

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-6929-1994 (O & M)
Reserved on: 06.02.2024
Pronounced on: 27.02.2024

BABA BALKAR SINGH (DECEASED) THROUGH LRs.
.....Petitioner

Versus

THE JOINT DEVELOPMENT COMMISSIONER (IRD), PUNJAB
AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Robin Dutt, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Avinit Avasthi, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.
Factual Background

1. That the petitioner filed petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 hereinafter for short called as 'the Consolidation Act' before the Director, Consolidation of Holdings, for making the deficiency of the land of the religious place 'Takia Daswandhi Shah', thus being the proprietor of the above said religious place. The Director vide his order dated 19.12.1989, accepted the said petition and remanded the case to the Consolidation Officer to check the record and make up the

2. In compliance with the order of the Director, the Consolidation Officer vide order dated 28.05.1990 (Annexure P-1), ordered for making up the deficiency of 11 kanals 13 marlas of land of 'Takia Daswandhi Shah'.

3. Respondent No. 4-Gram Panchayat filed an appeal thereagainst before the Settlement Officer. However, the said appeal became dismissed.

4. Feeling dis-satisfied from the afore orders (Annexures P-1 and P-2), respondent No. 4-Gram Panchayat preferred an appeal before the Assistant Director, Consolidation of Holdings, Jalandhar. The Assistant Director, through its order drawn on 03.02.1992, accepted the said appeal and ordered that the parties can go to the Civil Court for interpretation of the Order dated 19.12.1989.

5. The petitioner filed appeal against the order dated 03.02.1992 before the Director of Consolidation of Holdings, Punjab, Chandigarh. The Director, Consolidation vide order dated 24.09.1992 (Annexure P-3) issued notice on the apposite appeal and ordered for *status quo*, till further orders.

6. It has been averred in the writ petition that the State Government long back during the year 1977-78, decided to develop Focal Point in Block Nadala in District Kapurthala. Since the Gram Panchayat was not having enough land situated on the main road, thereby it exchanged its land with the land of the petitioner. The land under dispute and some other land was given to the father of the petitioner in exchange (Annexure P-3/A). However, possession of the land of the disputed khasra numbers was not given to the father of the

to make up the necessary deficiency. However, the Gram Panchayat kept on auctioning the land falling on the disputed khasra numbers.

7. In the year 1990, the petitioner again made request to the Gram Panchayat either to release his land under Focal Point or make up the deficiency of the land. The then Sarpanch asked the petitioner to take the land on lease and in the meantime, they would start process for transferring the same in the name of the petitioner.

8. The petitioner continued to take the land on lease in the years 1991, 1992 and 1993. Copies of the receipts whereof are attached as Annexures P-5, P-6 and P-7. The lease period of the petitioner was going to expire on 30.05.1994. It was further requested that in view of the stay order (Annexure P-3), the Gram Panchayat cannot auction the land. However, despite the Director ordering for maintaining status quo, still the Gram Panchayat conducted the auction of the land for lease on 16.04.1994 without even following the procedure.

9. The petitioner filed thereagainst a petition before respondent No. 1, wherein, he was directed to appear before the DDPO (Kapurthala) on 29.04.1994.

10. The DDPO concerned, through the impugned order (Annexure P-14) made on 29.04.1994, held that the auction held on 16.04.1994, was conducted in accordance with rules and with the consent of both the panchayats.

11. The petitioner filed an appeal thereagainst before respondent No. 1 (Annexure P-16), wherein, he was granted interim stay. In spite of various orders passed by the Joint Development Commissioner (IRD) exercising the power of Commissioner with

petitioner was dispossessed.

12. Feeling aggrieved, the petitioner further filed CWP-6250-1994 before this Court wherein the hereinafter extracted order was passed thereon, on 18.05.1994.

“ This writ petition is disposed of with the direction that the petitioner will not be dispossessed till 31.05.1994. It is left open to the petitioner to get his appeal pending before respondent No. 1 disposed of before that. ”

13. That in spite of the above orders, respondents No. 4 to 7, with the help of some other persons entered into the disputed lands and completely destroyed the crop sown by the petitioner.

14. It is apt to mention here that the petitioner also filed a suit for permanent injunction and got a stay order from the learned civil Court on 14.05.1994.

15. That eventually, the appeal filed by the petitioner (Annexure P-16) was decided vide order dated 18.01.1995 and the case was remanded back to DDPO-cum-Collector, Jalandhar.

16. In the meantime, the petitioner also filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 before the Collector, Kapurthala. The said petition was allowed vide order dated 04.06.2001 (Annexure P-35), whereby it was held that the Gram Panchayat had no connection with the land in dispute and the possession of the petitioner over the land in dispute from the year 1947 was upheld.

17. Aggrieved against the above order, respondents No. 4 to 6-Gram Panchayat's filed respective appeals before the Joint Development Commissioner (IRD). The said appeals were allowed through an order made on 12.09.2002 (Annexure P-41).

18. Feeling aggrieved, the petitioner filed CWP-17742-2002 and CWP-17743-2002 before this Court. Through an order made thereons, on 16.01.2004 (Annexure P-42), the said writ petitions were disposed of and the case was remanded to the Joint Development Commissioner (IRD) with the direction that he should decide the appeals by passing an order by giving a clear finding as to whether the land in dispute was '*Shamlat Deh*' or not and whether the same vested in the Gram Panchayat or not.

19. The Joint Development Commissioner (IRD) vide order dated 30.08.2006 (Annexure P-43) dismissed the appeals of the Gram Panchayat.

20. Aggrieved from the afore order, the Gram Panchayat filed two writ petition(s) bearing No. CWP-18370-2006 and CWP-17773-2006. This Court through orders made respectively on 10.11.2006 and on 21.11.2006 (Annexures P-44 and P-45), upon the apposite writ petition(s), thus dismissed both the writ petition(s).

21. Feeling dis-satisfied from the above, the Gram Panchayat filed SLP (Civil) No. 7927-2007 before the Hon'ble Supreme Court which was converted into Civil Appeal No. 4686 of 2008. The Hon'ble Apex Court through an order made thereons, on 07.09.2017 (Annexure P-46) dismissed the civil appeal filed by the Gram Panchayat.

Written statement on behalf of respondents No. 4 to 7.

22. The petitioner was a lessee for one year i.e. 1993-1994 and his lease expired on 15.04.1994. On termination of the lease he is an unauthorized occupant over the disputed land and has no locus standi to file the writ petition.

he had obtained 13K-6M of land against his land of 10K-14M and no additional area was agreed to be given over to him by the Deputy Commissioner-cum-Collector Kapurthala.

24. He made mis-representation about his being 'Muafidar' of 'Takia Daswandhi Shah' and secured allotment of land illegally.

25. The disputed khasra No. 89 measuring 13K-17M land was declared as evacuee property at the time of migration of evacuees in the year 1947. Accordingly, the said khasra number i.e. 89 was duly allotted to Sh. Gurdip Singh son of Ishar Singh etc. During the consolidation process carried in the year 1959-60, the above said Gurdip Singh etc were given Killa No. 148//43, 40//23, 40//24/1, 45//3, 45//8 (29K-18M) in lieu of their allotted areas inclusive of khasra No. 89 over which they had been in possession after consolidation.

26. The father of the petitioner was never made any allotment of the 'Takia land' known as 'Takia Baba Daswandhi Shah' nor he was performing any religious duties. However, the above said Mukhtiar Singh was allotted 4 kanals land against his entitlement of the land abandoned by him in Pakistan. Therefore, no right accrues in the petitioner to take possession of the 'Takia Daswandhi Shah' land. In fact with the migration of muslims-muafidars, this land became part of the evacuee lands.

27. The exchange (Annexure P-3/A) is the only document transacted between the father of the petitioner and the Collector, Kapurthala. As such, there was no question of the petitioner becoming entitled to any more land.

28. That every year a new lease deed was executed between

of lease monies. A copy of the relevant lease deed register is attached as Annexure R-4/A.

Inference of this Court.

29. Though the learned counsel appearing for the petitioner before this Court vehemently argues before this Court that given the conclusivity acquired by the verdict(s) made respectively by the Collector (Annexure P-35), by the Joint Development Commissioner (IRD) (Annexure P-43), by this Court, on CWP-18370-2006 (Annexure P-44) and on CWP-17773-2006 (Annexure P-45), and, by the Hon'ble Apex Court on Civil Appeal No. 4686 of 2008 (Annexure P-46), whereby the respondent is declared to be owner of the disputed lands. Resultantly, thereby he therefore contends that there was no occasion in the drawing of Annexure P-14, nor there was any occasion for the Gram Panchayat concerned, to proceed to make an auction of the disputed lands. Moreso, when, right, title and interest thereovers thus through binding and conclusive verdicts (supra) became declared to vest in the petitioner herein.

30. Moreover, thereby, though he contends that the estopping norm embodied in the statutory cannon of constructive res judicata barred the authority concerned, to draw Annexure P-14.

31. However, for the reasons to be assigned hereinafter, it but appears that the conclusivity and finality as argued by the learned counsel for the petitioner to become mobilized by all the verdict(s) (supra) rather is not amenable to become fastened theretos.

32. Contrarily, for the reasons as but evident from a reading of impugned Annexure P-14, especially of the relevant therein occurring

becomes generated qua the petitioner herein acquiescing to his holding the disputed lands on lease, thereby, his motion for rescinding the auction proceedings became aptly declined through Annexure P-14. The said declining became founded on the ground that the said rescinding motion, is, not made in the appropriate forum thereby the auction as become conducted of the disputed lands became upheld.

*“On perusal of record, it transpired that previously there was single gram panchayat for village Kuka, Village Daulatour Ghog and village Ibrahimval and in the year 1993, three separate panchayats were constituted for each of this village and still they all have single hadbast no. **Last year i.e. 1993-94 the applicant took this land on lease for Rs. 2800/-** Now in the year 1994-95, the auction of this land was held on 16.4.1994 and Balbir Singh s/o Balkar Singh resident of village Ibrahimwal took this land on lease for Rs.78,000/-. This auction was held on 16.4.1994 with the consent of residents of village and Sarpanch Gram Panchayat Ghog Daulatpur and Sarpanch of Gram Panchayat Kuka and whose signatures are available in the processing book. The auction was hold in Govt. Primary School, Ibrahimwal under the supervision of B.D.P.O. Nadala.*

33. Consequently, the said acquiescence as manifestative in the above extracted portions in Annexure P-14, does also when is not strived through adduction of cogent evidence, to become eclipsed. Resultantly, thereby begets an inference vis-a-vis the petitioner despite admittedly holding leases over the disputed lands, rather his suppressing the said factum from the statutory authorities, who drew the verdict(s) (supra), besides also his suppressing the said factum, not only from this Court but also from the Hon'ble the Apex Court.

34. The suppression of the above acquiescences, as occurring in Annexure P-14, fosters an inference that the verdict(s) made by the Collector (Annexure P-35), by the Joint Development Commissioner (IRD) (Annexure P-43), by this Court, on CWP-18370-2006 (Annexure P-44), and, on CWP-17773-2006 (Annexure P-45), and, by the Hon'ble Apex Court on Civil Appeal No. 4686 of 2008 (Annexure P-46), becoming procured by the petitioner herein, thus through his evidently practicing the vices of *Suppressio Veri* or *Suggestio Falsi*, rather before the statutory authorities (supra), as well as before this Court and before the Hon'ble Apex Court.

35. Consequently, with the said verdict(s) becoming stained with the above vices, thereby, this Court is led to affirm Annexure P-14. In sequel with the judgments (supra) becoming procured by the present petitioner through his practicing the vices of *Suppressio Veri* or *Suggestio Falsi* over all above, thereby, the said verdict(s), but cannot become assigned any conclusivity and binding effect.

36. It also appears that the suit lands as appear from a reading of Annexures P-41 to P-46, appended with CM-2885-2019, which are taken on record, thus prior to the happening of the partitioning of the Country in the year 1947, rather were in the possession of muslims, who on the happening of the partition of the country in the year 1947, left for Pakistan. Therefore, when in terms of the verdict rendered by the Hon'ble Apex Court, in case, titled as '***Gram Panchayat of village Jamalpur Vs. Malwinder Singh***', reported in ***1985 (3) SCC 661***, such lands left behind by muslims migrants to Pakistan, became vested in the *shamlat deh* besides whether thereovers there is no right, title and

possession thereovers. Consequently, possession, if any, which the petitioner herein assumed over the disputed lands but after the muslims who were earlier thereto cultivating the disputed lands, rather migrating to Pakistan, on the ill happening of the partitioning in the year 1947, is in sequel of the verdict (supra), as made by Hon'ble Apex Court, thus to the considered mind of this Court, to be construed to be leaving no vestige of any right, title and interest thereovers in the petitioner herein. The relevant paragraphs are extracted hereinafter.

3. *Prior to the partition of India on August 15, 1947 the Shamlat-deh lands in Punjab were owned by the proprietors of the other lands in the Village, "Hasab Rasad Khewat", that is to say, in the same proportion in which they owned the other lands. Therefore, a person who did not own any other land in the village could have no proprietary right or interest in the Shamlat-deh lands, But, though the interest of the proprietors of the other lands, in Shamlat-deh lands, was incidental to their proprietary interest in those other lands, such interest in the Shamilat was not a mere appendage to their interest in the other lands. Our learned Brother Chinnappa Reddy, has referred in his judgment to a leading decision of the Lahore High Court, Rehman v. Sai ILR 9 Lahore 501 in which it was held that, if a proprietor alienated his land, the alienee would not acquire any interest in the Shamilat by mere virtue of the alienation. That was but consequential to the well- established legal position in Punjab that the Shamlat-deh lands were intended for the common use of all sharers.*

4. *There were some villages in Punjab which were mostly inhabited by Muslims, with the result that almost all the lands in those villages were owned by Muslim proprietors who, as a result of their proprietary interest in those lands, had a proportionate undivided share in the*

Shamlat-deh lands. They had only an 'undivided' share in the Shamlat-deh lands because such lands were not liable to be partitioned, they could not be alienated and, they were intended to be used and were in fact used, without exception, as undivided property of the proprietors of the other lands. Indeed, our learned Brother has cited a passage from Rattigan's 'Digest of the Customary Law in the Punjab', which shows that Shamlat-deh lands were treated as reserved for common village purposes. Some of the villages in Punjab and many in Haryana, were inhabited partly by Muslims and partly by non-Muslims. Most of the Muslim proprietors migrated to Pakistan whereas, the non-Muslims continued to live in their villages.

5. The question as to the management and preservation of the property left by Muslim evacuees led to the passing of the East Punjab Evacuees (Administration of Property) Act, 14 of 1947. That was an Act of the Punjab Legislature, section 4 of which provided that all interests in the property whether movable or immovable, of the evacuees vested in the Custodian appointed by the State Government. That Act, like similar Acts passed by the other State Legislatures, was repealed and replaced by an Act passed by the Parliament, viz; the Administration of Evacuee Property Act, 1950, to which we will refer as the 'Central Act of 1950'. That Act came into force on April 17, 1950. Section 8(2) thereof provided that, if any property in the State had vested immediately before the commencement of the Act as evacuee property in any Custodian under any law repealed by the Act, that property shall, on the commencement of the Act, be deemed to be evacuee property and shall vest in the Custodian appointed for the State under the Act. As a result of this provision, the interest of all evacuees which had vested in the Custodian under the Punjab Act 14 of

1947, came to be vested in the Custodian appointed under the Central Act of 1950. In the villages which were wholly inhabited by Muslims and from which almost the entire population migrated to Pakistan, all the Shamlat-deh lands together with the other proprietary lands were declared evacuee property and came to be vested in the Custodian. In the villages which were inhabited both by Muslims and non-Muslims the proprietary holdings of the Muslim evacuees vested in the Custodian and, along with that, the interest of the proprietors in the Shamlat-deh lands, such as it was, also vested in the Custodian.

6. The point which arises for our consideration and which has been answered in the affirmative by the High Court of Punjab and Haryana is whether, there is any repugnancy between the provisions of the Central Act of 1950 and those of the Punjab Act of 1953. (The latter Act has been referred to by the High Court as the Act of 1954 because, though passed in 1953, it was numbered as Act 1 of 1954). Section 3 of the Punjab Act, which is said to be the focal point of the repugnancy, reads thus, in so far as relevant

"3. Vesting of rights in Panchayats end in non-proprietors: Notwithstanding anything to the contrary contained in any other law for the time being in force.....all rights, title and interest whatsoever in the land-

(a) which is included in Shamlat-deh of any village, shall, on the appointed date, vest in a Panchayat having jurisdiction over the village".

....xxxx.xxxx....xxxx.

14. The line of reasoning of our learned Brother, Chinnappa Reddy, affords a satisfactory solution to this constitutional impasse, which we adopt without reservation of any kind. The pith and substance of the Punjab Act of 1953 is 'Land' which falls under Entry

No.18 of List II (State List) of the Seventh Schedule to the Constitution. That Entry reads thus :

"Entry No. 18 - Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents ; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

*Our learned Brother has extracted a passage from a decision of a Constitution Bench of this Court in Ranjit Singh v. State of Punjab [1965] 1 S.C.R. 1982, which took the view that since, the Punjab Act of 1953 is a measure of agrarian reform it would receive the protection of Article 31-A. It may be recalled that the Act had received the assent of the President as required by the first proviso to that Article. The power of the State Legislature to pass law on matters enumerated in the State List is exclusive by reason of the provision contained in Article 246(3). In a nutshell, the position is that the Parliament has passed a law on a matter which falls under Entry No. 41 of the Concurrent List, while the State Legislature has passed a law which falls under Entry No. 18 of the State List. The law passed by the State Legislature being a measure of agrarian reform, is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the village panchayats will be able to meet the needs of the village community and secure its welfare. Accordingly, **the Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950, even in so far as Shamlat-deh lands are concerned.** ”*

37. Conspicuously, thereby in terms of the Section 3 of Act No. 1 of 1954 or the Punjab Act of 1953, provisions whereof are extracted hereinafter, such lands vest in the *shamlat deh*.

"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.....all rights, title and interest whatsoever in the land-

(a) which is included in Shamlat-deh of any village, shall, on the appointed date, vest in a Panchayat having jurisdiction over the village".

Final Order of this Court.

38. In aftermath, this Court finds no merit in the writ petition and is constrained to dismiss it and is accordingly dismissed.
39. The impugned Annexure P-14, is maintained and affirmed.
40. No order as to costs.
41. Since the main case itself has been decided, thus, all the pending application(s), if any, are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

27.02.2024
kavneet singh

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