

CWP No.5476-1996 (O&M)

-: 1 :-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP No.5476-1996 (O&M).

Date of Decision: 31.01.2024.

Gram Panchayat Amargarh @ Panjoli

....Petitioner.

Versus

The Joint Development Commissioner (IRD), Punjab and others

....Respondents.

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

Argued by: Mr. Arun Jindal, Advocate for petitioner.

Mr. Maninder Singh, Deputy Advocate General, Punjab.

Private respondents proceeded *ex-parte*,
vide order dated 10.01.2024.

Lalit Batra, J.

This petition under Articles 226/227 of the Constitution of India has been filed by petitioner-Gram Panchayat, Amargarh @ Panjoli (hereinafter to be referred as 'petitioner'), seeking quashing of order dated 06.04.1995 (Annexure P-2), passed by Joint Development Commissioner (IRD), Punjab (Exercising the Powers of Commissioner), (hereinafter to be referred as 'Commissioner'), vide which Appeal No.83 of 1991 under Section 11(2) of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as 'Act, 1961'), and Appeal No.110 of 1991 under Section 7(2) of Act, 1961, filed by appellants-Karam Singh and others (respondents No.3 to 7 herein), against order dated 13.02.1991 passed by

Collector/Divisional Deputy Director, Rural Development and Panchayat, Patiala (hereinafter to be referred as 'Collector'), on application under Section 11 of Act, 1961 and application under Section 7 of Act, 1961, were accepted thereby holding that land comprised in Khewat/Khatauni No.48/79, Khasra No.7//13/2(0-1), 18//2(0-8), 13//7(8-0), 14(8-0), 17/2 (4-9), 24(1-2) and Khewat/Khatauni No.32/48, Khasra No.13//17/1(3-6), situate in village Amargarh @ Panjoli, does not vest in Gram Panchayat.

2. Petitioner's case in brief is that petitioner filed an application under Section 7 of Act, 1961 against respondents No.3 to 7 seeking their ejectment from land in dispute and also filed an application under Section 11 of Act, 1961, against the said respondents. Both the above said petitions were accepted by Collector, vide order dated 14.11.1985. Respondents No.3 to 7 filed appeals before Commissioner, who vide order dated 20.05.1988, remanded the case to Collector, Patiala, to decide the same afresh after affording opportunity to both the parties. Thus, after hearing both the parties at length, Collector accepted both petitions filed under Sections 7 and 11 of Act, 1961, and declared petitioner as owner of the land in dispute under Section 11 of Act, 1961, and further passed the order of ejectment against respondents No.3 to 7, vide conjoint order dated 13.02.1991 (Annexure P-1). Aggrieved against the said orders, respondents No.3 to 7 preferred appeals before Commissioner, which were allowed, vide order dated 06.04.1995 (Annexure P-2) holding therein that land in dispute does not vest in Gram Panchayat. Petitioner has challenged the above said order *inter alia* on the grounds that according to revenue record, petitioner is owner of

land in dispute and the possession of respondents No.3 to 7 qua said land is unauthorized; respondents No.3 to 7 have failed to establish their possession qua said land prior to 26.01.1950; land in question was *Banjar Qadim* as on 09.01.1954 and the said land vests in petitioner and it was used for common purposes of the village. Petitioner is competent to file petition under Section 11 of Act, 1961. In view of above, impugned order dated 06.04.1995 (Annexure P-2) rendered by Commissioner, is liable to be set aside.

3. In their written statement, respondents No.3 to 7 have contended that petition under Section 11 of Act, 1961, was not maintainable as petitioner had no authority in the year 1985 to file petition under Section 11 of Act, 1961. Further, petition under Section 7 of Act, 1961, filed by petitioner was hit by the principle of *res judicata* because earlier petition under Section 7 of Act, 1961, moved by petitioner against Basawa Singh son of Bakhtawar Singh, predecessor-in-interest of respondents No.3 to 7, in respect of land measuring 22 Kanals of land in dispute, was dismissed, vide order dated 29.03.1968 passed by Assistant Collector Ist Grade, Bassi at Patiala. It is further contended that land in dispute and other land measuring 343 Bighas – 3 Biswas is recorded as *Banjar Qadim* and 76 Bighas – 3 Biswas, is recorded as *Gair Mumkin* and as per *Jamabandi* for the year 2001-2002 Bikrami (1944-1945) (Annexure R-1), above said land is recorded under the ownership of *Shamilat Deh Hasab Hissa Mandarza Shajra Nasab* and in the column of cultivation (Column No.5), *Maqbooza Malkan* is recorded and the nature of land is recorded as *Banjar Qadim*. Respondents No.3 to 7 are proprietors and right holders in village

Amargarh, therefore, they are owners-in-possession of the land in dispute as per their share and land in dispute being *Shamilat Deh Hasab Hissa Mandarja Shajra Nasab* never vested in the petitioner and, thus, latter has no concern whatsoever with the said land. Respondents No.3 to 7 are in continuous possession of the land in dispute since 1944-45. It is further contended that impugned order dated 06.04.1995 (Annexure P-2) is legal, valid and the same has been passed by respondent No.1-Appellate Authority in accordance with law and rightly appreciated the points raised and principle of *res judicata* is applicable in the instant case and as such petitioner could not file petition under Section 7 of Act, 1961, against respondents No.3 to 7. The land in dispute was *Banjar Qadim* as on 09.01.1954 and was not used for common purposes and, thus, it does not fall within the ambit of *Shamilat Deh*. Similar land has been declared as not being *Shamilat Deh* by respondent No.1 as well as by this Court. Mutation entered in the name of petitioner is null and void. The Collector had wrongly clubbed petitions under Sections 7 and 11 of Act, 1961, as amalgamation of two procedures is not warranted and the right of ownership cannot be decided in proceedings under Section 7 of Act, 1961. It is further contended that Collector, vide order dated 13.02.1991 (Annexure P-1) had wrongly allowed both the petitions of petitioner and the said order has rightly been set aside by Commissioner, vide order dated 06.04.1995 (Annexure P-2). Thus, denying the claim of petitioner, dismissal of petition has been prayed for.

However, at the time of final hearing, neither private

respondents appeared in person nor through any validly engaged counsel, therefore, they were proceeded against *ex-parte*, vide order dated 10.01.2024.

4. Learned counsel for petitioner *inter alia* contended that impugned order dated 06.04.1995 is illegal, arbitrary, against principles of natural justice and liable to be set aside as the Appellate Authority acted illegally and with material irregularity in accepting the appeals. According to the revenue record, the land in dispute is owned by petitioner and possession of respondents No.3 to 7 over the said land is unauthorized. Even otherwise, respondents No.3 to 7 have failed to establish their possession over the land in dispute prior to 26.01.1950. It was rightly held by Collector that land in dispute was *Banjar Qadim* as on 09.01.1954 and it was used for common purposes of the village, therefore, no benefit of it can be given to respondents No.3 to 7. The land in dispute vests in petitioner and is used for common purposes. Thus, impugned order dated 06.04.1995 (Annexure P-2) rendered by Commissioner, is liable to be set aside.

5. We have heard learned counsel for the petitioner and learned Deputy Advocate General, Punjab, at length and carefully perused the record.

6. Claim of respondents No.3 to 7 for exclusion of the land in dispute, from “*Shamilat Deh*” is primarily based on a plea that the land was partitioned amongst proprietors, prior to 1950 and was in their individual possession. Respondents No.3 to 7, therefore, invoke Section 2(g)(iii) of the Act, 1961, in support of their 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;]

7. 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". Respondents No.3 to 7 assert a private partition amongst proprietors and their individual possession

before 1950. The *Jamabandis* produced by respondents No.3 to 7 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 Hissa Mandarja Shajra Nasab*", i.e. the joint ownership of proprietors. If the land had, indeed, been partitioned, it would no longer be recorded as "*Shamilat Deh Hasab Hissa Mandarja Shajra Nasab*" but in the individual name of a landlord. The fact that the land continues to be recorded as "*Shamilat Deh Hasab Hissa Mandarja Shajra Nasab*", i.e. the joint ownership of proprietors and continues to retain one *Khewat* number, depicts that plea of respondents No.3 to 7 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 private respondents, 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 private respondents acquiesce to the validity of said entries. Resultantly, private respondents are also estopped from discrediting the said entries.

8. Apart from the fact that respondents No.3 to 7 have failed to prove a partition, they were also required to prove, under Section 2(g)(iii) of Act, 1961, that after partition, the land was in individual cultivation of landlords. The evidence on record is devoid of any evidence of the cultivating possession of individual landlords, whether after partition or before partition. The land, as already noticed, was recorded in pre and post consolidation *Jamabandis* as "*Banjar Qadim*" i.e. lands that have remained fallow for eight or more consecutive harvests.

9. After perusing order dated 06.04.1995 (Annexure P-2), it is not understandable that in what manner the Appellate Authority concluded that *Banjar Qadim* land was not being used for common purposes of village as no supporting record i.e. copies of (a) *Khasra Girdawari*, (b) Consolidation Scheme, and (c) *Shart Wazib-Ul-Arz*, were referred to, which was the best evidence and in absence thereof Appellate Authority could not conclude

that *Banjar Qadim* land was not being used for common purposes of village. That aspect was required to be gone into by Appellate Authority. To substantiate their possession over the land in question prior to 26.01.1950, respondents No.3 to 7 have pressed into service revenue record i.e. *Jamabandi* for the year 1944-1945 (Annexure R-1). A bare perusal of said record reveals that in Column No.4 (Name and description of owner), expression “*Shamilat Deh Hasab Hissa Mandarja Shajra Nasab*” has been mentioned and Column No.5 (Name and description of cultivator), expression “*Maqbooza Malkan*” has been enshrined therein. The expression “*Banjar Qadim*” in the *Jamabandi* for the year 1944-45 (Annexure R-1), 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. Though expression “*Maqbooza Malkan*” has been enshrined in Column No.5, but it is a term depicting general possession and it is not specific to the cultivators as to by whom particular chunk of land was being possessed at the relevant time. At this juncture, reference to copy of *Khasra Girdawari* for the year 1953-1955 (Ex.R-7), as referred to in order dated 13.02.1991 (Annexure P-1), reveals that 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 1944-45 negates the plea of self-cultivating possession of the private respondents 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 private respondents from contesting that disputed land was never *Shamilat Deh*, unless evidence became adduced to the extent that the relevant revenue record, contrarily spoke that the private respondents 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 private respondents. 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, private respondents cannot at all contend, that the disputed land is not covered within the ambit of definition of *Shamilat Deh* nor they 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 Hissa Mandarza Shajra Nasab*” 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 respondents No.3 to 7. In order to prove specific possession of a cultivator, respondents No.3 to 7 were required to place on record list of *Bartandaran* and failure on their part to prove said aspect, they have failed to prove their specific possession as cultivators over the land in question prior to 26.01.1950.

10. Regarding maintainability of petition under Section 11 of Act, 1961, moved at the instance of petitioner (Gram Panchayat), it is observed that though Section 11 of Act, 1961, has been subsequently amended vide Act No.25 of 1993 and for the expression “any person” the words “any person or a Panchayat” have been substituted but such amendment is only to clarify the existing position of law. The expression “person” as it existed in Section of Act, 1961, would include a statutory entity i.e. Gram Panchayat. Moreover, deeming provision of preferring appeal at the instance of Gram Panchayat as enshrined in sub-Section (2) of Section 11 of Act, 1961, would *ipso facto* provides right to Gram Panchayat to file a petition as well, as appeal is but a continuation of petition. Thus, the Gram Panchayat was competent even prior to insertion of expression “Panchayat” in Section 11 of Act, 1961, vide Act No.25 of 1993 as the authority competent to claim question of title. To this effect, reliance can also be placed on the decision of this Court in case *Prithi Ram* vs. *Gram Panchayat of village Reona Bhola and others*, 2014(3) R.C.R. (Civil) 754.

11. Though a faint plea was raised before the Collector as well as Commissioner by the private respondents that since previously application

under Section 7 of Act, 1961, has already been dismissed by Assistant Collector Ist Grade on 29.03.1968, principle of *res judicata* would be applicable to instant proceedings, it is observed that order, if any, passed under Section 7 of Act, 1961, is summary in nature and the findings recorded thereof does not operate as *res judicata* in the proceedings initiated for deciding a title suit under Section 11 of Act, 1961. To this effect, reliance can also be placed on the decision of this Court in case **Gram Panchayat Village Mulepur** vs. **Prem Singh and others**, 2015(4) R.C.R. (Civil) 28.

12. As a sequel to above findings, private respondents have failed to establish their possession over the land in dispute prior to 26.01.1950 and as such Gram Panchayat has aptly been declared owner of said land and further private respondents have been aptly ordered to be ejected from said land. In these terms, instant writ petition is allowed. Impugned order dated 06.04.1995 (Annexure P-2) rendered by Commissioner, is set aside. Order dated 13.02.1991 (Annexure P-1) passed by Collector is affirmed. Consequently, order of eviction passed by the Collector is to be enforced forthwith through execution petition.

Pending application, if any, also stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

31.01.2024
jitender

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