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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-2336-1995
Date of Decision: 5th February, 2024

Ram Sarup
..... Petitioner
Versus

The Commissioner, Rohtak Division, Rohtak and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rajinder Goel, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Yashveer Kharb, Advocate
for respondent No.4.

HARSH BUNGER J.

1. Petitioner (Ram Sarup) has filed the instant writ petition under Articles 226 and 227 of the Constitution of India seeking setting aside of impugned orders dated 29.01.1993 (Annexure P-2), 15.03.1994 (Annexure P-3) and 12.05.1994 (Annexure P-4) passed by the Court of Assistant Collector, Ist Grade, Panipat; Collector, Panipat and Commissioner, Rohtak Division, Rohtak, respectively.
2. Briefly, Gram Panchayat, Bhadar, District Panipat filed an eviction petition under Section 7 of the Punjab Village Common Lands

(Regulation) Act, 1961 (hereinafter to be referred as 'the 1961 Act') seeking eviction of petitioner from the land comprised in Khasra No.90/1 min (3-4) and 90/1 (3-3) on the plea that the aforesaid land is *Shamlat Deh* and petitioner herein is in illegal and unauthorised possession of the said land.

Petitioner herein appeared in the aforesaid eviction proceedings and contested the same by filing his reply, wherein he *inter alia* stated that the Gram Panchayat is not the owner of land in question; and on the contrary, he was the owner in possession of said land since the time of his father and grandfather. Accordingly, petitioner raised an objection that before carrying out the eviction proceedings, the question regarding ownership of the land in dispute be settled.

3. The aforesaid objection regarding question of title *qua* the land in question was taken up for consideration by the Assistant Collector, Ist Grade, Panipat. Petitioner asserted that the land in question does not fall within the definition of '*Shamlat Deh*' because before vesting into the Gram Panchayat, the land was owned by *Shamlat Pana Gujran*, and such land does not vest in the Gram Panchayat as the same is not used for common purposes as per the Revenue Record. Apparently, the Gram Panchayat produced a copy of *jamabandi* for the year 1989-90 before the concerned authority, which reflected that the land in question was shown as the ownership of Gram Panchayat; and therefore, the Assistant Collector, Ist Grade, Panipat, vide order dated 29.01.1993 (Annexure P-2), observed that the land in dispute is owned by the Gram Panchayat and petitioner herein had not produced any evidence regarding the fact that the land in dispute was not used for any common purpose or that he was in possession of the land in question on or before 26.01.1950.

Accordingly, the Assistant Collector, Ist Grade, Panipat did not

find any question of title involved in the case and consequently the objection of petitioner regarding question of title *qua* land in dispute was rejected and it was observed that the eviction proceedings under Section 7 of the 1961 Act be carried out.

4. Being aggrieved against the aforesaid order dated 29.01.1993 (Annexure P-2), petitioner herein filed an appeal before the Collector, Panipat, which was dismissed vide order dated 15.03.1994 (Annexure P-3), by observing as under:-

“After hearing the arguments of both the counsel for the parties and perusal of the record which has come on file I have come to his conclusion that the appellant has failed to prove the contention raised in this appeal. From the perusal of the copy of Jamabandi for the year 1989-90 exhibit P-2 and P-3 produced on the file of the lower court that the land in dispute is owned by the Gram Panchayat. According to exhibit P-2 in the column of ownership Gram Panchayat Deh has been recorded and in the column of cultivation Prema s/o Sidhu Sakin Deh has been recorded as Gair Maroosi and the land comprised in khasra no. 90/1 min (3-3). In similar manner in Exhibit P-3 Gram Panchayat Deh is recorded in the column of ownership and in the column of cultivation Chhotu s/o Ram Kishan Sakin Deh Gair Maroosi has been recorded, and the land comprised in Kh. No. 90/1 min is (4-4). According to the copy of the khasra Girdawari exhibit P-4 & P-5 the name of the appellant has come in the Khasra Girdawari for Kharif 1991 and prior there to the appellant has no connection with the land in dispute. The counsel for the appellant while addressing the arguments has made spl. reference to the copy of the Jamabandi for the year 1962-63 exhibit P-2 according to which regarding the land in dispute in the column of ownership Sarupa etc. are recorded and in the column of cultivation self cultivation is recorded. This Sarupa is not the appellant but some other persons and this

Sarupa has given his statement in the lower court that this land was allotted to him and later on he exchanged this land with the Gram Panchayat. In this manner there remains no doubt that the Gram Panchayat is not the owner of this land. In this manner no question of title is involved. In the circumstances the order passed by the lower court do no call for any interference and the appeal filed by the appellant is ordered to be rejected. The parties have been directed to appear before the lower court on 22.3.94. The lower court is directed to proceed with the case in accordance with law.”

5. A revision petition filed by the petitioner against the aforesaid order dated 15.03.1994 (Annexure P-3) was also dismissed by the Commissioner, Rohtak Division, Rohtak vide order dated 12.05.1994 (Annexure P-4).

6. In the aforementioned circumstances, petitioner has filed the instant writ petition before this Court.

7. We have given our thoughtful consideration to the contentions raised by learned counsel for the respective parties.

8. In the instant case, in order to substantiate his plea/objection that question of title is involved in the matter, petitioner has placed reliance upon the *jamabandi* for the year 1962-63 (Annexure P-5) along with order dated 26.11.1965 (Annexure P-6) passed by the Court of Additional Director, Consolidation of Holdings, Punjab. On the strength of the aforesaid two documents, i.e. Annexures P-5 and P-6, it is contended that the land in dispute, i.e. Khasra 90/1, was recorded to be owned by *Pana Roran Thola Sardha* and Sarupa, Banwari, Sher Singh sons of Niather son of Shiba and Sheo Ram @ Sewa son of Ram Kalan were recorded in possession thereof; however, vide order dated 26.11.1965 (Annexure P-6), certain changes were ordered by the Consolidation Authorities between Sarupa and

other right holders on one side and *Shamlat Pana Gujran* on the other side. It is submitted that on the basis of aforesaid order dated 26.11.1965 (Annexure P-6), a wrong mutation came to be sanctioned, whereby the land of *Shamlat Pana Gujran* was allocated to the aforesaid Sarupa etc. and another piece of land measuring 74 Kanals 11 Marlas was given to *Shamlat Pana Gujran*. It is contended that the petitioner is in possession of the aforesaid Khasra number as proprietor of the *Pana* and the said area is not in excess of the share of petitioner; and accordingly, a question of title has arisen, which is required to be decided before proceeding further with the eviction petitions.

9. On the other hand, learned State counsel appearing for respondents No.1 to 3 as well as learned counsel for respondent No.4-Gram Panchayat have opposed the prayer made on behalf of petitioner by submitting that no question of title is involved in the present matter. It is submitted that petitioner has no concern with the land in dispute inasmuch as that as per *jamabandi* for the year 1962-63 (Annexure P-5), it is evident that the land comprised in Khasra No.90/1 (6 Kanals 7 Marlas) is recorded as the ownership of Sarupa etc.; and vide order dated 26.11.1965 (Annexure P-6), certain changes were carried out by the Consolidation Authorities, whereby the aforesaid Khasra No.90/1 along with other Khasra number came to be excluded from the holding of aforesaid Sarupa etc. and the same was allocated to the holding of '*Shamlat Pana Gujran Maqbuja Charand*'. Similarly, certain area was excluded from the area of *Shamlat Pana Gujram Maqbuja Charand* and included in the holding of the aforesaid Sarupa etc.

Learned State counsel has further referred to Annexure R-2 (Mutation No.950) attached with the reply filed on behalf of the Block Development and Panchayat Officer, Madlauda, to contend that as per the

said mutation, Khasra No.90/1 is shown as 'Charand', which is used for common purposes of the village, therefore, there is no substance in the plea raised by the petitioner. Accordingly, prayer has been made for dismissal of the instant writ petition.

10. Here, it would be apposite to refer to Section 7(1) of the 1961 Act and its proviso, which read as under:-

“7. Power to put Panchayat in possession of certain lands.--

[(1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised 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 the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Haryana Tenancy Act, 1887:

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.”

In terms of the proviso to Section 7(1) of the 1961 Act, it is envisaged that if in any proceedings under Section 7(1) *ibid*, the question of title is raised and proved *prima facie* on the basis of documents that the question of title is really involved, the Assistant Collector of the First Grade

is to record a finding to that effect and first decide the question of title in the manner laid down in Section 7 of the 1961 Act, therefore, it is manifest that it is not on the mere raising of a question of title or making an averment that a question of title is involved and the Assistant Collector, Ist Grade is to record a finding in that regard; rather, it is to be proved *prima facie* on the basis of documents that the question of title is really involved.

11. It is not in dispute that the land comprised in Khasra No.90/1 was earlier recorded as the ownership of aforesaid Sarupa etc. and the said area along with other Khasra number was a subject matter of proceedings before the Consolidation Authorities, which resulted into the passing of order dated 26.11.1965 (Annexure P-6), whereby the aforesaid Khasra No.90/1 was taken out of the holding of Sarupa etc. and was allocated to holding of '*Shamlat Pana Gujran Maqbuja Charand*' and in lieu of this area, certain areas were included in the holding of Sarupa etc. It is also not disputed that as per Annexure R-2, as referred above, Khasra No.90/1 along with other Khasra number is reflected as '*Charand*' in the cultivation column and the ownership thereof has been recorded as '*Shamlat Pana Gujran*'. The petitioner is not in any manner shown to be connected with the aforesaid persons, namely Sarupa, Banwari, Sher Singh sons of Niather son of Shiba and Sheo Ram @ Sewa son of Ram Kalan. Furthermore, Annexure R-2 clearly reflects that the entry in the cultivation column, as regards Khasra No.90/1 and other Khasra number, is shown as 'under *Charand*' and the nature of land is further depicted as '*Barani*' and/or '*Banjar Kadim Thoor*'. The land being reflected as '*Charand*' would mean that it is used for grazing cattle for common purposes. The petitioner has, therefore, not been able to show as to whether he has any foundation of right, title or interest in the land in dispute, as mentioned in *jamabandi* for

the year 1962-63 (Annexure P-5) and/or Annexure R-2, which is a mutation sanctioned on the basis of order dated 26.11.1965 (Annexure P-6) passed by the Consolidation Authorities. As such, the petitioner has *prima facie* failed to prove on the basis of any document/material that question of title is really involved, which is the requirement in terms of proviso to Section 7(1) of the 1961 Act. Accordingly, there is lack of merit in the grievance of petitioner that a question of title is involved as regards the land in question.

12. Consequently, the instant writ petition is dismissed, being devoid of any merit.

13. All pending application(s), if any, shall also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(HARSH BUNGER)
JUDGE

5th February, 2024
Apurva

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No