



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-16693-2010 (O & M)
Reserved on: 30.04.2024
Pronounced on: 27.05.2024

SADHA SINGH AND ORS.Petitioners

Versus

DIRECTOR RURAL DEVELOPMENT AND PANCHAYATS
PUNJAB AND ORS.Respondents

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

Argued by: Mr. Mandeep Singh Bedi, Senior Advocate with
Mr. Abhishek Thakur, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. M.L.Saini, Advocate
for respondent No. 3.

SURESHWAR THAKUR, J.

1. Through the filing of the instant petition, the petitioners herein lay a challenge to the orders of even date 05.06.2009, respectively comprised in Annexures P-3 and P-4. Further, the petitioners also seek quashing of order dated 09.07.2010 (Annexure P-6).

Factual Background

2. Gram Panchayat village Mardanheri, Tehsil and District Patiala, through its Sarpanch Smt. Gurnam Kaur instituted petition(s) respectively bearing No. 165/DDPO and bearing No. 166/DDPO, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as the 'Act of 1961'), whereby the Gram



Panchayat claimed the makings of a decree of eviction against the respondent(s) therein, thus from the disputed lands.

3. The said petition(s) became decided vide order dated 05.06.2009 and the respondents were ordered to be evicted from the disputed lands.

4. Feeling aggrieved, the respondents concerned filed separate appeals before the Appellate Authority concerned. The Appellate Authority concerned through a common order dated 09.07.2010 (Annexure P-6) dismissed the said appeals.

5. The passing of the afore orders (Annexures P-3, P-4 and P-6) has caused pain to the petitioners and has led them to institute thereagainst the instant writ petition.

Arguments of the learned counsel for the petitioners.

6. Prior to the institution of the ejectment petition(s) (supra) by the Gram Panchayat Mardanheri, ejectment orders were passed against the petitioners respectively by the learned Collector and by the Commissioner concerned. The predecessor-in-interest of the petitioners preferred CWP No. 4535 of 1983 against the afore ejectment orders and the said petition became decided by this Court vide order dated 06.07.1995 (Annexure P-13), whereby the impugned ejectment orders were set aside, and, the *lis* was remanded to the authority prescribed under the 'Act of 1961', thus for re-deciding the dispute between the parties, but after affording an adequate opportunity to both the parties, to adduce evidence in support of their respective contentions.



7. The learned counsel for the petitioners submits that, despite the aforesaid directions becoming passed in the writ petition (supra), rather after a period of about 13 years, the Gram Panchayat concerned filed a fresh petition (Annexure P-1) under Section 7 of the 'Act of 1961', against the petitioners, but without the Gram Panchayat concerned being mindful of the directions (supra), passed by this Court wherebys, the *lis* was remanded to the learned Collector concerned, for making a re-decision thereons but in accordance with law.

8. In summa, the learned counsel for the petitioners submits that the filing of the fresh petitions (supra) was as such barred. Contrarily, he submits that the remanded *lis* was to be restored to its original number and proceedings were to be continued thereons. Resultantly, he argues that decisions (Annexures P-3 and P-4), as made on the freshly instituted eviction petition(s), are vitiated and are required to be quashed and set aside.

9. The learned counsel for the petitioners further submits that, the instant dispute involves a question to title, which has to be decided at the first instance under Section 11 of the 'Act of 1961', before proceeding to pass an order of ejectment.

Reasons for rejecting the arguments made by the learned counsel for the petitioners.

10. The prime reason for rejecting the submission(s) as made by the learned counsel for the petitioners, is grooved in the factum, that a writ petition bearing No. CWP-1704-2011, involving similar lands, facts and legal propositions, as involved in the instant writ petition came up for hearing before this Court. The said writ petition became



dismissed by this Court vide order dated 31.01.2011. The operative underlined part of the said verdict (Annexure R/1/3) is extracted hereinafter.

“7. It thus transpires that the matter was remitted back to the prescribed authority under the Act for re-deciding the dispute between the parties after affording adequate opportunity to both the parties to adduce evidence in support of their respective contentions.

*8. Gram Panchayat, it appears that filed an application alongwith their contentions. **The application filed in consequence of order passed by this Court cannot be termed as fresh application for fresh adjudication. Rather the matter had attained finality however, this Court finding infirmity in the procedure, remitted the matter back for re-deciding the dispute. In such circumstances, the argument raised on behalf of the petitioner is not available to him and has to be rejected.***

9. No argument has been addressed on facts or merits, and therefore, the orders passed by the authorities are hereby confirmed.

10. No ground for interference extraordinary writ jurisdiction is made out.

11. The petition is dismissed.

12. Let a copy of this order be placed on the files of Civil Writ Petition No. 16693 of 2010 titled 'Sadha Singh & another vs. Director, Rural Development & Panchayats and others' and Civil Writ Petition No.18497 of 2010 titled 'Lal Singh & others vs. Director. Rural Development & panchayats and others', which are scheduled to be heard on 8.2.2011.”

11. A plain reading of the above extracted underlined operative part of the order passed by this Court on writ petition (supra),



candidly unveils, the factum, that the argument as is raised by the counsel for the petitioners in the instant writ petition became dealt with in the said writ petition thus involving similar lands of the same village, and also became rejected.

12. Further, it was also ordered that a copy of the said order be placed on the file of the instant writ petition. The effect of the above, is that, the order passed by this Court on 31.01.2011 in CWP-1704-2011, was also to be followed in the instant writ petition.

13. In addition, the petitioner in CWP-1704-2011 also challenged the order dated 31.01.2011 passed by this Court through his preferring an LPA-824-2012 before this Court. The said LPA became dismissed by this Court vide order dated 08.10.2012.

14. In consequence, the decisions (Annexures P-3 and P-4), as made on the freshly instituted application(s) by the Gram Panchayat concerned, cannot be termed to be suffering from any illegality.

15. Be that as it may, this Court would proceed to invalidate the impugned Annexures, only when the petitioners became revealed, by the jamabandis drawn, thus on or before 26th January, 1950, to rather through their predecessors-in-interest, make independent cultivating possession of the suit lands. Resultantly the petitioners would become well leveraged to draw, an able sustenance, from the provisions carried in Section 2 (g)(viii) in the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as the 'Act of 1961'). The said provisions are extracted hereinafter.

2. In this Act, unless the context otherwise requires-

xxxxxxx



(g) '*shamilat deh*' includes -

(1)

(2)

(3)

(4)

(5)

but does not include land which -

(i) xxxxx

(ii) xxxxx

(iii) xxxxx

(iv) xxxxx

(v) xxxxx

(vi) xxxxx

(vii) xxxxx

**(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) xxxxx

16. A perusal of the above extracted statutory provisions which are but an exception or a saving, to the definition of *shamlat deh* land, unfold(s) that for the mandate thereof, becoming affirmatively applied vis-à-vis the petitioners, thereupon, they were required to adduce cogent documentary evidence, reflecting that prior to the year 1950, they were in independent cultivating possession of the suit lands. However, no such evidence became adduced by the petitioners in the eviction petition(s) filed by the Gram Panchayat concerned, thereby also the benefit of the savings clause (*supra*) to the definition of *shamlat deh* but was not assignable to the petitioners.



17. In addition, a perusal of jamabandis for the years 1961-62, 1976-77, 1986-87, 1991-92, 2001-02, 2006-07, already on record, reveal that in the column of ownership '**Nagar Panchayat Deh**' is reflected, whereas, in the column of cultivators the names of the predecessor-in-interest of the petitioners becomes reflected therein as **Gair Marusi** over the subject lands. Further, in the column of rent, an entry of '**without rent unauthorized possession**', is carried therein.

18. The effect of the above, is that, the predecessor-in-interest of the petitioners was not holding independent cultivating possession of the subject lands as but contemplated in the savings clause (supra) to the definition of *shamlat deh*. Contrarily, he was entered as **Gair Marusi** over the subject lands and that too without rent and with further reflections qua his holding unauthorized possession of the subject lands.

19. The making of a conjoint readings of the above descriptions as made in the revenue records, is that, the petitioners were completely dis-entitled to claim the benefit of the savings clause (supra). Though the counsel for the petitioners has vehemently argued that the present petitioners did raise a disputed question of title vis-a-vis the dispute lands, thus in terms of the proviso to Section 7 of the 'Act of 1961'. Therefore, he contends that thereby the Collector concerned was required to be making an objective contemplation whether the said disputed question of title was really involved and was also required to be as such passing an objective order. However, he submits that neither the said contemplation was made nor any objective decision became recorded by the Collector concerned. In sequel, he



argues that for the omission (supra), despite the petitioners becoming well entitled to espouse that the Gram Panchayat had no valid title to the disputed lands, rather through the omission (supra) the said espousal becoming not dealt with at all.

20. The above submission is also not acceptable to this Court. The reason for making the said conclusion, is that, since this Court has concluded that the petitioners were not entitled to the benefit of the savings clause (supra) to the definition of *shamlat deh*. Nonetheless, yet assuming that the entries (supra) as reflected in the revenue records hold only a presumption of truth yet the said presumption of truth was deemed to suffer erosion only through a decree in the said respect becoming passed by the civil Court of competent jurisdiction. Therefore, the said decree was required to be placed by the present petitioners in response to the eviction petition whereby they purportedly canvassed an assertion to title vis-a-vis the disputed lands, thus in terms of the proviso to Section 7 of the 'Act of 1961'. However, it appears that the said decree never became placed on record nor thereby the said presumption of truth as carried by the entries (supra) became denuded vis-a-vis its vigor. Contrarily, when the predecessor-in-interest of the petitioners was entered as **Gair Marusi** but without rent and with a further entry that he is in unauthorized possession of the disputed lands, thereby too, the said entry completely disentitled the petitioners to assert any valid title over the disputed lands nor merely on the basis of the said entries, thus without a declaratory decree being passed by the civil Court of competent jurisdiction, the counsel for the



the Collector concerned, to make an objective evaluation of the said entries and to thereafter pass an objective decision that therebys a disputed question of title is really involved in the *lis*, especially when on the basis of the said unrebutted entries in the manner (*supra*), there was no reality as such in the petitioners posturing, that they had a valid title to the disputed lands and that the said valid title be determined before the Collector concerned, proceeding to make a verdict of eviction vis-a-vis the disputed lands, and, qua them.

Final order of this Court.

21. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders/annexures are maintained and affirmed.
22. No order as to costs.
23. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

27.05.2024
kavneet singh

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