

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

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CWP-20164-2015

Date of Decision : **14-02-2023**

Ajit Singh and others

.....Petitioners

VERSUS

The Director Rural Development & Panchayats Punjab and others

.....Respondents

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

Present: Mr. J.P.S.Sandhu, Advocate for the petitioner.
Mr. Paramjit Batta, Addl. AG, Punjab.

KULDEEP TIWARI, J.

1. The petitioners by placing reliance upon the copy of *jamabanadi* for the year 1939-40 (Annexure P-1) wherein in the column No.4 i.e. appertaining to ownership “Shamlat Deh” is recorded and in the column of cultivation, the name of the father of the petitioners is recorded as “*gair dakhilkar*”, asserted that they are in cultivating possession of Shamlat Deh for more than 12 years immediately preceding the commencement of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '**the Act**') without payment of charges not exceeding the land revenue and cess payable thereto. Therefore, the petition land is saved from vestment in the Panchayat.

2. Before we examine the legality of above submission made by the learned counsel for the petitioners, it is apt to examine the facts in detail as the case has chequered history.

3. The petitioners have filed a suit before respondent No.2 under Section 11 of the Act for a declaration to the effect that the petitioners are owners in possession of the land measuring 23 kanals and

6 marlas comprised in Khewat No.130 Khatauni No. 103, Rect. No. 21, Killa No.25(8-0), Rect. No.22, Killa No. 21/2 (5-15), Rect. No.27, Killa No.1 (8-0), Rect. No. 28, Killa No.5/1 (1-11), situated in the revenue estate of village Chopra, Hadbast No. 609, Tehsil and District Gurdaspur. That suit was dismissed vide order dated 1.6.2006. Aggrieved by that order, the petitioners filed an appeal before Director, Rural Development and Panchayat, Punjab (exercising the powers of Commissioner). However, that appeal was also dismissed by the learned Commissioner vide order dated 14.3.2006 observing that the petitioners failed to prove their possession on the disputed land for more than 12 years prior to 1961. Both the orders passed by the authorities below were successfully challenged by filing CWP No.13901 of 2008 before this Court and this Court vide order dated 19.3.2010 set-aside both orders (Supra) and remanded the case back to Divisional Deputy Director, Rural Development and Panchayat-cum-Collector, Panchayat Land, Jalandhar/Amritsar to decide the petition afresh by passing speaking orders.

4. Thereafter, the learned Deputy Director Rural Development and Panchayat-cum-Collector, Panchayat Land, Jalandhar/Amritsar after recording evidence led by both the parties dismissed the suit vide impugned order dated 9.9.2010 (Annexure P-6). The petitioners challenged the abovesaid order by preferring statutory appeal before the Director, Rural Development and Panchayats, Punjab. However, the same was also dismissed vide order dated 20.3.2015 (Annexure P-16). Aggrieved by the order dated 9.9.2010 (Annexure P-6) and 20.3.2015

(Annexure P-16), the petitioners have filed the present writ petition.

SUBMISSIONS BY THE COUNSEL FOR THE PETITIONERS:

5. Learned counsel for the petitioners has submitted that the land measuring 23 kanals and 6 marls was in cultivating possession of the ancestors of the petitioners. The entry of Panchayat Deh in the column of ownership is wrong and illegal. Initially, their father, namely, Jetha Singh was in possession of land measuring 9 kanals 17 marlas. For this, he referred to *jamabandi* for the year 1939-40 (Annexure P-1). Thereafter, the consolidation proceedings were initiated in the years 1956-57 and during consolidation proceedings also, their father was in possession and the entry in this regard was made in *khatauni istemal*. His share was also mentioned in *naksha hakdarwar* and after the consolidation, *khatauni pamaish* was prepared and his father remained in possession of the disputed land. After the consolidation, he was allotted 23 kanals and 6 marlas of land as evident from the *khatauni pamaish*. He further submitted that Jetha Singh has been in possession over the disputed land before 29.6.1950. Therefore, the disputed land does not vest in the Gram Panchayat in view of the provisions of Section 4(3)(ii) of the Act. Learned counsel for the petitioners further placed reliance upon the order dated 27.5.1967 (Annexure P-8) passed by Sub Divisional Officer (C), Gurdaspur wherein it was observed that the father of the petitioners was in possession of the disputed land for more than 12 years and paying no rent in cash or kind exceeding land revenue and cess, hence, this land does not vest in Panchayat as per provisions of Section 4 (3)(ii) of the Act, and, the possession of the father of the petitioners

cannot be disturbed. He also placed reliance upon the report of the Local Commissioner which was appended with CWP-1884 of 2011 in earlier round of litigation. The report reads as under:-

“At the site, sugarcane crop had been harvested and a few bundles of cane were lying at the spot but the site reveals that sugarcane had been sown at the site. The land at the site was damp, and as it had rained in the earlier hours of the day, there was water logging at few places, revealing that the soil underneath was already moist. However, in the adjacent fields which were about one and half feet higher than the site land, wheat crop had been sown. Photographs no.1 to 4 reveal the situation of the site from a close look, while photos no. 5 & 6 reveal the larger topography. The Chamb area is towards the Sought, i.e. towards rectangles no. 11 & 12 as per the Aks Shajra. Photographs no. 7, 8 & 9 show land/fields on the Eastern, Western and Northern side of the site where wheat crop is sown, while photograph no.10 has been taken from the field on the Northern side.

The revenue record i.e. Jamabandi for the year 2006-07 reveals the nature of the land to be damp/moist (salabh) due to nearby Chamb. The Khasra girdawari issued by the Patwari reveals that sugarcane crop is being sown at the site.”

ANALYSIS

6. We have examined the entire record with the able assistance of both the counsels. There is no dispute that in the *jamabandi* for the year 1955, in the column of ownership, the 'Panchayat Deh' is mentioned. Now, we have to examine whether the suit land falls within the ambit of

Shamlat Deh and vests in the Gram Panchayat or whether in view of the provisions of Section 4(3)(ii) of the Act, the suit land is saved from vestment in the Panchayat . The word 'shamlat deh' is defined in Section 2(g)(i) of the Act which reads as under:-

(g) “shamlat deh” includes-

(1) lands described in the revenue records as shamlat deh (but excludes abadi deh, unless otherwise express provided in this Act)”

xx xx xx xx

Section 4(3)(ii) of the Act reads as under:-

“4. Vesting of rights in Panchayat and non-proprietors:-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land:-

xx xx xx

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the:-

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(ii) rights of person in cultivating possession of *shamlat deh*, for more than twelve years (immediately preceding the commencement of this Act) without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.”

7. A perusal of *jamabandi* for the year 1939-40 shows that in the column No.4 there is entry of Shamlat deh and whereas, in the column of cultivation, the name of the father of the petitioners is entered as *gair dakhilkar* and in the column of area and kind of land, it is recorded as

brani first. In the column of ownership, simpliciter the “shamlat deh” is recorded which as per Section 2(g)(i) falls in the inclusionary clause. Further, the kind of land mentioned in column No.8 depicts that it is *brani first*, meaning thereby, it is non cultivatable land. Therefore, the petitioners cannot claim that their father Jetha Singh was in cultivating possession in the year 1939-40. Under the column No.5 which depicts the name of cultivator, his name is entered as *gair marusi*, meaning thereby that he is 'non occupant tenant'. Therefore, the collective reading of the entries makes it clear that the land falls within the ambit of 'Shamlat Deh'. The contention of the learned counsel for the petitioners that since their father was in possession of the disputed land for more than 12 years immediately preceding to the commencement of this Act, therefore, by the dint of provisions of Section 4(3)(ii) of the Act, the land saved from vestment in the Panchayat, is not tenable. It is already mentioned that the land was recorded as *brani*. Therefore, no question arises that the father of the petitioners was in cultivating possession of the suit land. In the subsequent *jamabandi* for the year 1943-44, the entry remains the same and in the year 1955 under the name of column of owner, the 'Panchayat Deh' was entered. Therefore, none of these entries exclude the disputed land from the ambit of 'Shamlat Deh'. A perusal of the impugned verdict further shows that Jetha Singh, father of the petitioners had died in the year 1980 whereas, as per the revenue record, the disputed land remained in possession of Jetha Singh till 2004 which clearly shows that the entry which shows that Jetha Singh remained in cultivating possession after 1980 is incorrect. Overall, Jetha Singh was

recorded as *gair dhakhilkar* (non occupancy tenant). Therefore, a non occupancy tenant cannot acquire the status and right of *marusi* and claim ownership.

8. Now, let us examine the order dated 27.5.1967 passed by the Court of Sub Divisional Officer (Civil), Gurdaspur, upon which the petitioners have placed heavy reliance. As per the aforesaid order, the father of the petitioners was shown to have been in possession of the disputed land for more than 12 years and in view of Section 4(3)(ii) of the Act, the suit land does not vest with Panchayat. In our view, this order is of no consequence, as it has not been passed by the competent authority exercising the powers under the Act because no petition has been filed either under Section 7 or 11 of the Act. This order was passed without issuing any notice to the Gram Panchayat and, therefore, this order does not have any legal value, it being passed by an authority having no lawful and competent jurisdiction. Further, the report of the Local Commissioner is also of no significance as the nature of the land is not to be seen in the present context, rather, it has to be seen at the appropriate time i.e. in the year 1939-40 and 1943-44. Further, it would be relevant to observe that if a land remains uncultivated for a successive period of 8 harvest then the same is recorded as *banjar kadim*. In the *jamabandis* for the year 1939-40 and 1943-44, the nature of the land is recorded as *banjar kadim*. This dislodges the stand of the petitioners that they or their fore-fathers were in cultivating possession. Therefore, we find no merit in the present writ petition. The petitioners have failed to prove that they were in cultivating possession of Shamlat Deh for more than 12

years immediately preceding the commencement of this Act, rather, the revenue records with which presumption of truth is attached speaks otherwise, and, the land clearly falls within the inclusionary clause of Shamlat Deh, and, therefore, by the dint of provisions of Section 4(1) of the Act, the land vests in the respondent-Gram Panchayat.

9. In view of the above, the present writ petition is dismissed and the impugned orders dated 9.9.2010 and 20.3.2015 (Annexures P-6 and P-16) are, hereby, upheld.

(SURESHWAR THAKUR) (KULDEEP TIWARI)
JUDGE JUDGE

14-02-2023

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No