

In the High Court of Punjab and Haryana at Chandigarh

CWP-18263-1994

Reserved on: 08.04.2024

Date of Decision: 18.04.2024

TEK RAM (DECEASED) THROUGH HIS LRs

.....Petitioner

Versus

THE COLLECTOR, PANIPAT AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Amit Jain, Senior Advocate with
Mr. Chetan Slathia, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana.

Mr. Ashish Pannu, Advocate
for respondent No.3.

SURESHWAR THAKUR, J.

1. The present petition has been filed by the predecessor-in-interest of the petitioner, whereby he had thrown a challenge to the concurrently made orders of eviction, respectively by the learned Assistant Collector concerned, through an order made, on 31.05.1994 (Annexure P-1), and, by the learned Appellate Authority concerned, through an order made on 04.10.1994 (Annexure P-2).

2. Since in the written statement instituted by the petitioner to the eviction petition, he raised a question of title. Consequently, the learned Assistant Collector concerned, through an order made, on 01.01.1993, declared that as a matter of fact, the question of title was involved in the

relevant *lis*, and, resultantly on 01.01.1993, the learned Assistant Collector concerned, after framing the hereinafter extracted issues, thus permitted the litigants to adduce thereons, the apposite evidence.

“1. Whether the land does not vest in the panchayat if not what effect? OPP

2. Whether the land of shamlat was never divided and the petitioners and their forefathers were not remained in possession of the shamlat deh land prior to 26.01.1950? OPP

3. Whether the possession of the petitioners is not unauthorised and the same is not liable to be dispossessed? OPD

4. Whether the petitioners has no cause of action and the suit of the petitioner is not fit for dismissal? OPD.

5. Relief”

3. However, findings adversarial to the petitioner became returned on the relevant issues. Moreover, resultantly the eviction petition became concurrently decreed, through the makings respectively of Annexure P-1, and, of P-2, whereby the petitioner becomes led to institute thereagainst the instant writ petition before this Court.

4. The claim of title raised by the petitioner vis-a-vis the disputed lands, became founded upon the apposite savings clause embodied in Section 2(g)(v) of The Punjab Village Common Lands (Regulation) Act, 1961, provisions whereof, becomes extracted hereinafter. In case able and cogent evidence became adduced on the issue apposite to the said claim, thereupon this Court would be led to reverse both Annexures P-1 and P-2.

“2(g)(v) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records”

5. However, a closest scanning of the records of the case reveals,

that the disputed lands become classified in the relevant jamabandi as “*Banjar Kadim*”. Resultantly, the above classification assigned to the disputed lands, made them uncultivable and untillable. Moreover, therebys the propagation as made by the present petitioner, that his predecessors-in-interest rather were in individual cultivating possession over the disputed lands, does *ex facie*, thus falter.

6. The reason being that the predecessor-in-interest of the petitioner, was in terms of the mandate enclosed in the above extracted savings clause enjoined to prove that he was in proven cultivating possession over the disputed lands. However, when the disputed lands are classified as “*Banjar Kadim*”, therebys when they were not amenable for being tilled or cultivated. Resultantly, therebys the petitioner cannot well seek any claim that his predecessor-in-interest was making cultivation over the disputed lands, especially when the mandate enclosed in the apposite savings clause requires adduction of clinching evidence vis-a-vis the predecessor-in-interest of the present petitioner, was in fact provenly cultivating the disputed lands.

7. Be that as it may, the petitioner attempted to scuttle the presumption of truth assigned to the disputed lands, thus in the classification column of the jamabandi concerned, wherein the petition lands became classified as “*Banjar Kadim*”, through his placing on record the khasra girdawari relating to the year 1947 (Ex.P-9), but the said adduction into evidence of Ex.P-9, by the petitioner rather to scuttle or dislodge the presumption of truth assigned to the classification made *qua* the disputed lands, thus in the prior thereto jamabandis, besides the subsequent thereto jamabandis, rather is enveloped in a cloud of doubt.

8. The reason is but simple that the said entry but is a stray entry, as, neither in the prior thereto nor in the subsequent theretos, thus khasra girdawaris, thus any speakings manifest that the suit lands/disputed lands were subjected to cultivation. In consequence, the said stray entry in Ex.P-9 is inconsequential, besides is to be construed to idly or mechanically made without the Halka Patwari concerned, making inspections of the relevant fields.

9. In sequel, the said exhibit does not either dislodge nor overcome the presumption of truth assigned to the prior thereto jamabandis, and, to the subsequent thereto jamabandis, wherein, the disputed lands are declared to be “*Banjar Kadim*”, thus thereby making them to be uncultivable or untillable, thereupon the benefit of the savings clause (supra), but requiring the petitioner to prove that his predecessor-in-interest, rather was cultivating the suit lands, for thereby saving the suit lands from vesting in the *shamlat deh*, thus became aptly denied to the petitioner by both the learned statutory Authorities below.

10. Hence, this Court finds no merit in the instant petition, and, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

April 18, 2024
Ithlesh

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