

2024.PHHC.149327



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

102-2

CWP- 3663-1996

Date of Decision: 14.11.2024

DARSHAN SINGH

... Petitioner

VERSUS

JOINT DEVELOPMENT COMMISSIONER AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. J.S. Virk, Advocate
for the petitioner.

Mr. Aditya Sharda, DAG, Punjab
for respondents No.1 and 2.

Mr. K.S. Dadwal, Advocate
for respondents No.3 and 4.

None for respondent No.5.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 06.12.1995 (Annexure P-5) passed by respondent No.1 – Joint Development Commissioner (IRD) Punjab, (Exercising the powers of Commissioner), Chandigarh in Appeal No.50 of 1995 titled as ‘Shri Piara Singh and Another Versus District Development & Panchayat Officer-cum-Collector, Hoshiarpur and Another’, whereby the order dated 24.11.1994 passed by the Collector, Hoshiarpur has been set aside and the respondents No.3 and 4 herein (appellants in the abovesaid appeal) have been held to be in lawful possession of the land in dispute.



Briefly summarized, the facts of the present case are that the respondents No.3 and 4-Applicants had approached the Collector, Hoshiarpur by filing an Application No.55 of 1988 under Section 11 of the Punjab Village Common Land (Regulations) Act, 1961 (hereinafter to be referred to as the 'Act of 1961') claiming that they were owners of land in dispute as described in the head note of the Application. Their father-in-law Waryam Singh had constructed a pakka house on the said land and the respondents-applicants being successors-in-interest have succeeded in possession thereof and they have been in a continuous, uninterrupted occupation, use and enjoyment of the said property. There was a well dug in the land in dispute, which was constructed by them and hence belonged to them. It was known as the "Gujri Da Khoo". The said well touched the boundary wall of the house constructed by Waryam Singh and that the Gram Panchayat has no concern or relation with the well as well as the land in question. A prayer was hence made to be declared as owners since the land ceased to be shamlat after the settlement in the year 1911-12

Notice of the aforesaid Application was served upon the Gram Panchayat, which filed its written statement before the Collector, Hoshiarpur to the effect that the land in dispute was a common passage and vested in the Gram Panchayat. A further claim was raised that even the well was used for common purposes and hence belonged to the Gram Panchayat.

The parties led their respective evidence. The respondents No.3 and 4-Applicants produced AW-1 Piara Singh and AW-2 Atma Singh as witnesses in support of their claim. Both the said witnesses deposed in support of the claim of



respondent No.3 and 4- Applicants and submitted that the Gram Panchayat had no connection or concern with the land in dispute. A jamabandi Ex.AW-1 was also produced wherein the Gram Panchayat had admitted that the land in dispute was the ownership of the respondents No.3 and 4-Applicants. AW-3 as well as AW-6 also supported the case of the respondents No.3 and 4-Applicants and they also proved a site plan Ex.AW-6/1, in their support.

The petitioner Darshan Singh also moved an application for being impleaded as party therein, however, noticing that the petitioner had no connection or concern with the land in dispute, the same was dismissed on 04.07.1994, against which no appeal or revision had been preferred.

The Gram Panchayat, on the other hand, produced Sarpanch Phool Singh as its witness. In his testimony before the Collector, Hoshiarpur, he admitted that the petitioner Darshan Singh had filed a Civil Suit in which the Gram Panchayat had been impleaded as party, but later on, the Gram Panchayat made an exit from the said petition and he also admitted that the land in dispute was in possession of the respondents No.3 and 4-Applicants since prior to the settlement.

After hearing the parties and considering the evidence adduced by both sides, including the judgment dated 22.10.1993 passed by the District Judge, Hoshiarpur, the Collector, Hoshiarpur held that no evidence could be produced by the respondents No.3 and 4-Applicants to establish their ownership over the land in question. The application under Section 11 of the Act of 1961 was accordingly dismissed.



Aggrieved thereof, the respondents No.3 and 4-Applicants preferred the Appeal No.50 of 1995 before the Joint Development Commissioner, Punjab.

The parties advanced their respective arguments and upon considering the same, the Joint Development Commissioner, Punjab held that the land in question was *Abadi Deh* and that the testimony of the witness of the Gram Panchayat i.e. Budh Singh Sarpanch clearly shows that he had specifically admitted that there is a stone affixed on the well constructed on the site which inscribes the words “Well of Waryam Singh”. It was also not disputed that respondents No.3 and 4-Applicants were successors of Waryam Singh and that a kotha had also been constructed on the said site. It was thus held that the Gram Panchayat admitted the possession of the respondents No.3 and 4-Applicants and that being so, the appeal filed by the respondents No.3 and 4-Applicants was allowed and they were held to be owners-in-possession of the land since their forefathers.

Aggrieved thereof, the present writ petition has been filed.

A written statement on behalf of the Gram Panchayat has been filed wherein Gram Panchayat did not dispute the factum of the Civil Suit at the behest of the petitioner but stated that the Gram Panchayat had not been impleaded as party in the said suit. The Gram Panchayat supported the case of the respondents No.3 and 4-Applicants in the written statement and it was stated that the resolution dated 06.11.1988 (appended by the petitioner alongwith the present writ petition as Annexure P-1) is a forged and concocted document as at the time of preparation of the said resolution, there was enmity between the



parties. The Gram Panchayat also admitted in its reply that the respondents No.3 and 4-Applicants are successors-in-interest of Waryam Singh and that the site in dispute fell within the definition of *abadi deh* of Village Nadalon and the said fact is also recorded in the settlement of the year 1911-12; and that they constructed the pakka house, which was in existence for the last more than 50 years and had been in continuous and uninterrupted possession of the respondents No.3 and 4-Applicants. Objection with respect to the competence of the petitioner to institute the instant petition was also raised.

A separate reply had also been filed by the contesting respondents wherein it was stated that the resolution dated 06.11.1988 already passed by the Gram Panchayat against them is a forged document. The petitioners built up the case by placing reliance on the above resolution despite knowing that it was a forged document. The site is a recorded *abadi deh* as per settlement of the year 1911-12 and was in possession of 'in-laws' of Waryam Singh, the ancestor of respondents-applicants. The possession thus remains continuous and uninterrupted. It was also stated that Darshan Singh had no right to become a party to the proceedings and that the impleadment application was earlier dismissed. The said order has attained finality. The petitioner thus had no right to challenge the decision.

No replication/rejoinder to the written statement has been filed by the petitioner in the present case.

Learned counsel for the petitioner has argued that in the proceedings instituted by him before the Civil Court for seeking injunction, a specific finding



was recorded by the Civil Court that respondents No.3 and 4-Applicants could not establish their ownership over the land in question and it was also held that the land was *shamlat deh*. Hence, there was no jurisdiction vested in the Civil Court to adjudicate the said issue. He has further argued that a cryptic and non-speaking order had been passed by the Authorities declaring respondents No.3 and 4-Applicants to be the owners of the land in question, despite the said respondents having failed to prove their ownership over the land in question in the proceedings before the Civil Court.

Counsel for the respondents No.3 and 4-Applicants, however, contends that the present petition is liable to be dismissed as the petitioner has no locus to institute the present petition. He submits that vide order dated 04.07.1994, the application of the petitioner for being impleaded as party was dismissed by the Collector, Hoshiarpur. He never raised any challenge against the said order, hence, he has no further locus to impugn the said decision. He further contends that the Gram Panchayat has also filed its separate written statement, wherein the Gram Panchayat admitted the claim of respondents No.3 and 4-Applicants and has specifically acknowledged that during the settlement proceedings in the year 1911-12, the land in question was brought within the *abadi deh*. It is further submitted that once the said land comes within the *abadi deh*, it ceases to be a *shamlat deh* as per the Section 2(g) of the Act of 1961. Further, the possession of respondents No.3 and 4-Applicants was acknowledged and stood established even as per the *misal haqiyat* of year 1884. Thus, the area in dispute was never being used for common purposes of the village. The

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admission by the witness of the Gram Panchayat to the effect that the well specifically has a stone bearing an inscription “Well of Waryam Singh” undisputedly establishes the title of the respondents No.3 and 4-Applicants not only over the disputed plot but also on the adjoining Well.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

While the petitioner seeks to assert that the land in question is a *shamlat deh* and impugns the order passed in favour of respondents No.3 and 4-Applicants in an Application under Section 11 of the Act of 1961, it remains undisputed that no evidence has been adduced by the petitioner to establish that the land in question is *shamlat deh*. The sole reliance of the petitioner is on the finding recorded by the civil Court about the respondents No.3 and 4-Applicants having failed to establish their ownership over the land in question, however, for continuation of proceedings for seeking eviction, it was required to be established that the respondents No.3 and 4-Applicants were in an unauthorized possession of the land and had encroached upon the same. If the evidence adduced before the Civil Court as well as before the Collector, Hoshiarpur are seen and examined in harmony, it would reveal that the Bandobast of 1884-*misal haqiyat* shows that the passage stopped towards the western corner of the Khasra No.4731 i.e. the property in question and that the passage was on the western side of the said plot. A presumption was drawn by the District Judge, Hoshiarpur that given the nature and the Naksha of site as prepared by the Local



Commission, it is right that the same was left for use of the residents of the village originally, however, the said *misal haqiyat* undisputedly establishes that even at that time, the respondents No.3 and 4-Applicants were in possession of Khasra No.4731 i.e. the suit property. Eventually, at the time of settlement in the year 1911-12, the land in question was brought out of the passage and within the abadi area. The said position remains undisputed and intact. No evidence has been led by the petitioner, even at the stage of filing of the instant writ petition, that the findings so recorded by the Authority suffer from any error. Once the settlement of year 1911-12 took the disputed land out of the passage area, it does not lie with the petitioner to nonetheless still claim that it continued to remain as an existing passage. The possession of respondents No.3 and 4-Applicants has been established since *misal haqiyat* of 1884 and the user of land having been changed in 1911-12 coupled with the fact that the witness of the Gram Panchayat himself admitted the possession and ownership of respondents No.3 and 4-Applicants over the land in question, I find that the present writ petition lacks merit. There is no evidence on the basis whereof, the findings recorded by the Joint Development Commissioner (IRD) Punjab can be held to be bad or contrary to the record. Furthermore, no satisfactory explanation has been put forth as regards the locus of the petitioner to prefer the instant writ petition more-so, when the application preferred by him before the Collector, Hoshiarpur for being impleaded as party had already been dismissed and which such order attained finality. Examining it from a separate perspective, once proceeding before a Forum are held to be not maintainable, its findings on merits lack

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enforceability. The petitioner thus may not be justified in law to just refer to an extract of the order of the District Judge, who actually held that proceedings were not maintainable and also said that the respondents could not prove their title. For sustaining proceedings of eviction under the Act of 1961, it is required to be established that the land is a shamlat land. A person being in possession of land would not be sufficient to seek initiation of proceedings under the Act of 1961 unless it is established on record that the land is a shamlat. The record relied upon by the authorities since 1884 does not corroborate the usage of the land for common purposes and the land having been brought under Abadi as per settlement of the year 1911-12. Besides, the petitioner made a statement in the Regular Second Appeal No.2482 of 1993 that he does not press against the finding recorded regarding maintainability, hence to the said extent, the statement cannot be reopened.

The Gram Panchayat has conceded the claim of the respondent and petitioner has failed to address on the illegality or perversity in the orders passed.

The present petition is accordingly dismissed.

14.11.2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No