

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

CWP-27280-2022

Reserved on: 20.07.2023

Pronounced on: 25.07.2023

Gurudwara Sehaj Parkash and Others

.....Petitioners

Versus

State of Punjab and others

....Respondents

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

Argued by: Mr. G.S.Sirphikhi, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. V.K.Chaudhary, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.

Factual Background.

1. Through the instant petition, the petitioners cast a challenge to Annexure P-4, annexure whereof embodies a verdict of eviction against the encroachers/respondents, petitioners herein, as made on 02.05.2022, upon case No. GSP/DDPO/SEC/2021/000393, and, also to Annexure P-10, whereby the apposite appeal No. 402/2022, as became instituted by appellants therein, petitioners herein, also became dismissed. Thus, a challenge is made to concurrently made verdict(s) of eviction, by the authorities (supra), against the petitioners herein.

2. The Gram Panchayat concerned had pleaded, that the petition lands had been reserved by the consolidation officer concerned, thus, for the village common purposes. Moreover, since the above averment became supported by a jamabandi relating to the petition lands, appertaining to the year 1963/64 and to which Annexure P-12 is assigned, wherein, in the column of ownership, the Gram Panchayat is declared as owner but in the column of cultivation, an entry of Makbuja Gurudwara Sahib Thamian, (*Gair Marusi*) rather exists. Consequently, on the basis of the above unrebutted entries, the Gram Panchayat concerned, contended that the petition lands were evidently owned by it, and, with the column of cultivation revealing the petitioners herein, to be merely *Gair Marusi*, over the petition lands, thereby the said limited status of the petitioner as a *Gair Marusi* over the petition lands, thus was terminable through a petition for eviction becoming filed.

3. Moreover, it was also averred against co-respondents No. 1 to 7, besides become also proven against them, thus from the above reflections, that they too were only holding a limited status as *Gair Marusi* over the petition lands, thus they were also amenable for becoming evicted therefrom, through a petition for eviction becoming filed. As stated (*supra*), both the learned Collector concerned, through making Annexure P-4, and also the appellate authority concerned, through making Annexure P-10, declined the espoused relief to the petitioners herein.

4. Though a presumption of truth is attached to the above entries, as exist in the jamabadi (*supra*), and as relates to the petition lands and appertains to the year 1963-64, but yet no evidence either

cogent or clinching became adduced by the present petitioners, thus

before the authorities below, to thereby bely the efficacy of the above entries nor thereby the presumption of truth attaching to the above entries can be set to be rebutted, rather thereby the presumption of truth attaching to the entries (supra), acquires an aura of conclusivity.

Arguments of the learned counsel for the petitioners and reasons for rejecting the same.

5. However, the learned counsel appearing for the petitioners has vehemently argued before this Court, that in terms of clause (ix) of Section 2(g) of the Punjab Village Common Lands (Regulation) 1961 (hereinafter for short call the ‘Act of 1961’), provisions whereof are extracted hereinafter, that since a Gurudwara Sahib exists on the petition lands, and also when the petition lands are reflected in the jamabandi (supra), to be cultivable land, hence the cultivations as made of the petition lands, are on or behalf of the Gurudwara Sahib, and rather for the purposes subservient to the place of worship i.e. the Gurudwara Sahib, thereby the petition lands are saved from vestment in the *shamlat deh*.

“2(g) ‘shamilat deh’ includes-

(1) xxxxxxx;

(2) xxxxxxx;

(3) xxxxxxx;

(4) xxxxxxx;

(5) xxxxxxx;

“but does not include land which:-

(i) xxxxxxx

(ii) xxxxxxxxxxx;

(iii) xxxxxxx

(iv) xxxxxxxxxxx;

(v) xxxxxxxxxxx

(vi) xxxxxxxxxxx

(vii) xxxxxxx

(viii) xxxxxx or

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

6. However, the above argument would succeed only when the imperative statutory condition, as cast therein, inasmuch as, prior to 1961, or prior to 1950, thus evidently a place of worship or a Gurudwara Sahib, thus existing upon the petition lands, besides it also evidently surfacing, that the petition lands which but are entered in the revenue records, as cultivable lands, thus the income reared from cultivation of the petition lands, was utilized for the benefit of the place of worship, thereby making the cultivation(s) of the petition lands rather for purposes subservient to the place of worship. However, the above argument can not succeed, as there is no jamabandi prior to 1961 nor prior to 1950, thus existing on record, whereby the above engrafted statutory ingredients, thus can become concluded to be accomplished. Also, there is no evidence either documentary or oral, in respect of the existence of Gurudwara Sahib, thus on the petition lands either prior to 1950 or 1961. Though the existence of the said entry in the revenue record but was essential, as thereby it may have been concluded, that as a matter of fact, there was a place of worship, thus existing on the petition lands, and thereby the income, if any, derived from the cultivable category of the petition lands, thus became used for the purposes of the place of worship or was subserving the place of worship. Therefore, since in the above event only, the benefit of the above savings clause was assignable to the petitioners-herein, but obviously, for want of adduction of above cogent evidence (supra), rather the benefit of the savings clause (supra), thus making the petition

lands to become saved from vestment in the *shamlat deh*, hence cannot be assigned to the petition lands.

7. In nutshell with this Court, while assigning conclusivity to the entry (*supra*), as carried in the jamabandi relating to the petition lands, thereby the recorded therein limited status of a *Gair Marusi* of the litigant concerned, over the petition lands, thus was amenable for termination through a petition for eviction becoming filed.

8. Even though the learned counsel appearing for the petitioners has contended with much vigor, before this court that a civil suit bearing civil suit No. 1412 of 2022, has been instituted before the Court of learned Civil Judge, Batala, thus seeking correction of the apposite revenue entries. Therefore, he makes a submission that till a decision is made thereons, thereupto this Court may not fasten any conclusivity to the entries (*supra*), as are carried in the jamabandi (*supra*), and/or, thereby he strives to make an argument, that the mere institution of the suit (*supra*), thus for nullification of the entries (*supra*), as carried in the jamabandi (*supra*), but without an dis-affirmative decree becoming pronounced thereons, by the learned civil Judge concerned, does *ipso facto* beget the effect of falsity being ascribable to the entries (*supra*), as carried in the jamabandi appertaining to the petition lands.

9. However, the petition under Section 7 of the 'Act of 1961' became instituted on 08.06.2021, whereas, the civil suit became instituted in the year 2022, and if the respondents therein chose, to unrest or unsettle the efficacy of the entries (*supra*), as carried in the apposite jamabandi, thereby they could well have in terms of proviso(s)

are extracted hereinafter, raised a question of title to the petition lands, thus on the premise, that the said entries are false or fictitious. In consequence, the Collector concerned, thus became enjoined to direct the person concerned, thus raising the question of title, to submit his claim under Section 11 of the 'Act of 1961' before the Collector concerned, and awaiting the making of a decision on the said civil suit, he became enjoined to keep pending the Section 7 petition.

[7.Powers to put panchayats in possession of shamilat deh-

“The Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

2[Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh].

(2) An appeal against the order of the Collector under sub-section (1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against.”

10. However, the petitioners herein and or the other respondents in the Section 7 petition, did not adopt the mandate of the first proviso (supra), as occurs in Sub Section (1) of Section 7 of the ‘Act of 1961’. Hence, for non availment or non recouring of the said proviso, thus at the instance of the concerned, thereby begets a firm conclusion, from this Court, that the plea of title founded upon falsity of making(s) of the said entries, rather became waived or abandoned. Resultantly the present petitioners or the other respondents in the petition cast under Section 7 of the 'Act of 1961' all became also estopped through Order 2 Rule 2 of CPC, to raise it subsequently in other proceedings. In consequence, prima facie, the respondents in the apposite petition, could not subsequently make a challenge to the entries (supra), through theirs filing a civil suit before the civil court concerned, especially when in terms of Section 13 (a) of the 'Act of 1961', provisions whereof are extracted hereinafter, the jurisdiction of the civil court is completely barred, in respect of lands which are described in the revenue records, as *shamlat deh* lands, and when in respect thereof, the *panchayat deh* is entered as owner thereof, thus in the column of ownership of the apposite jamabandi.

13. Bar of jurisdiction in civil courts – No civil courts shall have jurisdiction--

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not shamlat deh vested or deemed to have been vested in a Panchayat under this Act; or

- (b) xxxxx;
- (c) xxxxx;

Final order of this Court.

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

(SURESHWAR THAKUR)
JUDGE

25.07.2023

kavneet singh

(KULDEEP TIWARI)

JUDGE

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