

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

CWP-27195-2016 (O & M)

Reserved on: 05.09.2023

Pronounced on: 14.09.2023

SUSHIL KUMAR AND ORS.

.....Petitioners

Versus

FINANCIAL COMMISSIONER HARYANA AND ORS.

.....Respondents

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

Argued by: Mr. R.S.Kundu, Advocate with
Mr. Anshul Chahal, Advocate
for the petitioners.

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

Ms. Sandeepa Mehta, Advocate
for respondent No. 4 - Gram Panchayat.

Mr. Vikram Singh, Advocate
for respondent No. 9 - Gram Panchayat.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seek quashing of order(s) made on 09.12.2009 (Annexure P-5), order(s) made on 13.06.2012 (Annexure P-6), order(s) made on 14.06.2013 (Annexure P-8) and order(s) made on 14.09.2016 (Annexure P-9), whereby the espoused declaratory relief became denied to them. Moreover, the petitioners pray, that this Court may affirm Annexure P-3, whereby, rather the petitioners were declared to be owners in possession of the disputed lands.

2. This Court would proceed to validate (Annexure P-3) and would become led to invalidate the impugned Annexures (supra), only when the petitioners became revealed, by the jamabandis drawn on or prior to 26th January, 1950, to thus through their predecessors-in-interest, make independent cultivating possession of the suit lands. Resultantly the petitioners would become well leveraged to draw, an able sustenance, from the provisions carried in Section 2 (g)(viii) in the Punjab Village Common Lands (Regulation) Act, 1961 (As applicable to Haryana) hereinafter for short called as the 'Act of 1961'. The said provisions are extracted hereinafter.

2. In this Act, unless the context otherwise requires-

xxxxxxx

(g) 'shamilat deh' includes -

(1)

(2)

(3)

(4)

(5)

but does not include land which -

(i) xxxxx

(ii) xxxxx

(iii) xxxxx

(iv) xxxxx

(v) xxxxx

(vi) xxxxx

(vii) xxxxx

***(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950 ;
or***

(ix) xxxxx

3. A perusal of the above extracted statutory provisions which are but an exception or a saving, to the definition of *shamlat deh* land, unfold(s) that for the mandate thereof, becoming affirmatively applied vis-à-vis the petitioners, thereupon, they were required to adduce cogent documentary evidence, reflecting that prior to the year 1950, they were in independent cultivating possession of the suit lands.

4. Moreover, the petitioners could well take the benefit of Section 4(3)(ii) of the 'Act of 1961', provisions whereof are extracted hereinafter, only when the revenue records suggested, that on the date of commencement of the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter for short called as the 'Act of 1953') the petitioners, thus through their predecessors-in-interest, were in cultivating possession of the suit lands, but more than twelve years prior to commencement of the Act (supra) i.e. in the year 1953, and such cultivating possession rather was without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereons.

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

(1) xxxxxxx,----

(a) xxxxx;

(b) xxxxx;

(2) xxxxxxx;

(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) xxxxxxx ;

(ii) rights of persons who were in cultivating possession of shamilat deh on the date of 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)xxxxxxx.”

5. Though, the Collector concerned in passing the declaratory decree vis-à-vis the petitioners (Annexure P-3), founded the said declaration, on the basis of jamabandis appertaining to the year(s) 1940-41, 1952-53, 1957-58 and 1961-62 and also appertaining to the years upto 2000 to 2001. In the said jamabandis though in the column of ownership, occurs a revenue entry, designating the disputed lands to be *shamlat deh hasab (Panchayat ownership)*. Therefore, though in proportion to the size of other lawful estates, held by the *bartan darans*, in the apposite estates, they became entitled to cultivate the suit lands. However, yet the names of such estate holders was required to be occurring in the column of cultivation. Moreover, in the column of cultivation, the said estate holders were required to be holding independent cultivating possession of the suit lands, inasmuch as, theirs not being becoming described therein, as *Gair Marusis* or sub tenants under the land owner concerned. Significantly, it becomes echoed in the jamabandi for the year 1961-62, that the entry in the column of cultivators vis-à-vis the predecessors-in-interest of the petitioners, is that, the latter being entered therein as *Gair Marusiaan Awal through Marfat Kesra son of Puran son of Binja Sakin Deh Gair Marusi Doyam*. The import of the said entry, is that, but obviously the status of the predecessors-in-interest of the petitioners over the disputed lands

was in a limited capacity, thus as Gair Marusiaans thereons. Resultantly thereby there was no independent cultivating possession of the disputed lands rather by the predecessors-in-interest of the present petitioners nor thereby the benefit of the savings clause (supra) to the definition of *shamlat deh* but was assignable to the petitioners.

6. The relevant entries as occur in the jamabandi's concerned, are extracted hereinafter in a tabulated form.

Jamabandi for the year 1936-37

1	2	3	4	5	6	7	8	9	10	11	12
			Name of owner with description	Cultivator description with				Rent paid by cultivator, Rate and amount			
			Shamlat Deh Hasab Hasees Paimana Malkiyat	Balu S/o Luna Kumhar Kalwa R/o Chak Jalu Gair Marusi under (Mahatat) Daan Mal co sharer				Batai being 1/3 (Soyam) share Basharah Khata 382 10 Dol			
				Jeeram S/o Vinja Kumhar R/o Chak Jalu Gair Marusi under (Mahatat) Daan Mal cosharer				Batai being 1/3 (Soyam) share Basharah Khata 382 3/6/3 Dol			
				Sadu S/o Jaisa Jaat Mund R/o same village Gair Marusi under (Mahatat) Daan Mal co-sharer				Batai being 1/3 (Soyam) share Basharah Khata 382 12 Dol			
				Total especially Daan Mal co-sharer							

Jamabandi for the year 1940-41

1	2	3	4	5	6	7	8	9	10	11	12
			Name of owner with details	Details of Kashtkar				Rent paid by cultivator, Rate and amount			
			Shamlat Deh Hasab xxx Panchayat Ownership	Rukla S/o Vikhal Chuhra markhat Deh Gair Marushi Mathat Sitaram etc. co-sharers				xxx			
				Sadu S/o Jakka Jat Mund all residents Gair Marushi Mathat Sitaram etc. co-sharers				xxx			

Jamabandi for the year 1952-53

1	2	3	4	5	6	7	8	9	10	11	12
			Name of owner with details	Details of Kashtkar				Rent paid by cultivator, Rate and amount			
			Shamlat Deh Majbar	Kesra s/o Puran s/o Lachmasa Shakil Ramgarh Mujara Deh Gair Marushi Mathat Sitaram etc. co-sharers				xxx			

Jamabandi for the year 1957-58

1	2	3	4	5	6	7	8	9	10	11	12
			Name of owner with details	Details of Kashtkar				Rent paid by cultivator, Rate and amount			
			Gram Panchayat Land	Sitaram etc. Majkor Gair Marushiyat Awal Markat Kesaram S/o Puran S/o Lachmasa Shakil Ramgarh Gair Marushi Doham				xxx			

Jamabandi for the year 1961-62

1	2	3	4	5	6	7	8	9	10	11	12
			Name of owner with details	Name of present cultivator				Rent paid by cultivator, Rate and amount			
			Gram Panchayat Majkoor	Sitaram Etc. Mundraja Khatoni No. 545, Gair Marushian Awal through Marfat Kesra s/o Puran s/o Binja Sakin Deh Gair Marusi Doyam				Gair Marusi Awal Bila Lagan Be wajah Ruswar Malkiat Khud. Gair Marusi Doyam be hissa			

Jamabandi for the year 1965-66

1	2	3	4	5	6	7	8	9	10	11	12
			Name of owner with details	Name of present cultivator				Rent paid by cultivator, Rate and amount			
			Gram Panchayat	Sitaram-Mitaram- Ram Kumar Mahavir Parshad s/o Danmal s/o Mutvana Moolchand, Saknan Sirsa equal share Gair Marushiyan awal marfat Raja ram s/o Kesav s/o Puran Sakan Deh Gair Marushi Dayam				Gair Marushi awal Killa Lagan without ownership self gair marushi dayam batai chothai khata No. 9			

7. A perusal of the above extracted table appertaining, to the jamabandis respectively, for the years 1936-37, 1940-41, 1952-53, 1957-58, 1961-62 and 1965-66, reveals, that in the column of possession, the predecessors-in-interest, are entered as Gair Marushi, and, also reveal that in the column of rent, they are disclosed to be paying *gala batai i.e.* a portion of the harvested crops to the land owner. Consequently, the import of the said entry, is that, the petitioners were but holding only a limited or a restricted status on the suit lands, thus the said limited status was amenable for termination through a petition for eviction becoming filed.

8. Be that as it may, though the jamabandi for the year 1957-58, which has been extracted in the table above, does carry reflections that in the column of cultivation, the predecessors-in-interest are entered as *Gair Marusi Doham*, but in the column of rent, in jamabandi for the year 1961-62, an entry occurs whereby the said *Gair Marusi*, are stated to be holding the suit lands as owner thereof, but he is also revealed in the thereafter jamabandi for the year 1965-66, to be as *Dayam Batai i.e.* his tendering a portion of the harvested crops, but as rent in kind to the land owner.

9. The consequence of the above entries, is that, though Section 4 (3)(ii) of the 'Act of 1961' as extracted above speaks, about the predecessors-in-interest of the present petitioners, thus evidently holding cultivating possession for more than twelve years, before coming into force of the 'Act of 1953', and, the said cultivating possession rather being without payment of rent, whereby, the disputed lands become saved from vestment in the *shamlat deh*.

10. Nonetheless, since the said entry exists but post coming into force of the Act (supra), and does not occur twelve years prior to coming into force of the above Act. Therefore, when in the pre 1950 revenue entries, the predecessors-in-interest of the present petitioners are recorded as *Gair Marusi*, thus on payment of *Gala batai*, to the land owner concerned. Resultantly the pre 1950 entries, which are the reckonable entries, as they are the ones made twelve years prior, to coming into force of the 'Act of 1953', and with therein, rather the predecessors-in-interest, though being shown to be *Gair Marusi*, but yet their reflections as *Gair Marusi*, but evidently is to be also without payment of rent, whereby they would become well enabled, thus to draw sustenance from provision of Section 4(3)(ii) of the 'Act of 1961'. However, when the revenue entries prior to 1953, for reasons (supra) do unfold that predecessors-in-interest of the petitioners were paying rent in kind to the land owner concerned. Consequently, thereby the petitioners are dis-abled to ensure the bestowment(s) to them of the benefit of the above statutory provisions. In sequel, the disputed lands do not become saved from vestment in the *shamlat deh*.

11. Moreover, in the column of rent, (in jamabandi appertaining to the year 1936-37), they are reflected to be defraying rent in the shape of the harvested crops from the suit lands, thus to the owner concerned. In the jamabandi appertaining to the year 1961-62, in the column of rent, though the predecessors-in-interest of the petitioners are reflected as *Gair Marusi Awal Bila Lagan Be wajah Ruswar Malkiat Khud*, and, in jamabandi appertaining to the year 1965-66, they are reflected as *Gair Marushi awal Killa Lagan without*

hence the said entries in the column of possession, do not make the predecessors-in-interest of the present petitioners, to be holding independent cultivating possession on the disputed lands. The reason becomes comprised in the factum, that the entry therein thus describing them to be owners but with a further entry in the column of rent rather making reflections of *Gair Marushi dayam batai chothai khata*, entry whereof is but exemplificatory, of not only the predecessors-in-interest of the petitioners being *Gair Marusi* on the suit lands, but also theirs paying rent in kind to the land owner concerned. Therefore, the said entry did not make the predecessors-in-interest of the petitioners to hold independent cultivation possession of the suit lands, rather the said entries conferred upon them only a limited or restricted status on the suit lands.

12. Therefore, when the import of the ingredients carried in the savings clause Section 2(g)(viii) of the 'Act of 1961', to the definition of *shamlat deh*, is that, they were required to be holding independent cultivating possession. Resultantly the evident lack of holding of independent cultivating possession by the predecessors-in-interest concerned, thus over the suit lands, rather does not enable the present petitioners, to canvass that they are entitled to become able recipients of the beneficent grace of savings clause (supra) to the definition of *shamlat deh*. Therefore, the reason assigned by the Collector concerned, in Annexure P-3, whereby he granted the espoused declaratory decree, is mis-founded or is based upon a gross mis-appreciation, qua the import of the revenue entries, as, carried in the revenue records, besides is made on mis-application theretos of the

Final order of this Court.

13. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned annexures are maintained and affirmed.
14. No order as to costs.
15. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

14.09.2023

kavneet singh

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No