

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(I) CWP No. 28137 of 2017
Reserved on: 29.08.2023
Date of decision: 05.09.2023

DHARMPAL AND ORS.

-PETITIONERS

VERSUS

THE COLLECTOR, JHAJJAR AND ORS.

-RESPONDENTS

(II) CWP-3963-2018

RAJENDER AND ORS.

-PETITIONERS

VERSUS

THE COLLECTOR, JHAJJAR AND ORS.

-RESPONDENTS

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

Present : Mr. Ramesh Hooda, Advocate
for the petitioners.

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

Mr. Chanderhas Yadav, Advocate
for the respondent No.3.

SURESHWAR THAKUR, J.

1. Since both these writ petitions arise from a common verdict (Annexure P-10) (in CWP-28137-2017), and, Annexure P-9 (in CWP-3963-2018) respectively, as became made on 14.11.2017, by the learned Collector concerned, thereby both are amenable for being decided through a common verdict. For brevity, the facts are being extracted from CWP-28137-2017.

2. The petitioners become aggrieved from Annexure P-10, whereby, the appellate authority concerned made a verdict of dismissal on 14.11.2017,

upon, Case No.21/Appeal/VCL.

Submissions of the learned counsel for the petitioners

3. The learned counsel for the petitioners has vehemently argued before this Court, that despite a well laid question of title erupting amongst the contesting litigants concerned, yet the said laid question of title neither becoming discussed, nor becoming adjudicated upon, in the impugned order. Therefore, the learned counsel for the petitioners argues, that the above infirmity gripping the impugned order, requires that, after the said order becoming quashed and set aside, this Court proceeding to remand the lis to the statutory authority below, so as to enable it to remake a judgment on the said purported question of title, as emerges amongst the contesting litigants.

**REASONS FOR REJECTING THE SUBMISSION(S) OF THE
LEARNED COUNSEL FOR THE PETITIONERS**

4. Initially, a verdict of eviction became recorded by the learned Assistant Collector concerned, upon, Case No.22/7 V.C.L. along with other connected therewith eviction petitions. The said verdict of eviction became pronounced on 19.02.2014 (Annexure P-7). The verdict (supra) became appealed before the learned appellate authority concerned, who however, as unfolded by Annexure P-8, after rejecting the appeal bearing No.29/EA/VCL and the other connected therewith appeals, thus affirmed the verdict of eviction (supra).

5. Annexure P-8 became challenged at the instance of the aggrieved before this Court, through the institution of CWP-3599-2015 and another connected therewith writ petition. Through a decision made on the writ petition(s) (supra), on 18.07.2017, this Court, after formulating certain issues

in paragraph 8 of its verdict, paragraph whereof becomes extracted hereinafter, thereafter proceeded to set aside the impugned order (Annexure P8), but with an order of remand being made on the learned appellate authority concerned, to make a decision upon the issues formulated in paragraph 8 (supra). The said decision on the remanded lis, was directed to be made within a period of three months, from the date of the litigants concerned making their respective appearances, before the statutory appellate authority concerned.

“(8) Both the parties though have now placed on record some revenue record but having regard to the fact that the Authorities below are required to discuss the entries in the revenue record and then determine the nature and apparent ownership of the land, it is not expedient for this Court to express any views in relation to those entries. Suffice it to say that even in the summary eviction proceedings, the authorities are required to determine:-

- (i) Whether the above-stated Khasra numbers are 'Jumla Mustarka Malkan' or 'Shamlat Deh'?*
- (ii) If so, whether such land or its management and control vests in the Gram Panchayat?*
- (iii) If not, whether the petitioners are in individual and exclusive possession of these Khasra numbers and if so since when?*
- (iv) What is the legal effect of such possession, if any?”*

6. In pursuance to the decision (supra) becoming recorded by this Court, the impugned Annexure P-10 became drawn by the learned District Collector, Jhajjar. The drawing of Annexure P-10 occurred on 14.11.2017. A reading of the impugned Annexure reveals, that the learned appellate authority concerned, after evaluating the evidence adduced in respect of the issues, as formulated by this Court, thus returned a decision adversarial to the petitioners.

7. Therefore, it is deemed imperative to determine, whether the findings adversarial to the petitioners, as became returned on the relevant formulated issues, thus become a well informed, or, are founded upon a worthy appraisal of the documentary evidence, as became adduced in respect of the relevant formulated issues.

8. The Issue No. (i) related to “Whether the above-stated Khasra numbers are 'Jumla Mustarka Malkan' or 'Shamlat Deh'?”, became answered against the petitioners. The appellate authority concerned, after considering the relevant Jamabandis, as starting from the year 1963-1964 and lasting upto the year 1990-1991, and, with reflections therein, that in the column of ownership, “*Jumla Malkan Digar Hakdaran Hasad Rasad Rakba Khewat*” is recorded, and, in the column of cultivation thereof, “*Khud Kast/Makbuja Malkan*” becomes reflected. Moreover, with a further reflection becoming carried therein, that the mutation of ownership of the disputed lands, in favour of the Gram Panchayat concerned, thus becoming recorded through a mutation bearing No.1074 of 30.06.1992. Consequently, a conclusion was made, that the reservations of the disputed lands, were made for the benefit of the village proprietary body concerned, but after applying a pro-rata cut, from their lawful holdings, thereby making the Gram Panchayat concerned to be the manager and controller thereof. Resultantly, in the said capacity, it appears, that the mutation (supra) became entered in the apposite revenue record, whereby in the column of ownership thereof, thus the Gram Panchayat became ordered to be reflected as the owner of the disputed lands. The said order became also complied with in the subsequently drawn jamabandi(s), as, appertaining to the disputed lands. Consequently, unless cogent evidence

made its surfacings, and, made candid speakings, that the petitioners were enlisted as Bartandarans in the apposite list, thereupon the petitioners were incapacitated to well raise a question of title, in respect of the disputed lands. However, apparently the above evidence, did not become adduced, and, thereby conclusivity is thus assigned to the recording of the mutation (supra).

9. The issue No. (ii), which relates to **“Whether the disputed lands or its management and control vests in the Gram Panchayat?”**, did also for well founded reasons, became decided in favour of the Gram Panchayat concerned. The assumption of management and control of the disputed lands, by the Gram Panchayat concerned, but obviously did vest ownership rights in the Panchayat Deh concerned, but was limited to the exercising thereons of rights by the enlisted Bartandarans. Therefore, as stated above, the above evidence was required to become adduced. However, even in the above regard, no cogent evidence became adduced. Therefore, for want of adduction of the above evidence, thus the petitioners could not claim any right, title and interest over the disputed lands, nor they could, as done by them, raise constructions thereon.

10. The effect of the petitioners raising construction(s), upon, the disputed lands, thus is in complete derogation, besides is in blatant transgression, of their rights, if any, as Bartandarans, over the disputed lands. The reason being that a large portion of the disputed lands is recorded as “Banjar Qadim”. Therefore, when in terms of Section 2(g)(5) of the Punjab Village Common Lands (Regulation) Act, 1961, provisions whereof become extracted hereinafter, the disputed lands, thus fall within the definition of “shamlat deh”, though they are reserved for the village proprietary body concerned, after making a pro-rata cut from the lawful holdings of the estate-

holders concerned, whereby yet the Gram Panchayat concerned, only assumes management and control thereof. Resultantly thereons no constructions could be raised.

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

xx xx xx

(g) “shamilat deh” includes--

xx xx xx

(5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;

xx xx xx”

11. The validity of the entry (supra) remains unrebutted by adduction of cogent evidence. Therefore, for want of adduction of cogent evidence for dislodging the efficacy of the said entry, thus makes the said entry to be acquiring a conclusive evidentiary worth. In sequitur, the petitioners could not ever claim, that they had any right, title and interest over the disputed lands, nor could they raise any constructions on the disputed lands.

12. The answers adversarial to the petitioners, on the other issues also, are but a sequel to the answers to the above referred to issues.

13. The upshot of the above discussion, is that, unless there was adduction of categoric evidence by the petitioners, before the authority(ies) below, thus plainly speaking that in the Jamabandis prior to the year 1950, the disputed lands were coming in the independent cultivating possession of the predecessor(s)-in-interest of the petitioners, and, with further cogent evidence displaying that the category of the disputed lands thus was arable or cultivable, thereupon alone the benefit of the apposite savings clause was ensuable to the petitioners. However, when the above evidence, has not emerged, rather with firm documentary evidence, and which but becomes

unbelied by adduction of cogent evidence, and, with such adduced un rebutted documentary evidence openly magnifying the trite factum, that the disputed lands, rather fall within the category of “shamlat deh”. Moreover, when the said documentary evidence also speaks about the management and control of the disputed lands becoming conferred upon the Gram Panchayat concerned, thus for the benefit of the village proprietary body concerned. Therefore, the petitioners could not arrogate the disputed lands for theirs raising construction thereons, as the raising of the constructions thereons, is completely outside the ambit of the reservations, as, made, for the user of the petition lands, by any member of the village proprietary body.

FINAL ORDER

14. In sequel, this Court finds no merit in both the writ petitions, and, is constrained to dismiss the writ petitions. Accordingly, both the writ petitions are dismissed, and, the impugned order(s) is affirmed and maintained.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

05.09.2023
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No