

CWP No.2074-1996 (O&M)

-: 1 :-

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

CWP No.2074-1996 (O&M).

Date of Decision: 29.02.2024.

Bhagwan Kaur

....Petitioner.

Versus

Gram Panchayat Village Kamaspur

....Respondent.

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Ankush Rampal, Advocate for
Mr. Kushagra Mahajan, Advocate for
respondent-Gram Panchayat.

Lalit Batra, J.

This petition under Article 226 of the Constitution of India has been filed by petitioner-Bhagwan Kaur, seeking quashing of order dated 17.08.1995 (Annexure P-3), passed by Joint Development Commissioner, Punjab (Exercising the Powers of Commissioner), (hereinafter to be referred as 'Commissioner'), vide which Appeal No.12 of 1992 under Section 11(2) of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as 'Act, 1961'), filed by respondent-Gram Panchayat, Village Kamaspur (hereinafter to be referred as 'respondent'), against order dated 29.11.1991 (Annexure P-2) passed by the Collector/D.D.P.O., Patiala

(hereinafter to be referred as 'Collector'), was accepted and a declaration has been issued that land comprised in Khewat/Khatauni No.72/158, Khasra No. 30/17(9-9), 18(7-16), 23(8-6), 24(8-16), 32/2(2-0), 3(8-0), 4(9-5), 6(2-8), 7(8-0), 8(7-9), 14(6-1), measuring 76 Kanals – 10 Marlas, situate in village Kamaspur, Tehsil Samana, District Patiala, belongs to Gram Panchayat and as Bhagwan Kaur is in unauthorized possession of the land in dispute, she has been ordered to be dispossessed from the said land.

2. Petitioner's case in brief is that she is widow and is owner-in-possession of land in dispute and earlier her husband-Sohan Singh and his predecessor-in-interest were in possession of the said land, being owners and members of the proprietary body of the village. In the *Jamabandis* for the years 1940-41, 1944-45 and 1951-52 upto 1960-61, the land in dispute is described as *Shamilat Deh Hasab Rasad Khewat* and in the column of cultivation, *Makbooza Malkan* has been mentioned. Thus, the said land was owned by the proprietary body of the village and was in possession of the share holders in accordance with their respective share holdings. The land in dispute has also been described as *Banjar Qadim* and in the revenue record, there is no reference that the said land is being used for common purposes of the village. The petitioner and previously her husband and his predecessor-in-interest remained in peaceful cultivating possession of the land in dispute without any objection or hindrance from anybody including respondent. In the *Jamabandis* from 1941 onwards, the said land has been described as *Banjar Qadim* but in possession of proprietors. Eventually, the said land was made cultivable by the petitioner and her predecessors-in-

interest and the same is in continuous possession of them till date. On 14.12.1989, respondent-Gram Panchayat, through its Sarpanch, filed a petition under Section 7 of Act, 1961, against the petitioner alleging therein that she had obtained the land in dispute pursuant to a lease but even after expiry of the lease period, she has failed to vacate the said land and is in unauthorized possession of the same. However, there was no mention in the said petition regarding any lease deed, date of execution of lease deed, its commencement and duration and rate of rent. Above said petition was contested by petitioner-Bhagwan Kaur contending that the land in dispute does not vest in the respondent and she also filed petition under Section 11 of Act, 1961, stating therein that land in dispute does not belong to respondent as it was *Banjar Qadim* and was never used for the benefit of the village community, however, the said land was made cultivable by her and her predecessors-in-interest about thirty years back and respondent has no right, title or interest in the said land. Both the said petitions were clubbed together by the Collector and after adduction of evidence and hearing the parties, petition under Section 11 of Act, 1961, filed by petitioner was allowed, whereas petition under Section 7 of Act, 1961, filed by respondent was dismissed, vide common order dated 29.11.1991 (Annexure P-2), holding therein that land in dispute is not *Shamilat Deh* and, therefore, it does not vest in the Gram Panchayat. Feeling aggrieved, respondent preferred appeal before Commissioner, which was allowed, vide order dated 17.08.1995 (Annexure P-3), holding therein that land in dispute belongs to Gram Panchayat and as Bhagwan Kaur is in unauthorized possession of the

land in dispute, she is ordered to be dispossessed from the said land. In view of above, impugned order dated 17.08.1995 (Annexure P-3) rendered by Commissioner, is liable to be set aside.

3. In its written statement, respondent-Gram Panchayat has raised preliminary objection that petitioner has not come to the Court with clean hands and has suppressed material facts and, thus, she is not entitled for any discretionary relief. On merits, it is contended that neither petitioner nor her predecessors-in-interest ever remained in possession of the said land being owners and members of the proprietary body of the village. As a matter of fact, they were put in possession of land in dispute on 12.06.1964 as lessee for a period of five years on payment of lease amount @ Rs.40/- per acre, however, after the expiry of lease period, instead of delivering back the possession of said land to respondent, predecessors-in-interest of petitioner started challenging ownership of respondent. For the first time, in the year 1984-85, possession of petitioner was shown as tenant under respondent @ Rs.40/- per acre and the predecessors-in-interest of petitioner had deposited the rent in the Panchayat fund as under:-

Rs.70.71 on 06.01.1979;

Rs.90.00 on 21.05.1981; and

Rs.141.00 on 21.05.1981

Thereafter, petitioner has deposited the rent to the respondent-Gram Panchayat. Three receipts issued by petitioner having affixed her thumb impression (Annexures R-1 to R-3) show deposit of rent by her for the years 1983-84, 1984-85, 1985-86 and 1986-87. The land in dispute was

in possession of respondent before 12.06.1964 and name of petitioner reflected in the revenue record for the first time in the year 1984-85 and that too as tenant under the Gram Panchayat. It is further contended that on the basis of evidence available on the record, Commissioner has rightly accepted the appeal and ordered for ejectment of petitioner from the land in dispute. Thus, denying the claim of petitioner, dismissal of petition has been prayed for.

4. Learned counsel for petitioner *inter alia* contended that impugned order dated 17.08.1995 is illegal, arbitrary, without jurisdiction and liable to be set aside as the Appellate Authority acted illegally and with material irregularity in accepting the appeal. As a matter of fact, petitioner and earlier her predecessors-in-interest being members of the proprietary body of the village and share holders therein were in possession of the land in dispute, as is evident from revenue record. As per Section 2(g)(5) of Act, 1961, the land described in the revenue record as *Banjar Qadim* would vest in Gram Panchayat only if it was being used for the common purposes of the village. As per revenue record i.e. *Jamabandis* from 1940 to 1960 shows that land in dispute was *Banjar Qadim* and was not used for common purposes of the village, thus, the said land does not vest in the Gram Panchayat. Disputing the claim of respondent that land in dispute was leased out in favour of petitioner and prior to her in favour of her predecessors-in-interest, it is contended that in the petition under Section 7 of Act, 1961, date of commencement of lease, its duration and rate of rent etc. were not mentioned nor any resolution of the Panchayat was referred to.

The only evidence led by respondent is the bald testimony of Sarpanch accompanied by three receipts which are from the general receipt book maintained by the Sarpanch and does not disclose as to for what purpose the payment was received. Even otherwise, those receipts did not bear any reference to any payment having been made towards rent. Apart from that, paltry amount of Rs.70/-, Rs.90/- and Rs.141/- could not be considered as the amount paid towards rent in the years 1979 and 1981 and that too for approximately 9½ acres of land and as such alleged receipts appear to be manipulated one just to get favour to the cause of respondent-Gram Panchayat. Thus, findings recorded by Commissioner that land in dispute was leased out in favour of petitioner, are altogether illegal. The ownership of respondent is based upon a mutation entered in its favour. It was rightly held by Collector that land in dispute is not *Shamilat Deh* and does not vest in the Gram Panchayat. Petition under Section 11 of Act, 1961, filed by petitioner, was rightly allowed, whereas petition under Section 7 of Act, 1961, filed by respondent, was rightly dismissed by the Collector. The land in dispute does not vest in respondent and is not used for the common purposes of the village community, whereas the same is owned by the petitioner. Thus, impugned order dated 17.08.1995 (Annexure P-3) rendered by Commissioner, is liable to be set aside.

5. On the other hand, learned counsel for respondent contended that land in dispute is owned by respondent-Gram Panchayat. As per *Jamabandi* for the years 1951-52 and 1961-62, land in dispute has been described as '*Shamilat Deh*', however, thereafter the said land has been

recorded as ownership of Gram Panchayat. Neither petitioner nor her predecessors-in-interest were in possession of the land in dispute till May, 1964. They were put in possession on 12.06.1964 as lessee for a period of five years on payment of lease amount @ Rs.40/- per acre but on expiry of term of tenancy, they did not deliver back the possession of disputed land to the respondent. For the first time, possession of petitioner was shown in the *Jamabandi* for the year 1984-85 as that of a tenant. The petitioner had taken the land in dispute from Gram Panchayat on rent @ Rs.40/- per acre and the receipts (Annexures R-1 to R-3), depict payment of rent by her in favour of Gram Panchayat. After expiry of the lease period, petitioner cannot challenge the ownership of Gram Panchayat qua land in dispute and as such she is estopped from raising said plea. Petitioner is in unauthorized possession of the land in dispute as the same was taken by her and earlier by her predecessors-in-interest on lease from respondent and on expiry of lease period, she is liable to be evicted from the disputed land. Vide order dated 17.08.1995 passed by Commissioner, the land in dispute has been rightly declared to be ownership of respondent-Gram Panchayat and possession of present petitioner has been held to be unauthorized and, thus, she has been rightly ordered to be dispossessed from the land in dispute.

6. We have heard learned counsel for the parties at length and carefully perused the record.

7. Claim of petitioner for exclusion of the land in dispute, from “*Shamilat Deh*” is primarily based on a plea that prior to petitioner, her predecessors-in-interest were in possession of the land in dispute being

owners and members of the proprietary body of the village. To fortify her plea, petitioner has categorically pleaded that in the *Jamabandis* for the years 1940-41, 1944-45, 1951-52 and 1960-61, the land in dispute is described as *Shamilat Deh Hasab Rasad Khewat* and in the column of possession expression *Makbooza Malkan* has been mentioned and in this manner, land in question was the ownership of proprietary body of the village and possessed by share holders in accordance with their respective share holdings. Further, it is categorical stand of petitioner that though land in question has been described as *Banjar Qadim*, but there is no reference in the revenue record that it was being used for common purposes of the village. Further, it is pleaded by petitioner that land in dispute was made cultivable by her and her predecessors-in-interest by spending huge amount and they are continuing in possession of said land till date. In this view of the matter, petitioner invokes Section 2(g)(iii) of Act, 1961, in support of her plea of exclusion of land in dispute from “*Shamilat Deh*”. Section 2(g) of Act, 1961, reads as follows:-

“2(g) “Shamilat deh” includes—

- (1) *lands described in the revenue records as shamilat deh [but excludes abadi deh, unless otherwise expressly provided in this Act];*
- (2) *shamilat tikkas;*
- (3) *lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*
- (4) *lands used or reserved for the benefit of the village*

community including streets, lanes, playgrounds, school, drinking wells, or ponds within the abadi deh or gorah deh.

[(4a) vacant land or plot situated in abadi deh or gorah deh not owned by any person; and]

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

(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act;

Explanation:-- Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" shall be shamilat deh within the meaning of this section;]

but does not include land which--

(i) [----]

(ii) has been allotted on quasi-permanent basis to a displaced person;

(ii-a) was shamilat deh, but , has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July, 1985.]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed; [and is not in excess of the share of the co-sharer in the shamilat deh].

(v) is described in the revenue records as *Shamilat, Taraf, Pattis, Pannas, and Thola* and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village.

[(vi) lies outside the *abadi deh* and was being used as *gitwar, bara, manure pit, house* or for cottage industry, immediately before the commencement of this Act];

(vii) [.....]

(viii) was *Shamilat Deh*, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such *shamilat deh* on or before the 26th January, 1950; or

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

8. Section 2(g)(iii) of Act, 1961, provides that land which was "partitioned" and brought under cultivation by individual landlords, before 26.01.1950, shall be excluded from "*Shamilat Deh*". Petitioner asserts a private partition amongst proprietors and her individual possession before 1950. The *Jamabandis* produced by petitioner do not record a partition of the '*Shamilat Khewat*', much less the "cultivating possession" of individual landlords. A partition, inheres the severance of the joint status of co-sharers with each co-sharer becoming absolute owner of the parcel of land allotted to him during partition. The severance of the joint status would though be recorded in the *Jamabandi* by allotting a separate *Khewat* number, to each erstwhile proprietor and by recording his name in the revenue record, as absolute owner. A partition of agricultural land is normally carried out by revenue authorities, exercising power under the Punjab Land Revenue Act,

1887 (hereinafter referred to as 'Act, 1887') and is proved by an entry in the revenue record allotting a separate *Khewat* number (ownership number) to each erstwhile co-sharer, as proof of a partition. However, parties are not prohibited from entering into a private partition but the private partition has to be reported to revenue authorities under Section 123 of Act, 1887. A perusal of the record, however, reveals that the "*Shamilat Khewat*" continues to be joint without any individual landlord being recorded as a separate owner. The land also continues to be recorded as "*Shamilat Deh Hasab Rasad Kabja Mundarja Khewat*", i.e. the joint ownership of proprietors. If the land had, indeed, been partitioned, it would no longer be recorded as "*Shamilat Deh Hasab Rasad Kabja Mundarja Khewat*" but in the individual name of a landlord. The fact that the land continues to be recorded as "*Shamilat Deh Hasab Rasad Kabja Mundarja Khewat*", i.e. the joint ownership of proprietors and continues to retain one *Khewat* number, depicts that plea of petitioner of private oral partition before 1950, has not been proved. Moreover, presumption of truth is attached to said revenue entries and unless the said presumption is rebutted by adducing cogent evidence thereby said presumption acquires conclusivity. Since in the instant case, no cogent evidence to rebut the said presumption became adduced by petitioner, therefore, but naturally the said unrebutted presumption, thus, also assigns conclusivity to the revenue entries. In addition, when the said revenue entries became never asked to be quashed or set aside thereby the petitioner acquiesces to the validity of said entries. Resultantly, petitioner is also estopped from discrediting the said entries.

9. Apart from the fact that petitioner has failed to prove a partition, she was also required to prove, under Section 2(g)(iii) of Act, 1961, that after partition, the land was in her individual cultivation. A bare perusal of *Jamabandis* for the years 1944-45 (Annexure R-8), 1951-52 (Annexure A-1) and 1955-56 (Annexure R-9), clearly reveals that prior to Consolidation, land in question described as Khasra Nos.317, 318 and 319 was *Banjar Qadim* and continued to be same upto the year 1960-61. In this view of the matter, nature of land in question prior to Consolidation was *Banjar Qadim* i.e. lands that have remained fallow for eight or more consecutive harvests.

10. Once it has come on the record that prior to Consolidation, land in question has been described as *Banjar Qadim* in the revenue record, the fact that it was not being used for the common purposes of the village, petitioner was required to adduce cogent evidence in that regard. To substantiate her possession over the land in question prior to 26.01.1950, petitioner has pressed into service revenue record i.e. *Jamabandis* for the years 1944-45, 1951-52 and 1955-56. A bare perusal of *Jamabandi* for the year 1951-52 (Annexure P-4) reveals that in Column No.4 (Name and details of owner), expression “*Shamilat Deh Hasab Rasad Kabja Mundarja Khewat*” has been mentioned and in Column No.5 (Name and details of cultivator), expression “*Maqbooza Malkan*” has been enshrined therein. The expression “*Banjar Qadim*” in the *Jamabandi* for the year 1951-52 (Annexure P-4), assumes significance in view of definition of phrases like *Banjar Qadim*, *Banjar Jadid* and *Gair Mumkin*. The person could not be in

cultivating possession of the land which was recorded as *Banjar Qadim* in the year 1944-45 onwards. Though expression “*Maqbooza Malkan*” has been enshrined in Column No.5, but it is a term depicting general possession and it is not specific qua the cultivators who possessed the particular chunk of land at the relevant time. At this juncture, it is relevant to point out here that prior to 1960-61, land in question was *Banjar Qadim*. If the land has not been harvested for four successive crops and has not been sown, then such land is classified as *Banjar Jadid* or new fallow. If it continues to be uncultivated and the said entries are maintained for the next four harvests then such land comes under the category of *Banjar Qadim* or old fallow. The aforesaid terminology shows that a *Banjar Qadim* land is a land which remained uncultivated for eight preceding harvests. Once land in question has been categorized as *Banjar Qadim* as said land continues to be uncultivated and the said entries are maintained, *Banjar Qadim* land shown in Column No.8 of the *Jamabandi* for the year 1951-52 (Annexure P-4) negates the plea of self-cultivating possession of petitioner as on 26.01.1950. Revenue entry of *Banjar Qadim* acquires presumption of truth and said land is deemed to be used for common purposes of the village, thereby debarring petitioner from contesting that disputed land was never *Shamilat Deh*, unless evidence became adduced to the extent that the relevant revenue record, contrarily spoke that petitioner had changed the nature of said land to cultivable land so that thereby the said classification loses its beneficial consequential effect *vis-a-vis* the Gram Panchayat. However, no such evidence has been adduced by petitioner. Resultantly,

disputed land with above classification is deemed to be *Banjar Qadim* land and is also deemed to be used according to the revenue record for common purposes of village. Therefore, petitioner cannot at all contend, that the disputed land is not covered within the ambit of definition of *Shamilat Deh* nor she can contend that in terms of Section 4 of Act, 1961, the said land was not required to be mutated in the name of Gram Panchayat, as owner thereof. Moreover, the land in dispute was never partitioned because if it had been so, the land would not have been recorded as “*Shamilat Deh Hasab Rasad Kabja Mundarja Khewat*” but in the individual name of landlord(s). Thus, the requirement to oust a land from the ambit of *Shamilat Deh* as contained in Section 2(g) of Act, 1961, remains unfulfilled as there is no proof of partition and no proof of cultivating possession of petitioner. In order to prove specific possession of a cultivator, petitioner was required to place on record list of *Bartandaran* and failure on her part to prove said aspect, she has failed to prove her specific possession as cultivator over the land in question prior to 26.01.1950.

11. Petitioner had filed petition under Section 11 of Act, 1961, praying therein that she is in possession of the land in dispute as a owner thereof for the last thirty years and the said petition was instituted by her on 07.05.1991. Further, she has taken the stand that land in dispute was brought under cultivation by her for which purpose, a large amount was spent. Apart from that, petitioner has categorically pleaded that previously land in dispute was *Banjar Qadim* but it was never in possession of Gram Panchayat and had never been used for common purposes of the village.

Jamabandis for the years 1951-52 and 1961-62 describe the land in dispute as *Shamilat Deh* and thereafter said land stands mutated in the name of Gram Panchayat. In the petition under Section 11 of Act, 1961, petitioner has claimed her possession simplicitor since 1961, but she has nowhere pleaded that prior to 1961, through her predecessors-in-interest, she was holding independent cultivating possession over the disputed land. A bare perusal of the revenue record, it reveals that upto 1961-62, petitioner was not in possession of land in dispute. Thereafter, petitioner entered into possession and for the first time, her possession was shown as that of a tenant in the *Jamabandi* for the year 1984-85. In terms of that revenue entry, petitioner had taken the land in dispute on lease from Gram Panchayat @ Rs.40/- per acre. Respondent-Gram Panchayat has placed on record receipts Annexures R-1 to R-3, in terms of which, she had paid rent for the years 1983-84, 1984-85, 1985-86 and 1986-87 favouring Gram Panchayat.

12. In view of above, once the petitioner has made payment of rent favouring respondent-Gram Panchayat, she cannot dispute the title of land owner (Gram Panchayat). Petitioner has not adduced clinching evidence to dislodge the presumption of truth to the revenue entry of *Jamabandi* of the year 1984-85, whereby she has been displayed as 'tenant' over the disputed land, therefore, conclusivity is acquired by the said revenue entry, especially when receipts of rent (Annexures R-1 to R-3), do also justify the said revenue entry. In case petitioner was aggrieved of execution of above said receipts, then onus was shifted upon her to prove that the said receipts related to some other land and not to the disputed land. Failure to discharge

the said onus foster the inference that the said receipts irrespective of suit Khasra numbers not being detailed therein, thus, rather pertained to the land in dispute.

13. As a sequel to above findings, petitioner has failed to establish her ownership qua land in dispute. On the other hand, respondent-Gram Panchayat has been able to establish on record that land in question was leased out in favour of petitioner in the year 1984-85 and after expiry of lease period, instead of vacating the said land, she overstayed there and challenged the ownership of respondent-Gram Panchayat, which she was not entitled and has been aptly ordered to be ejected from said land, vide order dated 17.08.1995 (Annexure P-3) rendered by Commissioner. In these terms, instant writ petition is dismissed. Impugned order dated 17.08.1995 (Annexure P-3) rendered by Commissioner, is affirmed. Consequently, order of eviction passed by Commissioner is to be enforced forthwith through execution petition.

Pending application, if any, also stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

29.02.2024
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No