

2023:PHHC:038921-DB

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

215

CWP-24149-2015

Date of Decision : **March 03, 2023**

AJMER SINGH AND ORS

.....Petitioners

VERSUS

JOINT DEVELOPMENT COMMISSIONER AND ANR.

.....Respondents

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

Present : Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. V.K.Sandhir, Advocate
for respondent No3.

KULDEEP TIWARI. J.

The petitioners filed a suit under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “**the Act of 1961**” for declaration to the effect that they are owners in possession of land comprised in *Khewat/Khatauni* No.121/180, *khasra* No.28(1-0) as per *jamabandi* for the year 1992-93 of the revenue estate Parhi, Tehsil and District Ropar. It was pleaded therein that the suit land is recorded to be owned by *Shamlat Deh Hasab Arazi Khewatdars*, and, they are in possession of the same as owners. The land in question is a *Banjar Kadim*, and, is being utilized as a *bara/gohara* by the petitioners, and, they are in continuous possession prior to the year 1950. The land in question was never utilized or reserved for the common purpose of the

village. The Gram Panchayat filed written statement and pleaded that the suit land is Shamlat Deh, and, is being used for common purpose of the village community, therefore, vests with the Gram Panchayat, and, the petitioners have no concern whatsoever with the suit land. Infact, the petitioners throw cowdung etc. on the disputed land illegally and unauthorizedly. The respondent-Gram Panchayat also filed eviction application under Section 7 of the Act of 1961 against the petitioners.

The learned Collector after considering the revenue records placed on record by both the parties rejected the claim of the petitioners, and, accepted the eviction application No.18/VCL dated 8.8.1995 filed by the respondent-Gram Panchayat under Section 7 of the Act, vide order dated 23.7.1986 Annexure P-1. Being aggrieved against the order, the petitioners filed a statutory appeal before the Court of competent jurisdiction. The appeal was allowed vide order dated 8.1.1997. The learned Appellate Authority has recorded that the land is described in column as Shamlat Deh Hasab Rasad Khewat, and, in possession of Maqbooja Malkan. Therefore, such land does not vest with the Gram Panchayat as per definition given under Section 2(g) of the Act. The Gram Panchayat challenged the verdict passed by the statutory Appellate Authority by filing CWP No. 4128 of 1997 before this Court. The writ petition was allowed and it was held that the suit land is 'Shamlat Deh' as defined in Section 2(g) of the Act, and, therefore, the same vests in the Gram Panchayat. It was observed therein that the finding recorded by the Appellate Authority that the land is Shamlat Deh *Hasab Rasad Khewat* in possession of *Maqbooja Malkan* and does not come with the 'Shamlat

Deh', is legally incorrect. The nature of the land is to be determined by the words "Shamilat Deh", and, not by the expression "Hasab Rasad Khewat". The expression "Hasab Rasad Khewat" denotes the manner of calculating ownership in "Shamilat Deh" prior to enactment of the Punjab Village Common Lands (Regulation) Act, 1953, and, the 1961 Act. After enactment of these statutes, land described as "Shamilat Deh Hasab Rasad Khewat" etc., came to vest in the Gram Panchayat. However, considering the claim of the petitioners that the land in dispute was allotted to them during consolidation, and, such record with regard to the allotment of the land during consolidation to the petitioners was not before the Court, the *lis* was remanded back to the Appellate Authority to decide the question whether the land in dispute is a *bara*, and, allotted to the petitioners. The relevant extract of the order dated 3.8.2012 passed by this Court reads as under:-

"The question that remains is "whether the land, in dispute, is excluded from "Shamilat Deh" by virtue of section 2(g)(vi) of the 1961 Act?". The petitioner contends that land, in dispute, is a 'bara', allotted to the petitioner during consolidation. The Gram Panchayat, on the other hand, denies this fact. A perusal of the order passed by the Appellate Authority reveals that the question whether the land, in dispute, is a 'bara' has not been considered, much less, decided. We would have decided this question but as documents prepared during consolidation, are not before us, it would be necessary to remit the matter to the Appellate Authority for adjudication afresh.

In view of what has been stated hereinabove, we

allow the writ petition, set aside order dated 8.1.1997 and remit the matter to the Joint Commissioner Development (IRD), Punjab, (exercising powers of 'Commissioner' under the 1961 Act) for adjudication of the question whether land, in dispute, is a "bara" and is, therefore, excluded from "Shamilat Deh", within three months from parties putting in appearance, on 19.9.2012. No order as to costs."

On remand of the matter, the Appellate Authority again granted an opportunity to the petitioners to establish their claim. However, the petitioners failed to bring on record any documents to prove that the land in dispute was allotted during consolidation to the petitioners as *bara*. Above all, the first Appellate Authority has recorded that the land is shown as *Shamlat Deh Hasab Rasad Arazi Khewatdars* and in possession of *Maqbooja Malkan*, and, the quality of the land is *Banjar Kadim*, and, therefore, the respondents never cultivated the said land in dispute, the same not being cultivable, and, consequently dismissed the statutory appeal preferred by the petitioners.

We have heard the learned counsels for the parties.

This Court has already concluded vide order dated 3.8.2012 that the suit land is 'Shamlat Deh', and, vests with the Gram Panchayat, and, the verdict (Supra) has now attained finality. Therefore, the only issue warranting adjudication by the remandee Court was whether the suit land was ever allotted to the petitioners during the consolidation proceedings. Neither the petitioners could prove before the first Appellate Authority by placing any document on record that the suit land

was ever allotted to them nor the petitioners have brought on record any document before this Court to establish that the suit land was allotted to them. Therefore, in the absence of any document, we do not find any merit in the present petition.

Consequently, the present writ petition is dismissed, and, the impugned order dated 11.3.2015 (Annexure P-5) passed by respondent No.1 is upheld.

(SURESHWAR THAKUR)
JUDGE

March 03, 2023

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(KULDEEP TIWARI)
JUDGE

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

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**RESERVED JUDGMENT
IN THE HIGH COURT OF PUNJAB AND HARYANA
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CWP-24149-2015

Date of Decision : **February** _____, 2023

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.....Petitioners

VERSUS

JOINT DEVELOPMENT COMMISSIONER AND ANR.

.....Respondents

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