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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-21928-2024****Date of Decision:- 03.09.2024****Azad Singh and others**

...Petitioners

Versus

Financial Commissioner Haryana and others

...Respondent

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr.Satpal Bhasin, Advocate
Mr.Omkar Chauhan, Advocate, for the petitioners.

Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Mago, DAG, Haryana.

G.S. Sandhawalia, J. (Oral)

1. The petitioners have challenged the order dated 25.02.2020 (Annexure P-11) which was upheld vide orders dated 13.01.2022 (Annexure P-13) and 08.02.2024 (Annexure P-14) passed by the appellate authorities, whereby the authorities below have rejected their claim for being considered as owners of the land in dispute referred under Section 13A of the **Punjab Village Common Lands(Regulation) Act 1961** (as applicable to the State of Haryana) (hereinafter referred to as 'the Act') for declaring them joint owner in possession of the disputed land. The petition filed on 19.12.2019 (Annexure P-10) was filed by way of representative capacity with regard to the land falling in village Sarsad Sub Tehsil Khanpur, District Sonipat. The petitioners had also sought declaration regarding mutation No.1108 of the said village to be declared as illegal, invalid and not binding on the rights of the petitioners. The Collector, Sonipat noticed that eviction order had already been passed on 27.03.2001

(Annexure P-1) by the Assistant Collector, 1st Grade Gohana regarding the land in dispute which had further been upheld in appeal on 22.04.2003 (Annexure P-2) and the revision filed by the petitioners had been dismissed on 11.08.2004 (Annexure P-3) by the Commissioner.

2. A perusal of the paper book would go on to show that at first instance after the Commissioner had decided against the present petitioners and their predecessor-in-interest on 11.08.2004, the petitioners filed CWP No.6135 of 2006 titled 'Jora Singh and others Vs. State of Haryana and others' and the Coordinate Bench of this Court, as such has held that the mutation had been entered in the year 1956 and Consolidation took place in the year 1957-58 and the land in dispute was being used for common purposes and nobody had raised any objection. The land was given on lease since the year 1996 and no evidence had been produced to controvert the claim of the Gram Panchayat. Resultantly, it is held that the land in dispute is a 'Shamlat Deh' land for all intents and purposes and the writ petition was accordingly, dismissed on 24.04.2006 (Annexure P-4). The relevant portion reads asunder:-

“We have heard the learned counsel for the parties and examined the case file meticulously.

There is no dispute to the fact that Mutation No.1108 was entered in the year 1956 where under the land in dispute has been described as in the ownership of the Gram Panchayat. This mutation was accepted in general meeting of the villagers. Thereafter, the Consolidation of Holdings Proceedings were undertaken in the village in the year 1957-58. Under the Consolidation, the land in dispute was left for use of common purposes. Nobody raised any objection at the time of Consolidation. It shows that the land in dispute was in possession of the Gram Panchayat even before the Consolidation proceedings in the village. It had also come on record that the Gram Panchayat used to give the land in dispute on contract since the year 1996. The petitioners have

not adduced any documentary proof on record in order to controvert the claim of the Gram Panchayat in this regard.

So far as the argument of the counsel for the petitioner that the land in dispute does not fall within the definition of 'Shamlat Deh' under Section 2(g) of the Act, the same is also without any merit. Now with the amendment as per Act No.9 of 1992, the land described as Hasab Rasad Raqba Khewat comes under the definition of 'Shamlat Deh' under section 3 of the Act. Thus, the land in dispute is a 'Shamlat Deh' for all intents and purposes and the Gram Panchayat is the owner thereof.

In view of the above, the Gram Panchayat has rightly been given the possession of the land in dispute by the authorities under the Act.

Consequently, there is no merit in this petition. It is accordingly, dismissed in limine."

3. The said matter was taken to the Apex Court by filing SLP(C) No.13536 of 2006 titled "**Zora Singh and another** Vs. **State of Haryana & others** and the SLP was dismissed on 25.08.2006 (Annexure P-5). The petitioners, thereafter, chose not to raise any issue of title at any point of time, as noticed in the proceedings under Section 7 of the Act, which had been initiated against them. The Assistant Collector, 1st Grade, Gohana, had specifically recorded at that point of time that there was no question of title involved and the objections raised, if any, were not liable to be accepted keeping in view the revenue record and the mutation, specifically the fact that mutation had been entered way back in 1956 and the land had thereafter been leased by the Gram Panchayat and only thereafter, the encroachment had been done.

4. Apparently, the petitioners wanted to hold on to the possession, resultantly, leading to one Joginder Singh filing **CWP No.9512 of 2016** in which directions were issued by the Coordinate Bench

on 16.05.2016 (Annexure P-6) that if the land was occupied by

unauthorized encroachers who were the private respondents in the said writ petition, time bound action be taken and the land be restored to the Gram Panchayat with police help. Review was dismissed on 21.10.2016 (Annexure P-7). The matter was then taken to the Apex Court wherein leave was granted and the writ petition was directed to be re-heard after hearing the present petitioners since they were party respondents in the writ petition and order had been passed without affording them an opportunity of hearing (Annexure P-8). The Coordinate Bench then proceeded to decide the writ petition vide order dated 13.11.2019 (Annexure P-9). The contention raised by the counsel for the petitioners who were then private respondents was rejected that the question of title had not been decided or wrongly decided. It was further held that eviction order was passed 18 years back and the officials responsible were directed to start proceeding to take back the possession of land in dispute within 15 days. Operative part of the order dated 13.11.2019 reads as under

“Counsel for the petitioner has submitted that since there is no other legal impediment and the order of eviction passed under Section 7 of the Act, 1961 has attained finality, therefore, the private respondents may now be directed to implement the order of eviction passed way back on 27.03.2001 in respect of 384 acres of land which is in unauthorized occupation of the private respondents.

Learned counsel, appearing on behalf of the private respondents, has submitted that the said order still cannot be implemented because the question of title raised by them was not decided by the authorities who had passed the order under Section 7 of the Act, 1961. In this regard, learned Senior counsel appearing on behalf of the Gram Panchayat has pointed out that the question of title was raised by the private respondents and their contention has been rejected. Therefore, it is submitted that it does not lie in their mouth to raise the issue of question of title.

Be that as it may, counsel for the petitioner has submitted that once the validity of the order dated 27.03.2001 passed by the

Assistant Collector 1st Grade, Gohana has been tested by the authorities like Collector, Commissioner, High Court and the Hon'ble Supreme Court and the said order has been upheld, the private respondents cannot raise this issue that the question of title has not been decided or wrongly decided.

We have heard learned counsel for the parties and after perusal of record, are of the considered opinion that this is one such case in which all efforts have been made by the private respondents to keep their possession on the land as huge as 384 acres, that too, in the NCR, District Sonapat regarding which eviction order was passed about 18 years back. Thus, repelling the arguments raised by the counsel for the private respondents and keeping in view the totality of the facts and circumstances, we direct the official respondents herein to immediate start proceedings to take possession of the entire 384 acres of land about which the order of eviction has already been passed and attained finality. The needful shall be done by the official respondents No.1 to 6 within a period of 15 days from the date of receipt of the certified copy of the order. If the possession is not taken then the petitioner shall be entitled to file contempt petition against the official respondents in terms of the provisions of the Contempt of Court Act, 1971.

Petition is allowed.”

5. Faced with the eminent dispossession in view of the directions of the Coordinate Bench of this Court, the petitioners apparently filed, for the first time, a petition dated 19.12.2019 (Annexure P-10) under Section 13A of the Act, claiming title and challenging the mutation proceedings and concealing the fact of the earlier petition under Section 7 of the Act which had been decided against them. Resultantly, the authorities below had rejected their case as discussed in the earlier part of the order. It is thus a classic case where the petitioners having no legal and valid right, had chosen to raise the issue of title, after two Division Benches having specifically held against them that question of title does not arise. It is not for us to now hold that the findings recorded by the authorities below, are wrong in any manner and the petitioners have lost

the first round of litigation by filing SLP which was also dismissed on 25.08.2006 (Annexure P-5). Second petition also rejected their case as noticed above against which no SLP was filed. The principle of constructive *res judicata* thus would come into play, apart from findings which have now been recorded by the Coordinate Bench which are reproduced hereinabove.

6. In a similar situation, a Division Bench of this Court in **Surat Singh and others Vs. Commissioner, Rohtak and others, 2007 (56) RCR (Civil) 900** also held that mis-use of the process of law, to continue in unauthorized occupation of the land, which actually, belongs to the Gram Panchayat cannot be permitted. It was accordingly held that the question of title had been specifically raised and the same had been decided by the govt. authorities and having failed to prove that they were in possession of the property in question on 26.01.1950, findings have been recorded. Observations were also recorded by the Coordinate Bench in **Desh Raj and others Vs. State of Haryana and others in CWP-6237-2007 decided on 27.04.2007** wherein it is noticed that once the proceedings under Section 7(2) of the Act have become final, it is not open to any individual to file a title suit. Sections 7 and 13-A read as under:

“7. Power to put panchayat in possession of certain lands.--(1)

An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by a Panchayat or an inhabitant of the Village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorized by the Block Development and Panchayat Officer, after making such summary enquiry as he may think fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorized possession of the land or other immovable property

in the *shamilat deh* of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Haryana Tenancy Act, 1887:

Provided that if in any such procedure the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate of one percent of the Collector rate of the land per acre per annum with the ceiling of total penalty amount equal to ten percent of the current Collector rate of the encroached land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in *shamilat deh* and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.

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Section 13A – Adjudication -- (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).”

7. In such circumstances, we are of the considered opinion that the view taken by the authorities below, is justified in the facts and circumstances of the case and the argument as such, which is now sought to be raised that it was only a summary procedure and the right as such of the petitioners to claim title on 384 acres of land, could not have been curtailed. We are of the considered view that two Division Benches as such, have already decided the matter inter se the parties. The issue of constructive *res judicata* stands in the way of the petitioners as well, and it was always open to them to have specifically filed an application under Section 13-A of the Act, and having failed to do so, could not, now as such

start a new round of litigation for deciding their unauthorized claim, as such is not permissible.

8. Therefore, the principle of res judicata is involved herein and that proceedings have become final and no claim or right under Section 13A of the Act can be raised once the matter had been finalized. In appeal, the Commissioner, Sonapat, noticed that the eviction proceedings have been initiated and the proceedings have been finalized by this Court, then after 18 years, on passing of an adverse order of eviction dated 27.3.2001, the application has been filed under Section 13A of the Act to raise the question of title of the land, is a clear misuse of legal procedure and he noticed that neither any penalty nor cost was deposited as per the Collector order dated 27.03.2001 whereby the petitioners were asked to deposit Rs.10,000/- per acre for illegal possession over the land in question from filing of the application. Sections 7 and 13A of the Act, were noticed while dismissing the appeal, and directions were also issued to start recovery proceedings for implementation of the earlier order. The Financial Commissioner vide order dated 08.02.2024 (Anneuxre P-14) noticed that the possession of the disputed land had been handed over to the Gram Panchayat on 23.12.2019, and further noticed that the eviction proceedings had been filed by the Gram panchayat way back in December, 1998 and many chances were given to the petitioners to give their evidence on record. Assistant Collector 1st Grade had held that the land is owned by Gram Panchayat comes under the definition of 'Shamlat Deh' and accordingly, the petitioners were held to be in illegal possession over the land in dispute and ordered to be evicted. Reliance has been placed on Section 13-A of the Act to note that eviction proceedings had been

initiated in the year 1998 and at that point of time, question of title was raised and then the Assistant Collector recorded its finding in this regard and thus, in the absence of the same, the revision petition was dismissed.

9. The Apex Court in **Sarjeet Singh (Deceased) through LRs Vs. Hari Singh & others, 2015 (1) SCC 760** noticed that *shamlat* land is to be carefully protected keeping in view the purpose of the 1961 Act and the possibility of collusive suits being filed by co-sharers for transforming the *shamlat deh* into privately owned land to the detriment of the Gram Sabha and villagers is an important aspect which is to be kept alive by the Courts. In the said case, the Apex Court, while upholding the order of the Division Bench of this Court, had noticed that the Civil Court had no jurisdiction to entertain and adjudicate on the question pertaining to *shamlat deh* while decreeing the suit and holding that the plaintiff is entitled to possession of the dispossessed land. The said error had been corrected only at the level of the High Court which order had then been upheld.

10. Resultantly, we do not find any ground as such to entertain the writ petition and is accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

03.09.2024
Sailesh

Whether speaking/reasoned : Yes
Whether Reportable : No