

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-24926-2014 (O & M)

Reserved on: 07.12.2023

Pronounced on: 16.12.2023

MAHABIR AND ANR.

.....Petitioners

Versus

DISTRICT COLLECTOR FATEHABAD & ORS.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Shailender Kashyap, Advocate with
Mr. Parshant Sethi, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Mahesh Dheer, Advocate
for respondent No. 3.

Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arjun Lakhanpal, Advocate
for respondents No. 4 to 7.

SURESHWAR THAKUR, J.

1. The present petitioners becoming aggrieved from the makings of concurrently made verdicts, thus respectively by the Assistant Collector concerned, and, by the Collector concerned, to which respectively Annexure P-1 and P-2 become assigned, whereby the apposite petition thus seeking eviction of the respondents from the petition lands became dismissed, thus, have instituted thereagainst the instant writ petition before this Court.

2. The eviction of the respondents in the said petition was

claimed on the ground, that the respondents concerned had assumed illegal and unauthorized possession over the petition lands, despite the petitioners herein being khewatdars of the village, rather through their predecessors-in-interest, especially when qua them became reserved rights but alongwith other members of the village proprietary body, to use the petition lands, rather for common benefits/common users, thus in the finalized consolidation scheme.

3. They asserted that since the attestation of mutation, as made vis-a-vis the Gram Panchayat concerned, thus by the revenue officer concerned, rather remained un-challenged, thereby the allotment(s), if any, as made by the custodian concerned, but not being binding, upon, the Gram Panchayat concerned.

4. In short, the contention (supra) became planked on a verdict made by the Hon'ble Apex Court in case titled as ***Gram Panchayat of Village Jamalpur Versus Malwinder Singh***, reported in ***1985 AIR (Supreme Court) 1394***. Since thereins, it becomes expostulated, that after the coming into force of the Punjab Village Common Lands (Regulation) Act, 1953, thus the custodian concerned, became left with no vestige of jurisdiction, thus to make allotment(s) of *shamilat deh* lands, to the allottees concerned, as the said *shamilat deh* lands, did rather, on migrations of Muslims, from India to Pakistan, became completely vested in the Gram Panchayat concerned.

5. In sequel, it became contended that the allotment(s), if any, as made in breach of the judgment (supra), thus by the custodian concerned, is completely tainted and flawed.

6. However, through the Amending Act No. 13 of 1996,

Common Lands (Regulation) Act, 1961 (hereinafter for short called as the 'Act of 1961'), provisions whereof are extracted hereinafter.

(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 ;]

7. The said inserted provision, though did assign retrospective validity to allotment(s) made of the *shamilat deh* lands, by the custodian concerned, but yet with a cut-off date being mentioned therein, inasmuch as, the allotments being required to be made before the 9th day of July, 1985.

8. It is pertinent to mention here, that the vires of insertion of provision (supra) through the amending Act No. 13 of 1996, was challenged before this Court, in a case titled as ***Gram Panchayat of village Kum-Kalan versus State of Punjab and others***, and, to which ***CWP No. 4816 of 1996***, is assigned. However, through a decision made on the said petition, this Court had upheld the vires of the said inserted provision, hence through the relevant amending Punjab Act No. 8 of 1995, and, Haryana Act No. 13 of 1996.

9. Significantly, the *patta* or the allotment as made to the predecessors-in-interest of the respondents herein, inasmuch as, as made in favour of Mohd. Yusuf son of Mohd. Yakub, by the custodian concerned, who thereafter made alienations thereof, to the vendees concerned, who are arrayed as respondents in the relevant *lis'*, but remains unchallenged. The effect thereof, is but naturally that, the allotment made to Mohd. Yousuf son of Mohd. Yakub, thus by the custodian concerned, who thereafter alienated, the said lands through

respectively entered wasika No.2568 dated 20.10.1977 and Vasika No.

362 dated 25.06.1982, thus to the alienees concerned, thus makes the said alienations to be valid.

10. Furthermore, for want of challenge being made to the above registered deeds of conveyance, thus before the jurisdictionally competent Civil Court, thereby, the said alienations are declared to be lawfully made alienations, unless subsequent thereto they are, if yet permissible under law become challenged through a civil suit becoming drawn before the jurisdictionally competent Civil Court concerned.

11. Be that as it may, through the Amending Act No. 13 of 1996, sub clause (ii-a) became inserted in clause (g) of Section 2 of the 'Act of 1961', provisions whereof have been extracted above.

12. It appears that the reason for the incorporation of the said amendment, in the relevant provision(s), as carried under the 'Act of 1961' was to overcome the effects of the judgment made in **Jamalpur's case (supra)** by the Hon'ble Apex Court.

13. Therefore, it has to be tested whether in terms of the said amendment whereby retrospective validity becomes assigned to the allotment(s) made of the evacuee properties by the custodian, thus to the allottees concerned, thus qua the allotment(s), as appertain to the instant case were made on or before 9th day of July, 1985.

14. For applying the mandate of the above inserted amendment in Section 2(g) of the 'Act of 1961', it is deemed imperative to thus, from the facts at hand, determine whether the said amendment, rather is applicable hereto, inasmuch as, whether the allotment, as, made to one Mohd. Yusuf son of Mohd Yakub, thus was made prior to 9th July, 1985. If after discerning the records, it becomes unearthed, that the

custodian concerned, were made prior to 9th July, 1985, thereby the said allotment(s) would be valid and also the allottee concerned, became well empowered to execute in respect thereof, deeds of conveyance vis-a-vis the alienees concerned.

15. In the above regard, it evidently emerges that the allotment(s) as become made to Mohd. Yusuf, thus was made before 9th July, 1985, thereby the said made allotment, is covered within the domain of the amendment (Supra). Resultantly the said allotment was a validly made allotment, besides he became well empowered to alienate the said allotted lands, to the alienees, through his executing the wasika(s) (supra), vis-a-vis the alienees concerned.

FINAL ORDER OF THIS COURT.

16. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The concurrently made dismissal orders by the statutory authorities below are maintained and affirmed.

17. No order as to costs.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

16.12.2023

kavneet singh

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