

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**CWP-6981-2008 (O & M)
Reserved on: 12.04.2023
Pronounced on: 20.04.2023**

LAXMAN DASS (SINCE DECEASED) THROUGH LR.

.....Petitioner

Versus

STATE OF HARYANA AND ORS.

.....Respondents

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

Argued by: Mr. Anil Ghanghas, Advocate
for the non-applicant/petitioner.

Mr. Anmol Malik, DAG, Haryana.

Mr. Vikram Singh, Advocate
for the applicant/respondent No. 6.

SURESHWAR THAKUR, J.

Factual Background.

1. Puran Singh and others instituted case No. 19 of 2000 before the Collector concerned. In the said case, became impleaded two respondents, inasmuch as, one Lakshman Dass and Gram Panchayat Sisana. In the said suit, a declaratory relief, is claimed by the plaintiffs, that they are *biswedarans* (shareholders of land in village) of Pana Hansan and Meharban of Village Sisana. Thus, the disputed land measuring 206 kanals 15 marlas, as comprised in Khewat No. 895/876, Khata No. 1363 and 1364, Killa Nos. 227/16/8-0, 17/8-19, 18/8-16, 19/5-0, 21/6-7, 22/8-0, 24/8-0, 25/8-0, 228/1/8-0, 2/8-0, 229/9/8-0, 11/7-4, 12/8-0, 19/8-0, 20/7-4, 228/11/2/2-9, 20/8-0, 21/4-0, 227/15/5-

11, 229/21/7-4, 2/8-0, 230/1/6-16, 2/1/5-13, 238/5/7-4, 6/1/6-0, 229/1/7-4, 2/8-0, 3/8-0, 10/7-4, be declared to fall to their ownership and possession.

Facts relevant for the decision of the instant writ petition.

2. The said declaratory suit was filed in a representative capacity, and, the proprietors/ *biswedarans* of the *panna*, claimed that one Lakshman Dass, arrayed as a respondent therein, had no valid right title and interest over the suit land, as he did not succeed, as a *Dholidar*/beneficiary to the disputed lands.

3. The suit lands became assigned as a *Dholidar*, to one Jiwan Dass, but the initial assignees (*supra*), had a limited beneficial interest in the suit lands, and, had no right, title or interest to misappropriate or usurp the lands, as became assigned to him only as a *Dholidar*, and, rather not as owner thereof. Though, the said averment was made on the premise, that the assignment of the disputed lands, to one Jiwan Dass, as a *dholidar*, was but a limited assignment, but holding longevity only till the lands became used for charitable purposes. However, it was contended that though, the assignment of the disputed lands to one Jiwan Dass, as a *Dholidar* though could enure, and did enure to the benefit of his validly appointed chela one Ganeshi Dass, and, thereafter to one Kanhiya Dass. Nonetheless, it was contented, that Lakshman Dass could not on demise of one Kanhiya Dass, hence be construed, to be succeeding as a *dholidar* of the disputed lands, as Kanhiya Dass, did not nominate or appoint Lakshman Dass as his disciple. Thus, it was averred that the land was free from the encumbrance of *Dholidarship* or from encumbrance of the

predecessor in interest, of one Lakshman Dass, rather the limited grant, ceased to exist but necessarily on the premise, that the last holder of the office of the *dholidar* one Kanhiya Das, did not appoint Lakshman Dass, as his chela.

4. The learned Collector concerned, after striking issues, on the said pleadings and after receiving evidence thereons, made a conclusion, that Lakshman Dass, respondent No. 1 therein, was unable to produce any documentary evidence, potraying that he had been appointed as a valid successor, by one Kanhiya Dass, the last holder of the office of *Dholidar*, and, to whom the assignment of the disputed lands was made, but for charitable purposes. Moreover, it was also concluded, that on the basis of decree of the Civil Court passed, on 24.05.1982, in pursuance whereof, one Lakshman Dass, had leased on 14.07.1992, 91 kanals 5 marlas of the disputed land, to one Mehar Dass Sher Singh, rather is inconsequential, so as to erode the rights of the Gram Panchayat over the suit lands. Resultantly the Gram Panchayat, was declared to be owner of the disputed lands, but with a direction that it shall maintain and look after the land in dispute, only till such a stage when a *dohlidar* is lawfully appointed. Furthermore, another direction was also made, that the income derived from the suit property, be spent on the works of asthal (worship place), and, that the accounts in respect of the same shall also be maintained by the Gram Panchayat concerned.

5. Laxman Dass became aggrieved from the verdict, as made by the learned Collector concerned, and as becomes enclosed in Annexure P-7, and was led to institute thereagainst an executive appeal bearing No. 48, before the Competent Appellate Authority concerned.

dismissal, upon the above statutory appeal, and, obviously upheld the affirmative verdict, as became drawn on the plaintiff's suit, and, as become carried in Anneure P-7. However, Laxman Dass yet instituted a revision petition bearing No. 419 of 2005-06, before the learned Financial Commissioner, Haryana. However, the said revision petition was also dismissed, on 01.08.2006 hence leading the petitioner to institute thereagainst the instant writ petition before this Court.

6. During pendency of the instant writ petition, the sole petitioner expired and was substituted by his LR Dharmaarth Gaushala, Sisana, by an order made by this Court, on 14.09.2021.

Submissions of the learned counsel for the petitioner.

7. The learned counsel appearing for the petitioner, has alluded to a judgment and decree made by the learned Sub Judge, IIIrd Class, Sonapat, on 24.05.1982, upon, suit No. 468 dated 31.03.1982. The said judgment and decree, is enclosed in Annexure P-3. He submits that since an ex-parte decree was pronounced in the said civil suit, by the learned Civil Judge concerned, and which makes clear speakings that the plaintiff therein one Lachhman Dass, the petitioner herein, was declared as the owner and possession of the suit land. Therefore, he argues that the judgment and decree of the learned Civil Judge concerned, and as becomes embodied in Annexure P-3, has to be assigned validity, besides sanctity, and, as such, it holds preponderance over the impugned verdicts, as became concurrently pronounced against the petitioner herein, by the statutory authorities below.

Reasons for rejecting the above submissions.

8. The reason for rejecting the above made submission, is but very simple, inasmuch as, since there is a bar to exercise of jurisdiction

by the Civil Court concerned, rather through engraftment of Section 13 in the Haryana Village Common Lands (Regulation) Act, 1961 (for short 'the Act'), provisions whereof, became extracted hereinafter.

13. Bar of Jurisdiction:- *No civil court shall have jurisdiction:-*

(a) to entertain or adjudicate upon any question whether-

(i) any land or other immovable property is or is not shamlat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act ;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue Court, officer or authority empowered to do so under this Act.]

9. Since a reading of the above extracted provisions, make clear speakings, that in respect of any *shamlat deh* land, the Civil Court is barred to exercise jurisdiction. Moreover, when the concurrently made verdicts by the statutory authorities below, declare that the suit lands are *shamlat deh* lands, and, but obviously thereons the *panchayat deh* rather has a valid right, title and interest rather as a complete owner thereof. Further, when a deeper and incisive perusal of the jamabandi, as appertaining to the year 1945 and 1946, reveals that Ganeshi Dass, hence succeeded to the petition lands, but as chela of one Jiwan Dass, given his predecessor in interest, becoming assigned the suit lands as a *Dholidar*, but when it has a further reflection of his being a *gair marusi*, hence with an encumbrance of his paying chakota @ Rs. 100/-

per year. If so, the position of law, as was applicable to the stage of initiation of the *lis inter-se* the contesting litigants, is the one, as carried in Section 4 of 'the Act', provisions whereof are extracted hereinafter.

“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,----

(a) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at the commencement of this Act, vest in panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the panchayat under this Act.

(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—

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons who were in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

Inference drawn from the above extracted statutory provisions.

10. A reading of clause (ii) of Sub Section (3) of the above extracted statutory provisions, coaxes this Court to draw, an inference that though, the *dholidars* who are holding cultivating possession of *shamlat deh* lands for more than 12 years immediately preceding the coming into force of the Act (Supra), became empowered to save from vestment in the *panchayat deh*, those lands but designated as *dholidar* lands, but yet with a statutory pre-condition, that such assignment of lands to a *dholidar*, rather being without the *dholidar* concerned, making payment of rent to the *panchayat deh*.

11. If so, since the above pre-condition, against vestment of *dholi lands*, in the *panchayat deh*, is rather (supra) revealed to be not accomplished, by the *dholidar* concerned. Therefore, since the purported predecessors in interest of the petitioner, one Kanhiya Dass was a *dholidar*, on payment of rent to the *panchayat deh*, thus, his successors in interest, cannot claim the benefit of a *dholidar*, hence within the purview of clause (ii) of sub section (3) of Section 4 of 'the Act'. Thus, when they could become well empowered to claim the benefit of the above referred statutory provision or to draw any leverage from it, yet only if the relevant predecessors in interest, but prior to 1950 holding the disputed lands as *Dholidar*, yet without payment of rent. Contrarily, when the *dholidar* concerned, was prior to 1950 though holding the disputed lands as a *Dholidar*, but on his paying rent quantified at Rs.100/- per year. Thus, when obviously the said apposite predecessor in interest, only had a limited assignment over the disputed lands, as such, his successors in interest, cannot claim the benefit of the above extracted statutory provision, nor can they claim that the suit land is saved from vestment in the *panchayat deh*.

12. In consequence, since Section 13 of 'the Act' was inserted through a legislative amendment being made through Act No. 34 of 1974, therefore, any dispute, as relates to *shamlat deh* lands, when has been explicitly expressed in the said inserted statutory provisions, to be barred to be either raised or to be decided by the Civil Court concerned. Resultantly the judgment and decree made by the Civil Court, on 24.05.1982, is null and void, and, is to be aptly declared to be completely inconsequential.

Petitioner has not been able to prove that he was lawful successor in interest of one Kanhiya Dass.

13. Since this Court has not assigned any sanctity to the judgment and decree of the Civil Court, as became made, on 24.05.1982, and as become embodied in Annexure P-3. Thus, obviously any declaration therein, that he is the lawful owner of the disputed lands is completely void, and the petitioner herein, thus, does not hold any vestige of any right, title or interest over the same. Moreover, though the petitioner herein can claim a limited interest, as a *gair marusi*, on the petition lands, but even the said claim could be well rested, only when, he was able to bring forth sufficient evidence, but displaying that he was validly appointed as a successor by his predecessor in interest, one Kanhiya Dass.

14. However, as aptly discussed by both the authorities below no such evidence exists on record. Therefore, the present petitioner cannot even claim a limited or restricted succession to the suit lands, but from his purported predecessor in interest, one Kanhiya Dass. It appears, that in the garb of the jurisdictionally void judgment and decree of the learned Civil Court concerned, as becomes enclosed in Annexure

P-3, the petitioner has taken to pledge the suit properties, and, has also drawn a lease in respect thereof, but the said acts are completely antithetical to the purported limited grant, to which he could succeed, inasmuch as, it being completely against the charitable purposes, of the grant, as became made in favour of his purported predecessors in interest.

Final Order

15. In aftermath, this Court does not find any merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders are affirmed and maintained.

16. The Government of Haryana enacted the Haryana Gau-Seva Aayog Act, 2010 (for short, hereinafter refer to as 'the Act of 2010'), notified on 04.10.2010. By virtue of provisions of this Act, the Government has set up an Aayog which is comprised of at least six Heads of the Government i.e. of Revenue and Disaster Management Department, Urban Local Bodies Department, Agricultural Department, Finance Department, Animal Husbandry and Dairying Department, Development and Panchayat Department. Moreover, the Director General of Police, the Director General Animal Husbandry and representatives from Animal Welfare Board of India, besides other non-official Members, become nominated therein by the Government, from amongst Members representing Registered Haryana Rajya Gau Shala Sangh, and, from those non Government organizations (NGOs), who are engaged in working towards self protection and preservation of cows. Further Section 14 of the Act of 2010 lays down the functions of the Aayog, relevant portion whereof, stands extracted hereinafter:-

prohibition of slaughter and/or cruelty to cow and to suggest improvement in the existing laws for making them more meaningful;

(ii) *work for the welfare of cow in the State;*

(iii)supervise work of the institutions for the scientific use of dung and urine of cow so as to enhance their utility in the sphere of agriculture including soil fertility, bio-energy, bio-gas, bio-fertilizer, bio-pesticide and domestic use;

(iv)supervise and assist in the working and functioning of the institutions for the purpose of providing financial assistance, training in the field of scientific rearing of various breeds of cow;

(v) exercise supervision over institutions regarding utilization of funds and properties provided by Aayog and to bring to the notice of the Government specific instances for appropriate action;

(vi) develop pastures or grazing lands and to associate with institutions or other bodies whether private or public, for the purpose of developing pastures and Gauchars;

(vii) *provide financial assistance to deserving institutions, which in the opinion of the Aayog are engaged in the welfare of cow, as also for propagation of non-conventional energy like bio-gas from dung and urine of cow and other gainful uses through scientific tests or experiments;*

(viii) educate, campaign and to make people aware about the economic benefits which can be derived out of cow and arrange competitions to promote such awareness as also to preach compassion for cow and take steps for inclusion in school syllabi such information;

(ix) procure fodder and make available for use of cow in the area affected by famine, drought or other natural calamities and to set up camps for the aforesaid purposes in the affected area and to take steps for prevention of migration or export of cow from such affected area and to suggest action against persons indulging in or attempting export for slaughter from such area;

(x) to (xiii) xxx xxx xxx
xxx

(xiv) take into custody the abandoned, stray, confiscated or seized cow from the concerned local bodies, other competent authorities or courts after due authorization under any law for

the time being in force and to maintain them;
(xv)to (xvii) xxx xxxxx
xxx xx

17. A perusal of the above shows, that the Act, imposes obligation on the Aayog, to work for the welfare of the cows, besides to supervise the work of the apposite institutions. Moreover, the Ayog is obliged to undertake steps for the scientific use of dung and urine of cow, thus for enhancing their utility, in the sphere of agriculture including soil fertility, bio-energy, bio-gas, bio-fertilizer, bio-pesticide and other functions, as, enumerated therein.

18. The Government of Haryana has also enacted Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (for short hereinafter refer to as 'the Act of 2015'). Section 2 (c) of the Act (supra), provides the definition of cow, provision whereof is extracted hereinafter.

2. In this Act, unless the context otherwise requires,-
- (a) xxxxxxx
 - (b) xxxxxxx
 - (c) ***“cow” means and includes a bull, bullock, ox, heifer or calf and a disabled, diseased or barren cow;***

19. Gau Vansh has also been defined in Section 2(g) of the Act (supra), as cow for its progeny. Furthermore, Section 10 of the Act (supra), provides that Government or Local Authorities when so directed, shall establish an institution to accept, keep, maintain and care the individual, injured, stray and un-economic cows. It is also the statutory obligation of the Government to provide adequate financial and technical support to such institutions.

20 As far as facts of this case are concerned, the necessity for handing over the possession of the *Gau Shala* existing on a part of the petition lands, to the person/agency concerned, establishing and maintaining the *gau shalas*, arises because the *gau shala* was set up on the land, though belonging to the Gram Panchayat. However, since the Gram Panchayat concerned, may be beset with financial constraints, to manage and maintain the *Gau Shala*. Nonetheless, in view of the above Act, and its creating the above stated Ayog, which is meant for ensuring that cows are reared or housed in ably managed *gaushala*, besides for ensuring that their worth is utilized for the benefit of the community. Moreover, when the Haryana Gau Sewa Ayog, is possessed with opulent financial resources, thereby for ensuring that the statutory obligations cast upon the said Ayog, do become streamlined or become fully galvanized, thus for achieving the purpose for which the said Ayog is established. Therefore, the Authorities under 'the Act of 2010' and 'the Act of 2015' are directed to discharge their statutory obligations towards the cows, so as to ensure that no stranded or stray cattle exists within the State of Haryana, rather such stranded and stray cattle are sheltered in *Gau shalas*, and also sufficient financial resources are purveyed to the entity or persons concerned, thus establishing the *Gaushalas*, thus for purveying the ablest care givings to the cows housed in the *Gaushalas*.

21. Resultantly a direction is issued to the Ayog established under Section 3 of 'the Act of 2010' to discharge its statutory obligations and to also upkeep and maintain the present *Gaushala*, as existing on a part of the petition lands, besides others existing within

the State of Haryana.

22. Furthermore, the Ayog is also directed to maintain the statistics about the stray and stranded cattle existing within the territory of the State of Haryana, and, to thereafter establish *Gaushalas* for the cows being housed therein. Also, all the other expenses for the upkeep and maintenance of the *Gaushalas*, and also of the cows housed therein, are directed to be ensured to be purveyed by the Ayog, to the person or entities or non governmental organizations, who are engaged in the holistic work of establishing *Gaushalas*, thus meant for housing therein stranded and stray and diseased bovine.

23. Disposed of with aforesaid directions.

24. No order as to costs. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

20.04.2023

kavneet singh

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