

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(I) CWP-12493-2006 (O&M)
Reserved on: 01.02.2024
Date of decision: 19.02.2024

IMRAT (DECEASED) THROUGH HIS LR AND ANOTHER
...Petitioners

Versus

THE COMMISSIONER GURGAON DIVISION, GURGAON AND
OTHERS
...Respondents

(II) COCP-3556-2019
SHABUDIN AND OTHERS
...Petitioners

Versus

PRITAM YADAV, SARPANCH AND OTHERS
...Respondents

(III) CWP-17804-2006
YASIN KHAN AND OTHERS
...Petitioners

Versus

THE COMMISSIONER, GURGAON DIVISION, GURGAON AND
OTHERS
...Respondents

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

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate and
Ms. Himani Sarin, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana and
Ms. Kushaldeep Kaur Manchanda, Advocate

Mr. Sachin Mittal, Advocate with
Mr. Parth Sharma, Advocate
for respondent No.5.

SURESHWAR THAKUR, J.

1. Since both the writ petitions make a challenge to common thereto impugned orders of 01.06.2006 (Annexure P-13), and of 07.03.2006 (Annexure P-12) respectively passed by the Commissioner, and, by the Collector concerned, whereby became quashed the assigning of a declaratory decree vis-a-vis the present petitioners by the Assistant Collector concerned, through the latter making Annexure P-11, besides when the contempt petition also arises from the orders passed in writ petitions (supra), therefore all the (supra), petitions are amenable to be decided through a common verdict.

2. For the sake of brevity, the facts are taken from CWP-12493-2006.

FACTS

3. It is pleaded in the writ petition, that the suit lands in the jamabandis respectively enclosed with the writ petition, as Annexure P-1 to P-3, and, which appertain respectively to the years 1907-08, 1938-39 and 1945-46, thus in the column of ownership thereof, rather being stated to become owned by *Shamlat Deh Hasab Hissa Malkiat* and, with the column of cultivation thereof, making speakings qua an entry of *Makbooja Maalkan* thus existing therein. Therefore, it is contended that the disputed lands were *Bachat Lands*, and/or, were reserved after *pro rata* cuts, being made from the lawful estates of the present petitioners,

thus thereby the petitioners claim that they are entitled to re-partition and redistribution thereof to them, and/or, that they be declared lawful owners in possession of the disputed lands.

4. That the interpretation made by the Assistant Collector concerned, in Annexure P-11 to the said entries, thus was an apt and lawful interpretation and was not required to be annulled, through the makings of the impugned annexures.

5. That since in Annexure P-7, annexure whereof, is the consolidation scheme which became prepared in respect of the disputed lands, thus the disputed lands are not declared to be reserved for any common purposes of the village. Therefore, the order of mutation, as embodied in Annexure P-6 whereby right, title and interest over the disputed lands became conferred, upon the Panchayat concerned, rather is unlawful.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS

6. Learned counsel for the petitioners has argued, that despite an able interpretation being made by the Assistant Collector concerned, vis-a-vis the above revenue entries as carried in Annexure P-11, whereby the petitioners became well entitled to seek re-partition and re-allotments to them of the disputed lands, yet through the impugned annexures, a misplaced reliance becomes made, upon the *Sharat Wajiz ul Arz*, wherein, the disputed lands become depicted as *Shamlat Deh*, and, as such were declared to be impartible.

ANALYSIS OF THE SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONS AND THE REASONS FOR REJECTING THE SAME THEREBYS DISMISSING THE WRIT PETITION

7. Though in the column of ownership and in the column of cultivation the suit lands in the jamabandis (supra), do become spoken to become owned and cultivated respectively by *Shamlat Deh Hasab, Hissa, Malkiyat* and, and, by *Makbooja Malkan*, but significance is also assumed by the descriptions qua the disputed lands becoming made in the classification column, as carried in the jamabandis (supra), wherein, they become categorized to be *Gairmumkin Pahar, Bhur, Tilla, Banjar Kadim*. Therefore, *prima facie* the above classification assigned to the disputed lands, thus in the classification column of the jamabandis (supra), does make the suit lands to be uncultivable.

8. However, much strength is attempted to be derived by the learned counsel for the petitioners, from an entry occurring in the ownership of the jamabandi (supra), wherein the disputed lands become assigned the nomenclature of *Shamlat Deh Hasab Rasab Khewat*, and, also much strength is attempted to be derived by the learned counsel for the petitioners, from the entry of *Makbooja Malkan*, as exists in the column of cultivation in the jamabandis (supra).

9. The consequent thereto argument as raised before this Court by the learned counsel for the petitioners, is that, irrespective of any references, as, occur in the *Sharat Wajib ul Arz*, as, appertaining to the year 1939-40, and, which become alluded in the impugned annexures, and, which make speakings, that the disputed lands are used as pastures, for collecting fuels for domestic use and for collecting stones for construction of houses, thus by all the inhabitants of the village proprietary body, rather they yet become denuded of their worth, but from the above revenue entries, as occur respectively in the ownership

and in the cultivation column of the jamabandis (supra). Moreover, as above stated, the learned counsel for the petitioners, has also submitted that the disputed lands were *Bachat Lands* or were reserved as such, during consolidation operations, but only on a *pro rata* cut being made from the legitimate holdings of the petitioners, thereby the petitioners are entitled to re-partitioning and redistribution of the disputed lands to them.

10. In short, the learned counsel for the petitioners, has strived to, on the basis of the entries (supra), existing respectively in the ownership column, and, in the cultivation column of the jamabandis (supra), thus submit that references, if any, in the impugned orders to the *Sharat Wajib ul Arz*, hence making the above echoings, do rather succumb to revenue entries (supra), and/or, that the references in *Sharat Wajib ul Arz* are completely inconsequential. Moreover, as stated (supra), he has also attempted to completely underwhelm the importance of the classification column as occurs in the jamabandis (supra), wherein, the disputed lands are respectively declared to be *Gairmumkin Pahar, Bhur, Tilla, Banjar Kadim*.

11. Now assuming that even if the entry of *Shamlat Deh Hasab Rasab Khewat*, does exist in the ownership column of the jamabandis, besides assuming even if in the column of cultivation thereof, an entry of *Makbooja Malkan* exists. Nonetheless, the said entries are not to be read in isolation nor any interpretation thereto is to be made, thus in isolation to the references (supra), as made qua the disputed lands in the *Sharat Wajib ul Arz* nor in isolation to the classification (supra), assigned to the disputed lands.

12. If the learned counsel for the petitioners intended to denude the vigor of the references (supra), as made vis-a-vis the disputed lands, thus in the *Sharat Wajib ul Arz*, thereby it was but incumbent, upon the petitioners to adduce clinching discharging evidence, on the relevant issues, especially when they had espoused the making of a declaratory decree vis-a-vis them, on the eviction petition cast under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961, rather becoming converting into a title suit. However, it does not surface from a reading of Annexure P-11, which became reversed through the impugned orders, that the said evidence discharging onus, became adequately discharged, thus to bely the references (supra), as made in the *Sharat Wajib ul Arz*, nor the best rebuttal thereto evidence rather becomes adduced. Therefore, for non-adduction of the above evidence, to bely the presumption of truth attaching to the *Sharat Wajib ul Arz*, but naturally bolsters an inference, that therebys conclusivity is to be assigned to the references (supra), as made in the *Sharat Wajib ul Arz*, whereby the disputed lands are declared to be *Shamlat Deh* lands, as they are used by the entire village proprietary body to collect therefrom, stones for constructing their houses, to collect woods for domestic purpose, and, to make such other common users thereof, as detailed in the *Sharat Wajib ul Arz*.

13. If so, the further corollary thereof, is that, the petitioners did acquiesce to the validity of the said reference as made vis-a-vis the disputed lands, thus in the *Sharat Wajib ul Arz*, resultantly therebys the petitioners become estopped to make any challenge to the said entries before this Court. In sequel, the petitioners concede that the disputed

lands became used for the village common purposes (supra), besides they also concede that the disputed lands were but obviously *Shamlat Deh* lands, whereons no exclusivity of right, title or interest is amenable to become conferred upon them.

14. Now assuming that an entry of *Shamlat Deh Hasab Rasab Khewat* does exist in the jamabandis (supra), and, also an entry exists in the cultivation column thereof, hence manifesting that the *Makbooja Malkan* are holding cultivation of the disputed lands. Moreover, also assuming that therebys the present petitioners, if they were in proportion to their share in the *Shamlat Deh Hasab Rasab Khewat*, rather were holding cultivation thereof, yet it became incumbent upon them to also cogently prove, that they were thus holding independent cultivating possession of the disputed lands, but prior to 1950, and, as such were entitled to become bestowed with the beneficent grace of the apposite savings clause to the definition of *Shamlat Deh*, provisions whereof, are extracted hereinafter.

“Section 2 (g)

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

15. However, no such evidence exists on record. The sequel of non adduction of evidence (supra), at the instance of the plaintiffs, does foster an inference, that apart from the acquiescence (supra), by the petitioners to the references above, as made in the *Sharat Wajib ul Arz* vis-a-vis the lands, whereby the disputed lands become evidently used for the village common purposes, thus, the entries (supra), respectively

in the column of ownership, and, in the column of cultivation, do not *ipso facto* confer any indefeasible right, title and interest in the petitioners, and/or the said entries are mere paper entries, and/or, they succumb to the entires carried in the *Sharat Wajib ul Arz*.

16. To claim conferment of right, title and interest over the suit lands, cogent evidence was required to surface. The said cogent evidence become comprised in the adduction into evidence of Khasra Girdawaris relating to the disputed lands, wherein, but to the exclusivity of the other members of the village proprietary body, rather the petitioners were making utilizations of the disputed lands, and, that too prior to 1950. Nonetheless the above evidence also remained unadduced. The absence of adduction of the above evidence also lends strength to the above inference, whereby this Court has negated the challenge made to the impugned annexures by the learned counsel for the petitioners.

17. Be that as it may, the classification (*supra*), as, assigned to the disputed lands in the apposite classification column, thus also *prima facie* makes the disputed lands to be unamenable for cultivation. If so, since within the scope of the above extracted savings clause to the definition of *Shamlat Deh*, it is but imperative, that the suit lands were amenable to cultivation, whereas, *ex facie* the import of the classification (*supra*), assigned to the disputed lands, is that, they are uncultivable, thereby the petitioners who otherwise have also not brought forth any evidence suggestive that they earlier had or as of now rather made them cultivable, thus through theirs adducing the relevant Khasra Girdawaris, thereupon the disputed lands with the above classifications, are evidently untillable or uncultivable. Resultantly, they were but used for the village

common purposes, as detailed in the *Sharat Wajib ul Arz*. Consequently, they are *Shamlat Deh* lands, and, thereons no vestige of absolute right, title of interest can become endowed vis-a-vis the petitioners.

18. In sequel, the present petitioners cannot claim that they had at any time made them exclusively cultivable for their benefit, and, to the deprivation of the other members of the village proprietary body.

19. Contrarily it has to be concluded that the references (supra), as occur in the *Sharat Wajib ul Arz*, which became depended upon by the makers of the impugned annexures, rather were amenable to become well depended upon.

20. If it be so, the assignings respectively in the column of ownership, and, in the column of cultivation, thus respectively of rights of ownership, and, of rights of cultivation, respectively in the *Shamlat Deh Hasab Rasab Khewat*, and, in the *Makbooja Malkan*, are but concluded to rather, thus not conferring any exclusive right in any member of the village proprietary body, to make independent cultivations thereof, but in proportion to his share in the *Shamlat Deh*, rather it has to be concluded, that the said entries do rather only recognize, thus not any individual proprietor or cultivator rather holding individual rights in the suit lands, but they recognize that in terms of the *Sharat Wajib ul Arz*, the entire village proprietary body becoming conjointly enabled to make common users of the disputed lands. Moreover, the above revenue descriptions but also reiteratedly suggest, that the entire village proprietary body is making utilizations of the disputed lands in the manners detailed in the *Sharat Wajib ul Arz*.

21. The impact of the above inferences, may have become whittled down, but only when the evidence (supra), underlining the trite factum, that the present petitioners were holding independent cultivating possession of the suit lands, rather did surface. However, reiteratedly when the above evidence remained unadduced, thereby for non adduction of the above evidence, a conclusion becomes aroused, that the petitioners claim for exclusivity of conferment of right, title and interest over the disputed lands, is but a completely mis-founded claim thereovers.

22. Now assuming that from the legitimate holdings of the present petitioners over the disputed lands, thus the Consolidation Officer concerned, made pro rata cuts whereafter he reserved them as *Bachat Lands*, thus maybe therebys an enablement became created in the petitioners, to seek re-partition and re-allotments thereof to them. However, yet there was a necessity of firm evidence becoming adduced by the present petitioners, but magnificatory that in the pre consolidation era, they were holding independent cultivating possession of the disputed lands, and, that in terms of the savings clause (supra), to the definition of *Shamlat Deh*, they became entitled to become bestowed with absolute title thereons. However, reiteratedly even the above evidence remained unadduced, thereby it has to be concluded that the disputed lands were never declared *Bachat Lands*, in the consolidation scheme, and, nor also after *pro rata* cut being imposed from the legitimate holding of the present petitioners, the disputed lands became reserved for the village proprietary body. Contrarily, it has to be concluded, that prior to the holding of the consolidations operations, the

lands were used for the common purpose of the entire village community, and, thereby were kept intact in the very same manner, resulting in a valid mutation of ownership becoming attested *qua* the Gram Panchayat concerned, vis-a-vis, the disputed lands.

23. In view of the above made inferences, and, observations both the petitions sans any merit, and, are dismissed as such, and, the impugned annexures are affirmed and, upheld. Accordingly, the contempt petition is also dismissed.

(SURESHWAR THAKUR)
JUDGE

19.02.2024
Ithlesh

(LALIT BATRA)
JUDGE

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