

2023:PHHC:133592-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-22673-2023
Date of Decision : **October 13, 2023**

RAJINDER SINGH AND OTHERS

.....Petitioners

VERSUS

JOINT DEVELOPMENT COMMISSIONER (IRD) AND OTHERS

.....Respondents

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

Present: Mr. M.S.Balianwali, Advocate for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR. J.(Oral)

1. The petitioners before this Court had proceeded to, as plaintiffs, thus File No.DDDP(11) Sanaur-62, against the Gram Panchayat concerned, the said *lis* encapsulated a suit, as, contemplated under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '**the Act of 1961**'). The declaration as claimed therein, was that, the petitioners herein be declared as owners in possession of land measuring 26 bigha 11 biswas. Through a decision made, upon, the said *lis* Annexure P-15, the same became dismissed, and, also in an appeal raised thereagainst before the learned Appellate Authority concerned, the latter proceeded to through Annexure P-17 rather make a concurrent therewith order. Consequently, the present petitioners-plaintiffs become aggrieved therefrom, thus made a challenge thereto, through theirs instituting the instant writ petition before this Court.

2. Learned counsel for the petitioners has argued that since the revenue designation assigned in the relevant *jamabandis*, to the suit land, was '*gair mumkin*'. Therefore, he argues that since in terms of the provisions of Section 2(g)(5) of the Act of 1961, provisions whereof becomes extracted hereinafter, there was an imperative requirement on the part of the Gram Panchayat concerned, to adduce evidence, thus making forthright displays, that the said *banjar kadim* lands, became used for the common purposes of the villagers. Resultantly, he argues that since the above evidence remained unadduced, therefore, the declaratory suit(Supra) was required to be decreed.

“2. In this Act, unless the context otherwise requires,-
(g) "shamilat deh" includes,-

x xx xxx xxxx

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

3. However, the above made argument is meritless, as the said provision is beneficent to the plaintiffs/declarants concerned, therefore, the discharging onus in respect thereof rather was required to be adduced by the plaintiffs. Consequently, the onus to adduce evidence qua the said *banjar kadim* lands being not used for the common purposes of the village according to the revenue record, was rather not required, to be adduced by the Gram Panchayat concerned, as untenably argued, before this Court.

4. Since the above discharging evidence with respect to the declarant-plaintiffs, thus seeking the benefit of the above statutory

provisions remained unadduced, therefore, the counsel for the petitioners cannot argue that the *banjar kadim* lands, did not become used, for the common purposes of the village according to the revenue records nor resultantly thereby they were not required to be declared as *shamlat deh*.

5. Be that as it may, a perusal of the revenue records also discloses that the present petitioners are recorded as '*gair marusi*' over the petition land(s). Moreover in the column of rent, they are declared to be holding unauthorized possession of the suit land(s). Therefore, since the petitioners are in unauthorized possession of the petition land(s). Conspicuously also when the said revenue entries, as carried in the apposite *jamabandi* Annexure P-3, do have a presumption of truth, and, when the said presumption of truth, remains unrebutted through adduction of cogent evidence, therefore, the said presumption of truth acquires conclusivity.

6. In nutshell, the instant writ petition is, hereby, dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

October 13, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No