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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on : 23.01.2025
Pronounced on : 11.02.2025

Sr. No.	Case Number	Title of the case
1.	CWP-15189-2000	Gram Panchayat Vs. The Financial Commissioner, Punjab and Others.
2.	CWP-15194-2000	Gram Panchayat Vs. The Financial Commissioner, Punjab and Others.
3.	CWP-15190-2000	Gram Panchayat Vs. The Financial Commissioner, Punjab and Others.

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Argued by: Mr. K.G.Chaudhary, Advocate
Mr. Sushant Puri, Advocate
for the petitioner(s).

Mr. M.L.Saggar, Senior Advocate with
Mr. Armaan Saggar, Advocate
for the respondent(s).

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since all the writ petition(s) involve common questions of facts and law, besides since the impugned orders are similar in all the writ petition(s), therefore, they are amenable to be decided through a common order.
2. The instant writ petition(s) have been instituted by Gram Panchayat of village Bajaj, Tehsil and District Kapurthala, wherein, the petitioner prays for the quashing of the order dated 05.03.1998 and of order dated 29.09.2000, as made respectively by the District Development and Panchayat Officer-cum-Collector, Jalandhar, and, by

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the Financial Commissioner (Development), Punjab (exercising the powers of Commissioner), Chandigarh.

Factual Background.

3. For the sake of brevity, the facts of CWP-15189-2000 are taken here for deciding the instant controversy.

4. The land in dispute was given on lease to the predecessor of respondent No. 3, one Nirmal Singh and others. The said land was further given on *Chakota* to Nirmal Singh etc., in the year 1972-73 for Rs. 900/-, in the year 1973-74 for Rs. 1800/- and in the year 1975-76 for Rs. 1400 and so on.

5. On expiry of the lease period, the private respondents filed civil suit(s) for rendition(s) of decree(s) of permanent injunction, thus, before the Court of Sub Judge First Class Kapurthala, wherebys, they prayed that except in accordance with law, they be not evicted from the suit lands. The said suit became dismissed vide order dated 20.08.1979, thus on the ground that the exercising of jurisdiction by the civil court vis-a-vis the subject dispute, rather being statutorily barred.

6. Since one of the private respondent i.e. Bachan Singh failed to deliver back, the possession of the subject land, to the Gram Panchayat, therebys, the Gram Panchayat filed an ejectment petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as the Act of 1961) before the Collector concerned. The said petition became allowed vide order dated 07.06.1985 and the said respondent was ordered to be ejected from the suit lands.

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7. Further, the private respondents – Nirmal Singh, Balwinder Singh and Bachan Singh filed separate title suits under Section 11 of the Act of 1961, before the Collector Kapurthala. The said petitions became allowed vide order dated 27.05.1988. Thereafter, the Gram Panchayat filed an appeal thereagainst before the Additional Director, Panchayat, who, vide order dated 21.02.1990 remanded the cases to the Court below for deciding it afresh. Further, the Collector, Kapurthala on the remanded *lis*, vide order dated 23.04.1992, passed a decision in favour of the Gram Panchayat. Subsequently, the aggrieved, private respondents herein filed an appeal thereagainst before the Joint Development Commissioner (I.R.D.) Punjab. The said appeal became allowed and the Joint Development Commissioner, Punjab vide order dated 08.02.1995 remanded the case to the Court below for deciding it afresh.

8. On the remanded *lis*, the District Development & Panchayat Officer – cum – Collector, Jalandhar, through passing a common order dated 05.03.1998 (Annexure P-6), thus on the respective petition(s) as became preferred by the private respondents, made thereons an affirmative order and accordingly, the private respondents-petitioners therein were declared to be the owners of the land in dispute. The operative part of the said order is extracted hereinafter.

“After hearing the arguments of the learned counsel for both the parties and perusing the record, I have come to the conclusion that the land in dispute is not the Shamlat deh because :-

a) the land was “Shamlat Deh Hasab Rasad Zare Khewat” as per Jamabandies from 1937-38 to 1953-54 which implies that the land have been partitioned amongst the Khewatdars of the village, who had been

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in possession of their respective shares. Besides the column of cultivation contains the entry “ Maqbooza Malqaan”.

b) As per Section 2(g)(iii), the land partitioned amongst the Khewatdars prior to 26.1.1950, is not the shamlat Deh.

c) This land was the Banjar qadim as on 9.1.1954 when the Shamlat Law had come into force in the Pepsu State for the first time and the same was not being used for the common purposes of the village.

d) This land had been reserved for the common purpose without paying compensation to the Khewatdars, which was legally untenable.

e) The Gram Panchayat has never been in possession of this land. The judgments cited by the learned counsel for the petitioners during the course of his arguments are relevant with the facts of present case and prove that the land in dispute was not the Shamlat Deh. Therefore, the Gram Panchayat has no right over this land and it cannot lease out the same. This land is the property of the petitioners. Therefore, the petitions of the petitioners are accepted.”

9. Feeling aggrieved, from the afore order, thus the Gram Panchayat Bajaj filed three separate appeals thereagainst. However, the said appeals became dismissed through a common order dated 29.09.2000 (Annexure P-9). The operative part of the said order is extracted hereinafter.

“ The above account and established law lead to the conclusion that the land in dispute was Banjar Qadim on 9.1.1954 when shamlat law was enforced in the Erstwhile Pepsu area of the State. The land in dispute was neither reserved nor used for any common purposes of the village community as indicated by the revenue record on file. Accordingly the land cannot be described as shamlat deh in terms of Section 2 (g) of the Punjab Village Common Land (Regulation) Act, 1961. The mutation entered in the name of Gram Panchayat on the basis of the departmental instructions is not valid and does not stand scrutiny of law. Hence I do not find any grounds to interfere with the impugned order which is accordingly upheld and the appeals are rejected being without merits.”

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10. Feeling dis-satisfied from the concurrent dismissal orders (supra), the Gram Panchayat Bajaj has filed thereagainst the instant writ petition(s) before this Court.

Submissions of the learned counsel for the petitioner.

11. The learned counsel for the petitioner submits, that the land in question was being leased out to the private respondent i.e. Nirmal Singh etc. for a number of years, hence, on theirs thus being *chakotedars* of the subject lands, under the Gram Panchayat therebys, they cannot claim ownership of the said land on one pretext or the other.

Submissions of the learned counsel for the respondents.

12. On the other hand, the learned counsel for the respondents submit that the land is *banjar qadim* and was not being used for common purposes of the village as per revenue record on 09.01.1954, as well as on 04.05.1961. The mutation was entered in the name of the Gram Panchayat on the basis of letter dated 02.09.1961 issued by the State Government. The said mutation does not create any title and as such, was rightly set aside in the petition(s) under Section 11 of the Act of 1961, as filed by the private respondents. The jamabandis of 1980-81, 1985-86 and 1990-91, when are subsequent to the recording of the afore mutation, thus, they do not confer any title on the Gram Panchayat. The private respondents were in cultivating possession of the land as per their respective shares.

Inferences of this Court.

13. The eviction petition cast under Section 7 of the Act of 1961 became instituted on 12.01.1983 against one of the private

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respondent i.e. Bachan Singh thus before the Collector concerned. The eviction of the said private respondent was claimed on the ground, that he was a lease holder over the subject lands measuring 15 kanals 8 marlas, comprised in Khewat No.230, Khatanui No. 359/3, Khasra Nos. 45//6//7-8 and 46//1/8-0. The said eviction petition became allowed vide order dated 07.06.1985, wherebys, the Collector concerned ordered for ejectment of the respondent concerned, from the disputed lands. The said verdict of eviction remained unchallenged, wherebys, it acquired binding and conclusive effect. Consequently, the further effect thereof, but is that, therebys the respondent concerned, became estopped to file a title suit under Section 11 of the Act of 1961 before the Collector concerned, nor also any valid jurisdiction thereons was exercisable both by the learned Collector concerned, or subsequently by the Appellate Authority but only in-so-far as the land measuring 15 kanals 8 marlas, comprised in Khewat No. 230, Khatanui No. 359/3, Khasra Nos.45//6//7-8 and 46//1/8-0, over which the supra Bachan Singh rather was a *chakotedar* under the Gram Panchayat.

14. Fortifying vigor to the supra inference becomes derived from the factum, that unless during the pendency of the eviction petition, the present respondent concerned, had asserted title over the disputed lands, and the said assertion of title became settled in his favour, whereupon alone, thus the respondent concerned, could oust the petitioner-Gram Panchayat from seeking his eviction from the disputed lands. Since the said endeavour remained unrecoursed during the pendency of the eviction petition filed under Section 7 of the Act of

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1961. Contrarily, when the order of eviction passed on the eviction petition cast under Section 7 of the Act of 1961, remained unchallenged, therebys, when it but acquired binding and conclusive effect, but only vis-a-vis Bachan Singh. Resultantly, as stated (*supra*), there was no empowerment in the said respondent to recourse the remedy under Section 11 of the Act of 1961 nor the statutory authorities were endowed with any jurisdictional competence to allow the declaratory suit, as became filed by one Bachan Singh under Section 11 of the Act of 1961 before them. Imperatively, when it became filed post the rendition of a binding and conclusive verdict of eviction made on 07.06.1985, qua Bachan Singh.

15. Further momentum to the said inference ensues, from the factum that since in the eviction petition filed under Section 7 of the Act of 1961, though the said Bachan Singh could assert title over the disputed lands. However, when he did not choose to do so, whereas, he could do so. Resultantly the omission on the part of the said respondent, to assert title over the disputed lands, during the pendency of the eviction petition, thus creates against him, the bar of estoppel, as enclosed in the mandate occurring under Order 2 Rule 2 CPC, provisions whereof become extracted hereinafter, wherebys, for the relevant omission, rather the litigant concerned, becomes estopped or becomes precluded to subsequently raise any cause of action, which was earlier raiseable and which he omitted to do so, as the said Bachan Singh did omit to do so, in the previous eviction proceedings, which effectively and conclusively concluded on 07.06.1985.

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2. Suit to include the whole claim.—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

16. Be that as it may, even on the merits of the case, as appertains to not only Bachan Singh but also in-so-far as it appertains to the other respondents in the instant writ petition(s), since the revenue records rather consistently since the year 1972-73 upto the year 1975-76, do make graphic displayings that therein the present respondents were declared to be *chakotedars* over the disputed lands.

17. Now, since the order of mutation vis-a-vis the Gram Panchayat, was made in the year 1961, thus, much prior to the supra declarations occurring in the revenue records. Resultantly when the present respondents, since the making of the order of mutation vis-a-vis the subject lands, wherebys, the Gram Panchayat was declared to be the owner of the suit lands, upto theirs entering the suit lands as *chakotedars* under the present petitioner from the year 1972 and lasting upto the year 1975-76, but evidently failed or omitted to challenge the said order of mutation. Moreover also, when they further continued to pay rent to the Gram Panchayat. Resultantly, the cumulative effect thereof, but is that, since the respondents acquiesced to the validity of

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the attestation of mutation of title qua the Gram Panchayat, thereby, the present respondents became also concomitantly estopped to assert any title over the disputed lands.

18. Though the effect of the supra acquiescence as arising from the supra omissions could become blunted only on account of the present respondents averring besides cogently establishing that the order of mutation (supra), as attested in favour of the Gram Panchayat besides the consequential thereto entries made in terms of the revenue records but were non-est. However, in the said endeavour, they were required to be initially establishing that despite the fact that the disputed lands falling within the apposite exclusionary clause to the definition of *shamlat deh*, exclusionary clause whereof becomes extracted hereinafter, yet the supra order of mutation becoming recorded besides the consequential thereto entries also becoming entered in the revenue records.

“2. (g) shamlat deh includes :-

(1) xxxx

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

but does not include land which-

(i) xxxx

(ii) xxxx

(iii) xxxx

(iv) xxxx

(v) xxxx

(vi) xxxx

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(vii) xxxx

(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) xxxx

19. Now for the present respondents well claiming their becoming entitled to receive the benefit of the exclusionary clause (supra) to the definition of *shamlat deh*, they were required to establish that they were in independent cultivating possession of the disputed lands prior to 1950, besides were also required to establishing, that subsequently also from the year 1950, upto the recording of the impugned entries thus, they were un-interruptedly cultivating the disputed lands, either through their respective predecessors in interest or theirs making personal cultivations or through theirs assignees.

20. Though the statutory authorities concerned, relied upon the suit lands becoming described in the relevant column of the jamabandi, as *shamlat deh hasab rasad zare khewat*, wherebys, they concluded that as such, in proportion to the apposite share of the present respondents, thus through their respective predecessors in interest, they were holding independent cultivating possession of the disputed lands. Therefore, it also became concluded that the present respondents were entitled to become conferred the benefit of the supra exclusionary clause to the definition of the *shamlat deh*. However, the endowment of the supra benefit to the present respondents rather suffers from mis-appraisals of the relevant documentary evidence besides suffers from a gross mis-

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application theretos, of the supra exclusionary definition to the inclusionary meaning of *shamlat deh*.

21. The reason for stating so spurs from the factum, that the jamabandies prior to 1950, though reflect the suit lands carrying the description of *shamlat deh hasab rasad zare khewat*, but merely on the basis of the said description, the statutory authorities could not conclude that as such through their respective predecessors in interest, thus, the respondents were in independent cultivating possession of the disputed lands.

22. The said conclusion rather was required to be well founded upon the present respondents cogently establishing, that also in the cultivating possession of the relevant jamabandis, thus their respective predecessors in interest, thus became also entered, besides further they were required to be also establishing that in the relevant columns of the jamabandis, the suit lands also becoming classified to be of a cultivable category. However, it appears that the relevant columns of the jamabandis, did not come under any well appraisal, thereupon, it appears that despite the supra entries, thus not occurring in the relevant columns of jamabandis, yet an ill conclusion but ideally founded on the mere entry of *shamlat deh hasab rasad zare khewat*, rather became formed that the predecessors in interest were recorded to be in independent cultivating possession.

23. Moreover, a further conclusion became also formed, that the suit lands was of a tillable category. The existence in the relevant revenue records vis-a-vis the names of the predecessors in interest of the

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present respondents, yet as tillers over the disputed lands, thus, was a dire statutory requirement but for therebys the present respondents qualifying themselves to receive the beneficent grace of the apposite exclusionary clause to the definition of *shamlat deh*. The said benefit for the supra omissions or mis-appraisals, yet has been mis-endowed upon the present respondents.

24. Be that as it may, since in the jamabandis for the year 1954, the suit lands became entered therein as *banjir quadim*, therebys when *ipso facto*, the suit lands were not under cultivation. Resultantly the consequence thereof, is that, even prior thereto, the suit lands were untillable nor they were under the independent cultivation of their respective predecessors in interest nor therebys the present respondents could claim that they were to be endowed the benefit of the savings clause to the definition of *shamlat deh*.

25. In consequence, for want of the supra evidence, the making of the order of attestation of mutation, vis-a-vis the suit lands qua the Gram Panchayat concerned, appears to be founded upon a well appraisal of the revenue records. In sequel, the said order of mutation and the consequent thereto made revenue entries, are deemed to be neither non-est nor void ab initio. Since therebys the presumption of truth attached to the revenue entries becomes bolstered, as cogent evidence to rebut the presumption of truth for reasons supra remains un-adduced, at the instance of the respondents, therebys, conclusivity is to be attached to both, the order of mutation and the consequent thereto made revenue entries.

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Final Order of this Court.

26. In aftermath, this Court finds merit in the writ petition(s) and with the observations above, the same are allowed.
27. The impugned orders as passed by the statutory authorities below are quashed and set aside.
28. The private respondents are directed to forthwith hand over the possession of the subject lands to the Gram Panchayat.
29. Since the main cases itself have been decided, thus, all pending applications, if any, are disposed of as such.
30. A photocopy of this order be placed on the files of other connected cases.

(SURESHWAR THAKUR)
JUDGE

11.02.2025
kavneet singh

(VIKAS SURI)
JUDGE

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