivating possession of the petition land(s), prior to 1950, and therefore, he is entitled to receive the benefit of the savings clause (supra). The further effect thereof, is that, the petitioner evidently does not have, any independent cultivating possession of the petition land(s), but rather through his depositing rent qua the petition land(s) in terms of the order (supra), as made by this Court, he admits qua his being a Chakotedar over the petition land(s), thus has only a limited status over the petition land(s), which otherwise in accordance with law, is liable to be terminated, through an eviction petition being filed against him, before the competent authorities below.

Final Order

10. 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.

11. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

03.05.2023
devinder

(KULDEEP TIWARI)
JUDGE

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