

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

Reserved on: 01.05.2023
Pronounced on: 17.05.2023

1. CWP-29883-2018

JAI SINGHPetitioner

Versus

STATE OF HARYANA & ORS.Respondents

2. CWP-29885-2018

JAGDISH & ORS.Petitioners

Versus

STATE OF HARYANA & ORS.Respondents

3. CWP-29887-2018

DHARAMBIR & ORS.Petitioners

Versus

STATE OF HARYANA & ORS.Respondents

4. CWP-29890-2018

MAM CHAND & ORS.Petitioners

Versus

STATE OF HARYANA & ORS. ...Respondents

5. CWP-29893-2018

RAI SINGH & ORS.Petitioners

Versus

STATE OF HARYANA & ORS.Respondents

6. CWP-31701-2018
AJAIB SINGH & ORS.Petitioners

Versus

STATE OF HARYANA & ORS.Respondents

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

Argued by: Mr. Ashish Aggarwal, Senior Advocate assisted by
Mr. Karan Singla, Advocate
for the petitioner (in CWP-29883-2018).

Mr. Vikram Singh, Advocate
for the petitioner(s) (in remaining cases).

Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. Vaneet Soni, Advocate
for the respondent-Gram Panchayat.

SURESHWAR THAKUR, J.

1. Since all the petitions arrive here from a common thereto order. Therefore, they are amenable to be decided through a common verdict.

Factual Background.

2. The petitioners instituted suit for declaration, before the civil Court concerned, in the year 1988, but the Hon'ble Apex Court on a motion being laid before it, rather declared that the said suits were triable by the Revenue Court. Thus, the Assistant Collector, First Grade concerned, decided the suits against the petitioners. The subsequent thereto motions as became drawn by the aggrieved, became also dismissed, thus through (Annexures P-9 to P-11). This Court through an order made on 15.05.1997, upon Civil Writ petition No. 6479 of

remitted the case to the Assistant Collector, First Grade but with directions to him to decide the *lis* afresh. However, the Assistant Collector, First Grade concerned, again through an order drawn on 06.01.1998 (Annexure P-13), rejected the plaintiffs suit, besides an appeal, as became reared against the said order, also became dismissed on 24.05.1999. Moreover, the learned Commissioner Ambala Division, through an order made on 20.07.1999 (Annexure P-16), also dismissed the relevant revision petition, as became preferred by the revisionist-plaintiffs.

3. Thereafter, through an order drawn on 23.02.2001, the Financial Commissioner, Haryana remanded the *lis* to the Assistant Collector concerned. The Assistant Collector, First Grade concerned, through an order drawn on 05.02.2003, again dismissed the plaintiffs suits. On the filing of an appeal against the order (*supra*), the learned Collector concerned, through an order drawn on 16.07.2003, again remitted the matter to the Assistant Collector First Grade concerned. The Assistant Collector First Grade through an order drawn, on 30.06.2004, decreed the plaintiffs suit, but in an appeal reared thereagainst, thus before the Appellate Authority, by the Gram Panchayat concerned, the latter through an order drawn on 27.10.2004, remitted the *lis* to the Assistant Collector First Grade concerned. The appellate motion cast against the said remand order was rejected, through an order drawn by the Commissioner, Ambala Division, on 18.05.2005. Through an order drawn on 28.02.2006, the Financial Commissioner, remanded the *lis* to the Commissioner, Ambala Division. Since the cases were already remanded by the Collector concerned, to the Assistant Collector, therefore, the appeals thus were

disposed of by the Commissioner. However, the Gram Panchayat preferred CWP 18802 of 2007, seeking a direction to the Collector, to decide the matter in a time bound manner, thus leading this Court to through an order drawn on 20.12.2010, making a direction upon the Collector, Kurukshetra, to decide the matter within three months. The Collector concerned, through an order drawn on 20.04.2011, dismissed the plaintiffs suits resulting in an appeal being preferred thereagainst, before the Commissioner Ambala Division, who through an order drawn on 14.01.2004, thus remanded the case to the Collector Kurukshetra.

4. However, the Collector Kurukshetra again through, an order drawn on 18.04.2017(Annexure P-20), dismissed the plaintiffs title suits. The appeals reared thereagainst became also dismissed by the Commissioner Ambala Division, thus through an order drawn on 07.02.2018 (Annexure P-21), resulting in the aggrieved, to institute revision petitions, before the Revisional Authority concerned, which through an order drawn thereons on 26.09.2018, rather dismissed the said revision petitions.

5. The above concurrently made dismissal orders, respectively by the Collector concerned, (Annexure P-20), by the appellate authority concerned (Annexure P-21), and by the Revisional Authority concerned (Annexure P-23), brings grievance to the aggrieved therefrom, thus, they are led to make a challenge to the said annexures, through theirs instituting the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners.

by the revenue officer concerned, in favour of the Gram Panchayat concerned, in respect of the petition lands is a fallaciously drawn order of mutation. He rests the above submission on the premise, that the jamabandis appertaining to the suit lands, as thus become comprised in Annexure P-1, and, in Annexure P-2, and which are related respectively, to the years 1905-06 besides to the years 1943-44. Therefore, he submits that since the thereins cast Khasra numbers, thus relate to the suit khasra numbers, besides when in the column of cultivation thereof, the entry of *makbuja malkan* becomes depicted. Consequently, when in the said column of ownership, the predecessors in interest of the petitioners are entered therein as *hisedarans*. In sequel, he submits that the suit lands became saved from vestment in the *panchayat deh*, thus, in terms of Section 2(g)(viii) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called 'the PVCL Act'), provisions whereof are extracted hereinafter. He further consequently argues that the above recorded mutation was made in derogation of the above pre consolidation records.

“2(g) ‘*shamlat deh*’ includes-

- (1) xxxxxxx;
- (2) xxxxxxx;
- (3) xxxxxxx;
- (4) xxxxxxx;
- (5) xxxxxxx;

“but does not include land which:-

- (i) xxxxxxxx
- (ii) xxxxxxxxxx;
- (iii) xxxxxxxx
- (iv) xxxxxxxxxxxxxx;
- (v) xxxxxxxxxxxx
- (vi) xxxxxxxxxxxx
- (vii) xxxxxxxx

(viii) was *shamlat 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 shamlat deh on or before the 26th January, 1950; or

b) The learned counsel for the petitioners also submits that since the jamabandi appertaining to the year 1943-44, reveals that a private partition occurred amongst the co-sharing cultivators, over the petition lands, thus resulting as unfolded by Annexure P-2, the happening(s) of dismemberment(s) of co-shared cultivating possession but prior to 1950. Resultantly, the (supra) thereby manifests, that in terms of the saving clause (supra), thus not only the predecessors in interest rather holding independent cultivations, but also the apposite co- owned cultivating possession(s), thus became subjected to partition. Therefore, he argues that in view of all the statutory ingredients carried in the hereinabove extracted savings clause, as such, the above pre-consolidation record, was required to be meted reverence, whereas, no reverence being meted thereto, rather results in the mutation (supra), being fallaciously drawn.

Submissions of the learned counsel for respondent No. 4.

7. The learned counsel appearing for the Gram Panchayat-respondent No. 4, has argued, that in terms of the decision (supra), as made by this Court on the writ petition (supra), the learned Collector concerned, has formulated the hereinafter extracted issues, and, since the evidence relating to all the said issues, thus became threadbare deliberated upon, resulting in a speaking reasoned decision being made on each of them, but only after the Collector concerned, aptly appraising the documentary evidence, as became adduced by the Gram Panchayat concerned, rather to oust the plaintiffs claim. Therefore, he

submits that the documentary evidence, as became adduced by the Gram Panchayat concerned, for validating the above order of mutation, besides for validating the consolidation scheme rather has no consequence nor thereby the benefit of the above referred saving clause could be denied to the plaintiffs.

“1. Whether the land in dispute had partitioned prior to 26.01.1950 between the shareholders and it was under cultivation of plaintiffs? OPP

2. Whether the land in dispute was under cultivation of plaintiffs on 26.01.1950 or prior to that as per the share in shamlat deh and the lagan was assessed ?OPP

3. Whether the land in dispute re-vest in the plaintiffs u/s 13A of Punjab Village Common Land Act and the Panchayat is bound to handover the possession to the plaintiffs? OPP

4. Whether land in dispute vested in Gram Panchayat and whether the plaintiffs are cultivating the land in dispute prior to vesting in the Gram Panchayat ? OPP.

5. If it was under cultivation then whether the plaintiffs were in cultivation as co-sharer on the land in dispute? OPP.

6. Whether the plaintiffs are owner are in possession over the land in dispute? OPP.

7. Whether the land vest in the Gram Panchayat? OPD

8. Whether the suit is not maintainable? OPD

9. Whether the plaintiffs is entitled to file suit on the basis of own act & conduct? OPD

10. Whether the plaintiff is having right to institute the suit? OPD.

11. Whether this court have jurisdiction to hear the present suit ? OPD.

Reasons for rejecting the submissions of the learned counsel for the petitioners.

8. a) The petitioners have been unable to bring forth tangible evidence in display, that their purported *hisedarans*, thus

became recorded in the record of rights prior to 1950, thus evidently were their lawful predecessors in interest. Imperatively so, when the best evidence to substantiate, the fact of the petitioners, being the valid successors in interest of the *hisedarans* concerned, who became purportedly recorded, as such, in the record of rights but prior to 1950, thus, was the pedigree table. However, when the said pedigree table has not been placed on record, therefore, the petitioners cannot claim that they were either lawful successors in interest of their purported predecessors in interest, who were purportedly recorded, as *hisedarans* over the petition lands, in the records of rights, thus prepared prior to 1950.

b) That the classification column carried in the record of rights prepared prior to the year 1950, reveals that therein the petition lands are recorded as *Gair Mumkin* and or as *charand* lands. Therefore, in view of Section 2(g)(5) of 'the PVCL Act', provisions whereof, are extracted hereinafter, the said lands with the above revenue designation(s), when became also assigned to the panchayat. Therefore, when they were as such, thus evidently used for the common purposes of the village, thereby *banjir qadim* lands do fall within the inclusive definition of *shamlat deh* lands. Moreover, also the lands carrying the classification of *charand* lands, thus are lands reserved for the benefit of the entire village proprietary body concerned, and in respect of such reserved lands, rather the purported predecessors in interest of the petitioners, thus could not make them amenable for cultivation. In addition any entry in the record of rights drawn prior to 1950, revealing the purported predecessors in interest of the petitioners,

lands described as *charand* land, thus cannot be construed, to theirs making any befitting cultivations thereof, given such lands evidently being unfit for cultivation. Resultantly the effect if any of any private partitions occurring amongst the joint cultivators of the petition lands, thus is completely insignificant.

“(g) "shamilat deh" includes-

(1) xxxxxxxxx;

(2) xxxxxxxxx;

(3) ;

[(4) xxxxxxxxx]

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

c) That the petitioners have been unable to bring forth tangible evidence to display that the disputed lands are other than the lands in respect whereof, the mutation (supra), was made nor have been able to bring forth evidence suggestive, that the disputed lands, rather do not, yet fall(s), within the inclusionary definition of *shamlat deh* lands. Resultantly the petition lands are *shamlat deh* lands and the order of mutation (supra), was validly attested.

Further Reasons for rejecting the submissions of the learned counsel for the petitioners

9. 1) A perusal of the Jamabandi Exhibit P-2, which is drawn for the year 1943-44, and, in relation to Khewat No. 96, Khatoni No. 324, thus comprising lands measuring 304 bigga 14 biswa, reveals that the disputed lands are *charand*, *banjar quadim* and *gair mumkin* lands. Since in the above jamabandi, there is no *hisedari* possession, nor also, then obviously there could be any valid partition in respect of the above categories of land. Therefore, but obviously any placings of reliance, upon, any purported private partition, which occurred in the

year 1943-44, amongst the cultivating co sharers concerned, is

insignificant, nor also the benefit of the above savings clause can be assigned to the petitioners.

2) A perusal of the consolidation scheme discloses, that the area(s) of land, which were thus amenable for private partition taking place amongst the cultivators' concerned, given their holding such cultivation prior to 1950, rather became dismembered amongst the hitherto joint cultivators of the petition lands. The said area is carried in a dimension of 702 Kanals 9 Marlas. In pursuance thereto assignments have been made to the lawful estate holders concerned. If no assignment(s) of lands, other than the above, thus were made in the consolidation scheme to the petitioners, thereupon, the above non-assignment, thus but was an outcome of complete failure, on the part of the petitioners, to produce evidence but displaying that,

a) That they were lawful successors in interest of their purported predecessors in interest, rather thus through theirs' placing on record the pedigree table concerned.

b) The non assignment of the petition lands to the petitioners in the consolidation scheme, and, which resulted in the drawing of the above attestation of mutation, whereby the *panchayat deh* was recorded as owner of the petition lands, thus, was free from any vice of any illegality. The reason being that with the above classification assigned to the petition lands, the petitioners becoming barred to receive the beneficent grace of the above savings clause.

c) The partition, if any, which occurred amongst the joint cultivators concerned, and thus prior to the year 1950, appears to be not made in relation to the disputed lands, but appears to be made in

relation to some other land. The reason being that no evidence has been

adduced to display, that the said partition which occurred prior to the year 1950 thus amongst the cultivating joint owners, rather related to those khasra numbers but which are the ones which become displayed in the order of mutation (supra). Therefore, the said partition is insignificant, and does not empower the learned counsel for the petitioners, to contend that the order of mutation (supra), became erroneously drawn.

d) That with the panchayat adducing evidence, which thus forthrightly displays, that the petitioners had been rather assigned the petition lands, on lease. Moreover, when the above fact, becomes evident from the apposite land lease register and receipt book, to which respectively Exhibit R-6, R-10 and R-11, thus become assigned. Therefore, since there is a presumption of truth to the above, thus in the face of the petitioners taking the present disputed lands on lease, thereby the petitioners are completely estopped from contending, that either they were lawful successors of their respective purported predecessor in interest, who were thus cultivating the petition lands prior to 1950-51, and, thereby they became entitled to receive the benefit of the apposite savings clause. More so, even otherwise in respect of the lands categorized in the classification column either as *charand* or *banjar qadim*, thus render them unamenable for individual cultivation. Resultantly there could not be any cultivation of such categories of land by the purported predecessors in interest of the petitioners herein. Therefore, the order of mutation, whereby the disputed lands, became assigned to the Gram Panchayat, whereby title as owner has been conferred upon the panchayat concerned, thus does

pre-consolidation records. In sequel, the said order of mutation is required to be upheld.

Final Order

10. In aftermath, this Court finds no merit in the writ petitions, and, with the above observations, the same are dismissed. The impugned orders are maintained and affirmed.

11. No order as to costs.

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

(SURESHWAR THAKUR)
JUDGE

17.05.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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