

(2015) 01 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 26456 of 2014 (O and M)

Amolak Singh

APPELLANT

Vs

Director, Rural Development and Panchayat Department and
Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Citation : (2015) 2 RCR(Civil) 381

Hon'ble Judges : Raj Mohan Singh, J.;Surya Kant, J.

Bench : Division Bench

Advocate : Jatinder Jit Kaur and Vikram Singh, for the Appellant; Aman Bahri, A.A.G, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Surya Kant, J.—This order shall dispose of CWP Nos. 26456 of 2014; 120, 187 to 193 of 2015 as common question of law is involved in these cases. For brevity, the facts are being extracted from CWP No. 26456 of 2014. The petitioner impugns the order dated 14.08.2014 (Annexure P3) passed by the Director, Rural Development and Panchayat exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961. Vide the above-stated order, the Appellate Authority has allowed the appeal preferred after a period of nine years by the Gram Panchayat against the order dated 31.10.2001 passed by the Collector-cum-Divisional Deputy Director whereby the declaratory petition filed by the petitioner under Section 11 of the Act declaring him owner-in-possession of land measuring 20 kanal 80 marla, was decreed.

2. The solitary question that arises for consideration is whether the land in dispute is shamlat deh and vests in the Gram Panchayat or it is owned by the proprietors of the village?

3. Briefly stated the facts of the case are that petitioner instituted a petition under Section 11 of the Act in the Court of Collector seeking a declaration that

the entries in the column of ownership in favour of Gram Panchayat in the jamabandi for the year 1995-96 are wrong, illegal, null and void and that the subject land was in possession of the petitioner or his ancestors or the vendor from the time immemorial. It was averred that originally Massa Singh, the adopted son of Hazara Singh was the owner-in possession of the land which was in due course of time inherited by Lakhwant Singh and others to the extent of 8 kanal whereas 16 kanal was purchased by the petitioner by way of a registered sale deed. The Collector after referring to the entries of various jamabandis starting from the year 1945-46 (Ex. P15) decided both the issues in favour of the petitioner and held that as per the jamabandi for the year 1945-46 (old khasra Nos.) as well as the jamabandi for the year 1961-62 (with new Khasra Nos.), the petitioner or his predecessor/vendor were in possession of the suit property and thus their possession on the suit land prior to 26.01.1950 stood established. Consequently, the petition was allowed and the decree passed on 31.10.2001.

4. The Gram Panchayat did not challenge the above-stated order for nine long years and it was in the year 2010 only that Appeal No. 276 of 2010 was preferred by it before the Appellate Authority.

5. The Appellate Authority has allowed the appeal after condoning the delay of nine years. The Appellate Authority has observed that in the year 2001 when the suit was decreed, Harmanjeet Kaur was the Sarpanch of the village. She, however, did not defend the above-mentioned petition as neither the reply was filed nor any evidence led on behalf of the Gram Panchayat for the reason that her family and relations, namely, Kashmir Singh and others were the beneficiaries of the Collector's order. It was further observed that after expiry of the term of Harmanjeet Kaur in 2003, Jatinderveer Singh became the Sarpanch of the village. He too share family relations with Kashmir Singh and others and thus no action was taken by the Gram Panchayat till the year 2008 when the Department appointed an Administrator who then pursued the matter and got the appeals filed.

6. On merits, the Appellate Authority has concluded that the subject land falls within the shamlat deh as defined in Section 2(g) of the Act. The Appellate Authority has relied upon the entry made in the column of ownership in the jamabandi 1961-62 as well as subsequent jamabandis where the Gram Panchayat is recorded as owner of the subject land. The other material fact relied upon is that the subject land has been categorized as Banjar Kadim and there is no evidence of its cultivation therefore also it stood vested in Gram Panchayat under the Act. The Appellate Authority has also viewed that in the absence of any written statement by the Gram Panchayat all the necessary issues could not be framed by the Collector and obviously no evidence was led in the manner followed by a Civil Court. The appeal was consequently allowed. The aggrieved petitioner has approached this Court.

7. The Gram Panchayat in its written statement has reiterated that the petitioner did not produce any evidence showing his uninterrupted, continuous, physical

and cultivating possession before 26.01.1950.

8. We have heard learned counsel for the parties and gone through the record.

9. It may be observed at the outset that while calling upon the Gram Panchayat vide order dated 23.12.2014, it was prima facie observed that both the orders i.e., passed by the Collector as well as the Appellate Authority suffer from one or the other legal infirmity and are liable to be set aside with a view to give fair opportunity to the parties to seek the decision on merits in accordance with the law. We confirm that tentative view for the reason that admittedly no comprehensive written statement was filed by Gram Panchayat before the Collector nor the entire revenue record was produced in evidence for the reasons best known to the then Sarpanch. There is some credence in the observations made by the Appellate Authority that the successive Sarpanches or their families were the beneficiary of the orders and thus possibility of their collusion or half-hearted contest to the claim of the petitioner and other proprietors cannot be ruled out.

10. However, we need not to dwell upon this issue in detail, for the Appellate Authority has also committed the error by accepting the appeal of the Gram Panchayat instead of remanding the matter to the Collector. Once the Appellate Authority came to the conclusion that the Collector had decreed the petition without the relevant evidence on record, the only recourse ought to have been followed was to remand the case and direct the Collector to decide the same afresh in a time bound manner.

11. The order passed by the Appellate Authority too thus suffers from the same vice as it has detected in the order passed by Collector.

12. Needless to say that in the absence of complete and objective appreciation and discussion of the entries in the revenue record, it is neither possible nor expedient for this Court to draw any firm conclusion with regard to the rival claims of the parties. Instead, it is for the Collector to permit the parties to lead their respective evidence and then return his findings on the specific issue(s) that may be re-framed after the Gram Panchayat files its comprehensive written statement.

13. For the reasons afore-stated and without expressing any views on merit, we allow the writ petition to the extent that the orders passed by the Collector and that of the Appellate Authority are set aside and the matter is remitted to the Collector, Amritsar to decide the petition filed by the petitioner and other proprietors in the connected writ petitions afresh after giving an opportunity to the Gram Panchayat to file comprehensive written statement. Thereafter, let reasonable opportunities be granted to both the parties to lead their respective evidence, if need be. The Collector shall make an endeavour to decide the petition within a period of six months from the appearance of the parties. There shall be status quo re possession till the matter is decided. Nothing in this order shall be taken as an expression of views on merit. Parties are directed to appear

before the Collector, Amritsar on 09.03.2015.