

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-15261-2016****Date of decision : 22.05.2023**

HARCHAND SINGH AND ORS.

-PETITIONERS

VERSUS

JOINT DEVELOPMENT COMMISSIONER PUNJAB AND ORS.

-RESPONDENTS

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

Present : Mr. Kanwaljit Singh, Senior Advocate with
Ms. Neha Anand Mahajan, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

KULDEEP TIWARI, J.**FACTUAL BACKGROUND**

1. Through a petition instituted before the Id. Collector concerned, under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), the petitioners claimed a declaratory relief in their favour, qua title over the petition land(s), measuring 21 Kanals 13 Marlas, situated in Village Meham, Block Rajpura, District Patiala. However, the above relief, as claimed in the petition (supra), was declined by the Id. Collector concerned, vide order dated 27.09.2012 (Annexure P-3).

2. Feeling aggrieved by the dismissal order (supra), the petitioners made an unsuccessful attempt to challenge the validity thereof, by filing a statutory appeal before the learned statutory appellate authority, i.e. respondent No.1. However, the appeal so preferred by the petitioners was also dismissed

vide order dated 19.02.2015 (Annexure P-4).

3. Consequently, the petitioners, through the instant writ petition, by invoking the superintendence powers of this Court, as envisaged under Article 227 of the Constitution of India, have challenged the concurrent orders passed by the statutory authorities below.

SUBMISSIONS BY COUNSEL FOR THE PETITIONERS

4. By placing reliance upon the provisions of Section 2(g)(iii)&(v) of the Act of 1961, and, upon the entry of “*Shamlat Deh Hasab Hisas Paimana Malkiat*” as recorded in the column of ownership, in all the Jamabandis, upto the stage of the drawing of consolidation operation in the Mohal concerned, the learned counsel for the petitioners has claimed that the petition land(s) fall outside the ambit of the inclusionary clause of the definition of “*shamlat deh*”, which consequently saves them from vestment in the Gram Panchayat concerned. He argued that, as a matter of fact, one Teja Singh son of Puran Singh, i.e. predecessor-in-interest of the petitioners, was in possession of the petition land(s) since 26.01.1950, which factum is clear from the “Missal Haqiat” (1st Jamabandi after completion of consolidation) for the year 1956-1957, and, that the petition land(s) stands recorded therein as “*Banjar Qadim*”. Advancing further arguments, he stated that the petition land(s) was neither reserved nor was ever utilized for any common purposes of the village community, therefore, the petition land(s) falls within the ambit of “*Bachat land*”. The Khasra numbers of the petition land(s) were carved out from the old Khasra No.778/1, having total area 22 Bighas 00 Biswas, which in fact, has not been reserved for any common purposes of the village community, rather was in exclusive possession of Teja Singh, predecessor-in-interest of the petitioners.

ANALYSIS

5. Before we proceed to deal with the facts of the present matter and the principal dispute involved therein, it would be apt, at this juncture, to first deal with the legal propositions covering the present subject matter and therefore, Section 2(g)(iii)&(v) of the Act of 1961 is extracted hereinafter.

“2(g) “Shamilat deh” includes

XX XX XX

(iii) Land described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of village.

XX XX XX

(v) Land in any village described as banjar qadim and used for common purposes of the village, according to revenue records, but does not include land which:

3[Proviso.....]

4 [(i) becomes.....]

(ii) has been allotted on quasi permanent basis to displaced persons

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January,1950.

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed (and is not in excess of the share of the co sharer in the shamilat deh.

(v) is described in the revenue records as Shamilat, Taraf, Patti Panna an Thola and not used according to revenue records for the benefit to the village community or a part thereof or for common purposes of the village.

(vi) lies outside the abadi deh and was being used as gitwar,

bara, manure pit, house or for cottage industry, immediately before the commencement of this Act.

3 (vii) is Shamilat deh.....]

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

4 [(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act].”

6. A perusal of the above extracted statutory provisions makes it clear that in case, the petitioners claim that the petition land(s) does not fall in the inclusionary clause of “shamlat deh”, by virtue of Section 2(g)(iii) of the Act of 1961, there is an obligatory duty cast upon them to establish that the petition land(s) was partitioned and brought under individual cultivation by the proprietors of the revenue estate concerned, before 26.01.1950. Also, in order to fulfill the requirements as carried in Section 2(g)(v) of the Act of 1961, it is necessary for the petitioners to establish that the petition land(s) is recorded as “Shamilat, Taraf, Patti Panna and Thola”, which has never been reserved under any scheme of consolidation or used, according to revenue record, for the benefit to the village community concerned or a part thereof or for common purposes of the village.

7. We have heard the learned counsel for the petitioners and the learned State counsel at length and also considered the record attached with the petition. Primarily, the learned counsel for the petitioners has argued the petition land(s) to be excluded from the ambit of “*shamlat deh*”, which resultantly becomes saved from its vestment in the Gram Panchayat, by virtue of Section 2(g)(iii) of the Act of 1961. To corroborate the above argument, he has placed

reliance upon Jamabandi relating to the year 1949-1950, pertaining to the petition land(s), wherein, an entry of “*Shamlat Deh Hasab Hisas Paimana Malkiat*” exists in the column of ownership and an entry of “*Makbuja Malkan*” exists in the column of cultivation.

8. However, in our considered opinion, the above argument is not legally tenable, as the nature of the petition land(s) has to be determined by the term “*shamlat deh*” and not by the expression “*Hasab Hisas Paimana Malkiat*”. The expression “*Hasab Hisas Paimana Malkiat*” only denotes the manner of cultivating possession over “*shamlat deh*” land(s), prior to the enactment of the Punjab Village Common Lands (Regulation) Act, 1953 and the Act of 1961. After the coming into force of the statute (supra), land(s) described as “*Shamlat Deh Hasab Hisas Paimana Malkiat*” became vested in the Panchayat deh concerned. Furthermore, by dint of Section 3 of the Pepsu Village Common Lands (Regulation) Act, 1954, (hereinafter referred to as the ‘Act of 1954’), inasmuch as, those lands declared as “*shamlat deh*” thus became vested in the Panchayat deh concerned. Section 3 of the ibid Act is reproduced as under:-

“3. Vesting of rights in panchayats and in non-proprietors- Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom, or usage or any decree or order of any court or other authority, all right, title and interest whatever in the land-

(a) which is included in the Shamlat Deh of any village, shall, on the appointed date, vest in a panchayat having jurisdiction over the village;

(b) which is situated in the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor.”

However, the Act of 1954 was repealed by the Act of 1961. Section 3 of the Act of 1961 declares that the “shamlat law” shall be deemed always to have applied, to all land(s), which are “shamlat deh”, as defined in Section 2(g) of the Act of 1961. Section 3 of the Act of 1961 is extracted hereinafter:-

“3. Lands to which this Act applies-

(1) The act shall apply and before the commencement of this Act the Shamilat Law shall be deemed always to have applied to all lands which are shamilat deh as defined in clause (g) of section 2.

(2) Notwithstanding, anything contained in sub section (1) of section 4, where any land vested in the Panchayat under the shamilat law, but such. land has been excluded from Shamilat deh as defined in clause (g) of section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the persons in whom the vested immediately before the commencement of the Shamilat law and the Panchayat shall deliver possession of such land to such person or persons:

Provided that where a Panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, such land shall not cease but the Panchayat shall, notwithstanding, anything contained in section 10, pay to the person or persons entitled to such land ,compensation to be determined in accordance with such principles and in such manner as may be prescribed.”

9. In other words, a perusal of the above extracted Section 3 of the Act of 1961, makes it apparent that the “shamlat law” was made applicable to all the lands that are recorded as “shamlat deh”, which is defined in Section 2(g) of the Act of 1961. The term “shamlat law” is defined in Section 2(h) of the Act of

1961, which reads as under:-

“2(h) “Shamilat Law” means:-

(i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953, or

(ii) in relation to land situated in territory immediately before the 1st, November, 1956, was comprised in State of Patiala and East Punjab States Union; the Pepsu Village Common Lands Regulation Act, 1954;”

Also, Section 4 of the Act of 1961 stipulates the vesting of rights regarding “shamlat land” in the Panchayat and non proprietors. Provisions of the section (supra) are extracted as under:-

“4 Vesting of rights in Panchayats 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 a 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 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 interests 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 in cultivating possession of shamilat deh, for more than twelve years immediately preceding the commencement of this Act 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.”

10. A conjoint reading of Section 3 of the Act of 1954, and, Sections 3 and 4 of the Act of 1961, makes it absolutely clear that the land(s), which is described as “*shamlat deh*” and came to vest in the Gram Panchayat, in accordance with the Act of 1954, would be excluded from “*shamlat deh*” and would also become saved from vestment in the Gram Panchayat, yet only if such land(s) falls within any of the exclusionary clauses, as defined in Section 2(g) of the Act of 1961.

11. In the present case, as recorded above, in the Jamabandi for the year 1949-1950, the petition land(s) is recorded as “*Shamlat Deh Hasab Hisas Paimana Malkiat*” in the column of ownership, therefore obviously the land(s) is “*shamlat deh*” and the expression “*Hasab Hisas Paimana Malkiat*” appears to lose its relevance after the enactment of the Act of 1954, and, by a subsequent repealing Act of 1961. The above conclusion gathers support from a judgment passed by a Coordinate Bench of this Court, in **CWP-11589-2010**, titled as

“Amrik Singh V/s Director, Panchayats, Punjab and others”, the relevant extract whereof is reproduced under:-

“At this stage, it would be appropriate to point out that before enactment of the 1954 Act, proprietary and possessory rights, in “Shamilat Deh” of a village, vested in proprietors but to the exclusion of non proprietors. Shamilat Deh of the village was generally assigned the nomenclature “Shamilat Deh Hasab Rasad Zare Khewat” or such like similar expressions. Shamilat Deh is the common land of a village because it described as such (common land) and not because of the words “Hasab Rasad Zare Khewat, “Hasab Hissas Mundarja Shajra Nasab”. The words “Hasab Rasad Zare Khewat, “Hasab Hissas Mundarja Shajra Nasab” etc. denote the manner of calculating share holdings of proprietors, and, therefore, do not qualify or indicate the nature of the land. It would also be necessary to point out that after enactment of the 1954 and the 1961 Acts, the expressions “Hasab Hissas Mundarja Shajra Nasab” etc., lost their relevance as “Shamilat Deh” of a village, came to statutorily vest in a Gram Panchayat. Our opinion is fortified by the following Division Bench judgments of this Court:- Gram Panchayat Ugani versus State of Punjab, 1997(2) PLJ 3; Kashmir Singh and others versus Joint Development Commissioner (IRD), Punjab, Chandigarh and others, 2006(1) L.A.R. 607 and Civil Writ Petition No.9368 of 2007 (Sita Ram etc. versus Gram Panchayat Ismaila etc.)

After enactment of the 1954 Act, all the rights, title or interest, held by proprietors and non-proprietors in “Shamilat Deh”, whatever be the words and expressions that follow the words “Shamilat Deh”, came to vest in Gram Panchayat by a statutory declaration contained in Section 3 of the 1954 Act.”

12. Though the learned counsel for the petitioners contends that since the predecessor-in-interest of the petitioners was in cultivating possession of the

petition land(s), prior to 1950, thus thereby, within the ambit of the exclusionary clause as carried in Section 2(g)(viii) of the Act of 1961, the petition land(s) is saved from its vestment in the Panchayat deh concerned. However, the above made argument is rejected. The reason for making the above conclusion is generated from the factum, that in the classification column of the Jamabandi drawn for the year 1949-1950, relating to the petition land(s), the petition land(s) is described as “*Banjar Qadim*”. [A land is described as “*Banjar Qadim*”, in the records of rights, if the same remained uncultivated for a successive period of eight harvests.] Apparently, the explicit and the implied nuance of the above entry is that, it was but impermissible that the above revenue designation, as made to the petition land(s), did make them fit or amenable for cultivation. Therefore, the possession, if any, of “*Banjar Qadim*” land(s) by the predecessor-in-interest of the petitioners was not independent cultivating possession thereof, especially when the nature of the revenue designation imparted to the petition land(s), did not make them amenable for cultivation. In consequence, the petition land(s) do not fall within the ambit of the relevant exclusionary clause. Resultantly, the cultivating possession, if any, of the predecessor-in-interest of the petitioners, over the petition land(s) (which was indeed unfit for cultivation), was not an independent cultivating possession upon such “*Banjar Qadim*” land(s).

13. Furthermore, the argument of the learned counsel for the petitioners, that there exists an entry in favour of one Teja Singh, i.e. predecessor-in-interest of the petitioners, in the “Missal Haqiat” (supra), to be holding cultivating possession of the petition land(s) through one Amar Singh, is of no able consequence to the petitioners. The above argument is unfruitful, as in the “Missal Haqiat” (supra), the petition land(s) stands recorded as “*Banjar Qadim*”,

which consequently leads us to draw an obvious conclusion that the land remained uncultivated even in the year 1956-1957.

14. The petitioners have not placed any document on record to establish that either they themselves, or, through their predecessors-in-interest are/were proprietors of the revenue estate concerned, and, there is also a complete lack of any documentary evidence on record, to ascertain the purported share, if any, of the petitioners in the “*shamlat deh*”. Also, there is no document placed on record by the petitioners, to establish that they were in individual cultivating possession before 26.01.1950, **proportionate to their share (emphasize specifically)**. In the absence of the above documents, the argument raised by the counsel for the petitioners is unworthy of acceptance and is therefore rejected.

15. Furthermore, as per Jamabandi for the year 1961-1962, one Bachna and one Amar have been recorded therein as Chakotedars (leaseholders) over the petition land(s), under Nagar Panchayat, on payment of chakota of Rs.235/- per year. Likewise, as per Jamabandi for the year 1971-1972, one Sadhu Singh has also been recorded as a Chakotedar (leaseholder), under Nagar Panchayat. Therefore, apparently, when once the predecessors-in-interest of the petitioners have been recorded as leaseholders, under the Gram Panchayat concerned, consequently now they cannot dispute the ownership of their lessor over the petition land(s), rather occupation of the petition land(s) as Chakotedars by petitioners or by their predecessor-in-interest, thereby stops them from claiming any right, as lawful owner of the petition land(s), in view of the law of estoppel, as envisaged under Section 116 of the Indian Evidence Act, 1872. Section 116 of the Indian Evidence Act, 1872, is reproduced as under:-

“116. Estoppel of tenant and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance

of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

16. A perusal of above extracted Sections reveals that it creates estoppel against a tenant to, during the continuance of tenancy, deny the title of his landlord, at the beginning of the tenancy. In ***Halsbury’s Laws of England 4th Edition, vol 16, paragraph 1625, page 1095*** it is stated:

“the lessor is estopped from repudiating a lease under which possession has been given or a tenancy which he acknowledged and the assignee of the lessor’s interest is estopped from denying anything which the lessor is estopped from denying.”

17. A tenant cannot claim a permanent right of occupancy acquired by prescriptions, in derogation of his landlord’s title, by mere assertion of such a right to the knowledge of the landlord. A tenant cannot deny his landlord’s title, howsoever defective it may be, so long as he continues to be a tenant and does not surrender possession to the landlord. To buttress the above reasoning, reliance can be placed upon case titled ***“Inder Singh and another V. State of Punjab and others”***, 1988(1) R.R.R. 250 : 1987 PLJ 614, wherein it has been held that *“A tenant who claims title against the owner, has firstly to surrender possession and then only claim title”*. The relevant paragraph of the judgment (supra) is reproduced as under:-

“The petitioner got into possession of the land, in dispute as a successful bidder in the auction and by virtue of provision of Section 116 of the Evidence Act, the petitioner is not

entitled to challenge the status of the Gram Panchayat in regard to its right to possess it and auction it to whomsoever it likes. Since the petitioner had taken the possession of the land from the Gram Panchayat the petitioner had to give back the possession to the Gram Panchayat."

Moreover, it has also been held by a Division Bench of this Court, in **CWP-3646-1997**, titled "**Baldev Singh V/s State of Punjab**", that "*Once a tenant is always a tenant*". The relevant paragraph of the judgment (supra) is extracted hereinafter:-

"6. It is well known that once a tenant always a tenant. Once a person is found to be a tenant, he has no right to throw a challenge to the title of his landlord. If the tenancy is for a fixed period, it terminates automatically on the expiry of the lease period and the person in possession becomes unauthorized occupant. After expiry of the lease period, the lessee has no right to continue in possession of the property in question and is liable to be thrown out of it....."

18. Since the hereinabove extracted settled propositions of law are also applicable to the facts of the case at hand, especially when evidently the predecessor(s)-in-interest of the petitioners has been recorded as Chakotedar (leaseholder) over the petition land(s), under Nagar Panchayat, on payment of chakota of Rs.235/- per year, consequently, the petitioners are estopped from disputing the title of Gram Panchayat over the petition land(s).

19. The second limb of argument, as raised by the learned counsel for the petitioners, is that the petition land(s) is saved from vestment in the Gram Panchayat concerned, by virtue of Section 2(g)(v) of the Act of 1961. However, as already observed hereinabove, neither the petition land(s) has been recorded as "Shamilat, Taraf, Patti Panna and Thola" in the column of ownership, in the relevant revenue record(s), nor there is any cogent documentary evidence led by the petitioners, to establish the existence of any such entry in the column of

ownership, in the revenue record(s). Resultantly, the above argument is rejected, for want of any sound evidence, to support the said plea, becoming adduced by the petitioners.

CONCLUSION

20. As a sequel to the above made discussions, we do not find any merit in the instant writ petition and the same is accordingly **dismissed**. The impugned orders dated 27.09.2012 (Annexure P-3) and order dated 19.02.2015 (Annexure P-4), passed respectively by the Id. Collector concerned and by the learned appellate authority concerned, are hereby affirmed.

(SURESHWAR THAKUR)

JUDGE

22.05.2023

devinder

(KULDEEP TIWARI)

JUDGE

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