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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5445-2024
Date of decision:07.03.2024

NIRBHAI SINGH AND ANOTHER

...Petitioners

Versus

DISTRICT DEVELOPMENT AND PANCHAYAT OFFICER AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Jatinder Singla, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioners became aggrieved from Annexure P-5, wherebys the learned Collector concerned, rejected the present petitioners' claim as became founded, upon the proviso to Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act"). The relevant portion of the said proviso becomes extracted hereinafter.

“[Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh].”

2. Admittedly, a petition cast under Section 7 of the Act became instituted before the DDPO-cum-Collector, Patiala. After notice on the said petition becoming served, upon the present petitioners, they filed reply thereto. In the said reply, the relevant portion whereof becomes extracted hereinafter, they in terms of the above extracted proviso asserted title to the disputed lands, and, obviously refuted that title in the suit lands, vested in the Gram Panchayat concerned.

“That para No.2 of the petition as mentioned is wrong and hence denied. Land mentioned in the petition is not the ownership of Nagar Panchayat alias Shamlat Deh nor this land was reserved for any common purposes. The land in question never remained under the control of petitioner Gram Panchayat nor the Gram Panchayat has earned any income from this land. Therefore, question of utilization does not exist in Jamabandi for the year 2017-2018.

*Actual story is that this land is their own of owners of village Kalar Bhaini which is partitioned in 24 'Hals'. In column of ownership, the entry is '**shamlat deh malkiat 24 Hals Mundarja Shijra Nisab**' clear meaning that according to pedigree table, this land of 24 Hals/shares is of Khewatdars of Village and the Khewatdars of the village are cultivating this land according to their shares from the time of their forefathers. During consolidation, this land comprised in Khasra No.509(6-5), 510(6-5) as per Khewat No.28/31 of Khatauni Pamaish was allotted to Alam Singh, Bachna sons of Mastan Singh, Jat Dhindsa. This allotment was never challenged by any person.*

Later on, this land was entered in the ownership of 'shamlat deh malkiat 24 Hals Mundarja Shijra Nisab' but Alam Singh etc. are in possession of this land as owners continuously. In khewat No.66 of Jamabandi for the year 1978-79 and Jamabandi 1982-83, 1987-88, 1992-93, Alam Singh, Bachan Singh sons of Mastan Singh son of Bhagwan Singh are recorded in column of possession and in column No.9 of Jamabandi, clear entry 'Bila Lagan Bawaja Malkiat Tasabar Malkiat is mentioned. From the co-joint reading of entries of column of possession and column No.9 of rent, it is clear that Alam Singh etc. are in possession over it as owners. Alam Singh, Bachan Singh had sold their land to Respondents in the year 1993 alongwith all rights attached with this land. Therefore, the name of respondents as owners was mentioned at the place of vendors in the column of possession of Jamabandi for the year 1997-98. In column No.9 of Jamabandi for the year 2002-2003, entry 'Bila Lagan Bawaja Malkiat Tasabar Malkiat' is mentioned. From it, it is clear that the respondents are owners in possession.

Here, it is made clear that in Scheme consolidation, the land which was reserved for charand is measuring 153 Bighas 17 Biswas comprised in Khasra Nos. 440, 441 to 463, 438. Thus, above said Khasra numbers are not mentioned in the year of Charand. Apart from this, it is made clear that apart from this khewat, according to ownership of Shamlat Khewat No.63 is mentioned in Jamabandi for the year 1972-73 in which Khasra Nos. 438, 440 to 463 total measuring 156 Bighas 3 Biswas is Banjar Qadim and apart from it, for common purposes area like Ahle Salam, Maqbooja Ahle Hanood, Ghamiar, Hospital, School, Panchayat Ghar and area for Harizans, Ramdasia, Kamian and for Raffae-am is lying separately which is mentioned in Khewat No.165, total measuring 242 Bighas 13 Biswas in the present jamabandi. Gram Panchayat is utilizing this area and the land mentioned in the petition never remained the ownership of Gram Panchayat. Apart from this, it is also for consideration that Kartar Singh son of Sunder Singh son of Kharak Singh had got transferred Khasra Nos. 157(8-11), 158(8-0) out of khewat of

'Shamlat Deh Malkiat 24 Hals Mundarja Shijra Nisab' in their names by filing Suit No.182 dated 10.7.1981, from the court and its mutation was sanctioned. Apart from it, out of said area, area measuring 53 Bighas 6 Biswas, Sucha Singh son of Ghumand Singh 1½ share, Saun Singh son of Ghumand Singh V½ share out of 24 Hals of above said khewat had got entered in their ownership from the court in suit No.322 dated 9.8.1968 decided on 25.1.1969 and its mutation No.659 was attested. Apart from this, Gian Singh son of Kirpal Singh vide Suit No.259 decided on 10.11.1971 had got transferred area measuring 36 Bighas of his share in his name, its mutation No.601 was sanctioned in the name of Gian Singh. Apart from this, Amar Singh son of Rur Singh had got transferred area measuring 21 Bighas 8 Biswas by considering its own area of its share from the court in suit No.160 decided on 10.6.1969, its mutation No.718 was sanctioned. Gram Panchayat has not challenged the above said order till today. From it, it is clear that Gram Panchayat has not admitted this land as its own land. Thus, Question of Title' is involved and if the Gram Panchayat considers Itself as owner of this land then the petitioner has to get the question of title decided from the competent court.

Here, it is important to mention here that Naranjan Singh son of Hardial Singh son of Nidhan Singh had got transferred area measuring 64 Bighas 13 Biswas out of land of Shamlat Deh in his name vide suit No.158 decided on 16.6.1969, its mutation No.638 was sanctioned but till today, the Gram Panchayat has not challenged even this area of shamlat land. Therefore, the plea of Gram Panchayat that the land in question was reserved for common purposes and its control is with the Gram Panchayat is totally wrong."

3. The learned Collector concerned, through Annexure P-5 rejected the said assertion of title as became made to the disputed lands, by the present petitioners. Though, it is submitted by the learned counsel for the petitioners that the learned Collector concerned, was required to be

making a well reasoned and profound contemplation qua whether the above

extracted contention raised by the present petitioners in their response to the Section 7 petition, and, which became founded upon the above proviso, thus was as a matter of fact a well raised contention. However, the said profound contemplation qua the asserted facts, rather remained unmade by the Collector concerned.

4. A reading of the impugned order (Annexure P-5) reveals, that the Collector concerned, in a most slipshod and arbitrary manner, besides without making any profound contemplation, and, without his assigning any reason for rejecting the said contention, rather has in a cryptic manner, dismissed the said motion, thus merely on the ground, that the said motion is intended to merely prolong the litigation which had become laid before him.

5. In the face of the above, this Court finds merit in the instant petition, and, is constrained to accept it. Hence, the instant petition is allowed, and, the impugned Annexure P-5, is quashed, and, set aside. A direction is made to the learned Collector concerned, to make a well reasoned decision upon the said raised assertion by the present petitioners vis-a-vis the disputed lands.

(SURESHWAR THAKUR)
JUDGE

07.03.2024
Ithlesh

(RITU TAGORE)
JUDGE

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