
(2013) 05 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7324 of 2009

Babu Singh (Since Deceased) through his legal representatives APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Forest Act, 1927 — Section 20(b)
Punjab Land Revenue Act, 1887 — Section 44
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2(g), 2(g)(3), 2(g)(v)

Citation : (2013) 171 PLR 176

Hon'ble Judges : Rekha Mittal, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : S.K. Pipat, with Mr. Manoj Pundhir, for the Appellant; Rajinder Goyal, Addl. A.G., Punjab for Respondent Nos. 1 to 3 and Mr. R.L. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—The petitioner prays for issuance of a writ of certiorari setting aside orders dated 29.03.2004 (Annexure P-3), 27.04.2005 (Annexure P-6) and 05.07.2006 (Annexure P-9), passed by the Additional Deputy Commissioner(D), exercising the powers of "Collector" and the Director, Rural Development and Panchayats, Punjab, respectively, exercising the powers of "Commissioner", under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act"). The proprietors of village Balamgarh, created a Cooperative Society, by the name of Balamgarh Coop. Choe Reclamation Society (hereinafter referred to as "the Society"), on 30.05.1947. The petitioner (since deceased) was President of the Society. The members of the Society claim that they had 1/3rd share in Patti Albela, 1/3rd share in Patti Hushail and 1/3rd share in Patti Gulab, out of land situated in Khewat/Khatauni No. 414/456, as recorded in jamabandi for the year 1973-74. The landowners addressed a letter, in 1947,

to the Collector, Ambala, requesting that the forest existing on the land, should be managed on their behalf, by the Punjab Government, as a protected forest. A notification was consequently issued u/s 20(b) of the Indian Forest Act and remained in force till it finally expired in December, 1997. Aggrieved by transfer of management of the land, in dispute, to the Forest Department, the Gram Panchayat filed an application, u/s 11 of the 1961 Act, on 21.09.1977, before the Collector, Roopnagar, asserting its ownership and challenging the legality of notification dated 27.12.1972. The petitioner/proprietors filed a reply that notification issued by the State of Punjab is in accordance with law and as the land belongs to three Pattis, with, 1/3rd share each, it does not vest in the Gram Panchayat.

2. The District Development and Panchayat Officer, exercising power of "Collector", under the 1961 Act, allowed the petition by passing an ex-parte order, dated 20.07.1984, holding that as the Gram Panchayat is owner of the land, in dispute, the Society has no right, title or interest, therein. The Society filed an appeal before the Joint Director Panchayats, which was dismissed. The Society, thereafter, filed Civil Writ Petition No. 298 of 1985, which was allowed, vide order dated 11.08.1987, by holding that the Collector and the Commissioner, have no jurisdiction to pronounce upon the legality of notification, issued under the Indian Forest Act and to, consequently, determine the rights of parties. The orders, passed by the District Development and Panchayats Officer and the Joint Director, Panchayats, Punjab, exercising powers u/s 11 of the 1961 Act, were set aside and the matter was remitted to the District Development and Panchayats Officer-cum-Collector, Roopnagar, for deciding the matter afresh.

3. The parties put in appearance before the Collector, Roopnagar, but during pendency of proceedings, another petition came to be filed, u/s 11 of the 1961 Act, by one Pritam, before the Collector, claiming ownership of land bearing Khewat/Khatauni No. 416/481, 416/482, 416/483, 41/484, 416/501, 416/520, 416/530, 416/532, situated in village Balamgarh. The petition was decided in favour of the Gram Panchayat on 06.03.1988. The Gram Panchayat, therefore, withdrew its petition, that it had filed u/s 11 of the 1961 Act.

4. In the meanwhile, the petitioner filed an application for change of the mutation. The Collector, vide order dated 09.01.1995, held that as orders passed by the District Development and Panchayats Officer and the Joint Director, Panchayats, have been set aside, by the High Court, mutation sanctioned in favour of the Gram Panchayat on the basis of these orders is set aside. The Gram Panchayat filed an appeal before the Commissioner, Patiala Division, Patiala, which was dismissed, on 29.01.1996. The Gram Panchayat filed a revision before the Financial Commissioner (Revenue), Punjab. The Financial Commissioner disposed of the revision, on 14.08.2001, by directing that the matter be placed before the Collector, Ropar, to decide the question of title.

5. The Additional Deputy Commissioner(D), exercising the power of "Collector", under the 1961 Act, took up the matter for consideration and, vide order dated

29.03.2004, declared that the land, in question, is "Shamilat Deh" and vests in the Gram Panchayat. Aggrieved by this order, the petitioner filed an appeal. The Joint Director, Panchayats, exercising power of "Commissioner", under the 1961 Act, dismissed the appeal on 27.04.2005. The petitioner filed an application for review of order dated 27.04.2005 on various grounds, which was dismissed on 05.07.2006 by holding that there is no provision for review.

6. Counsel for the petitioner submits that the land, in dispute, is owned by three Pattis, namely, Patti Albela 1/3rd share, Patti Hushail 1/3rd share and Patti Gulab 1/3rd share. The co-sharers of the Pattis constituted a Society with the name and style Balamgarh Coop. Choe Reclamation Society, Balamgarh, through the petitioner Babu Singh. The original orders passed by the Collector and the Commissioner, under the 1961 Act, holding that the land is "Shamilat Deh", were set aside in Civil Writ Petition No. 298 of 1985 and the case was remanded to the District Development and Panchayat Officer, Ropar, exercising the power of "Collector", to decide the case afresh but as the Gram Panchayat withdrew this petition, it is prohibited from asserting its title with respect to the land, in dispute. It is further submitted that mutations, in favour of the Gram Panchayat, were rightly set aside by the Assistant Collector and the Collector but their orders were set aside by the Financial Commissioner, Revenue, by directing the Collector, Ropar, to decide the dispute regarding title. The Financial Commissioner had no jurisdiction to direct the Collector, to decide the question of title as the Gram Panchayat had already withdrawn its petition. It is further contended that as the land is clearly recorded as ownership of three separate Pattis and as the Gram Panchayat has failed to prove that it was used for any common purpose, it does not vest in the Gram Panchayat, u/s 2(g)(3) of the 1961 Act. It is further submitted that as revenue entries record the possession of proprietors as "Makbooja Matkan", the land does not vest in the Gram Panchayat.

7. Counsel for the Gram Panchayat admits that the land is "Shamilat Patti" but argues that as "Wajib-ul-Arz" for the years 1915-16(Ex.A-6), 1952-53(Ex.A-7) clearly record that the land is being used for a common purpose, i.e., for grazing of cattle, the land vests in the Gram Panchayat u/s 2(g)(3) of the 1961 Act. It is further submitted that even if a private Society, created before enactment of the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as "the 1954 Act") or the 1961 Act, entrusted the land to the Forest Department, it would not affect the rights of the Gram Panchayat. The Gram Panchayat withdrew its petition, u/s 11 of the 1961 Act, as a similar petition, filed by one Pritam Singh, a proprietor of the village, seeking declaration that a part of the land, in dispute, does not vest in the Gram Panchayat, was decided in favour of the Gram Panchayat, by the Collector, on 06.03.1990. The question of title having already been decided, the Gram Panchayat withdrew its earlier petition but as the petitioner filed an application for change of mutation, the Financial Commissioner rightly directed the Collector to decide the question of ownership of the land, in dispute, afresh, under the 1961 Act. The petitioners have not challenged the order passed by the Financial Commissioner and as they

participated in proceedings before the Collector and filed an appeal, they are estopped from challenging the order passed by the Financial Commissioner. It is further submitted that as the petitioners have not been able to prove that the land was not used for any common purpose and the Gram Panchayat has produced the Wajib-ul-Arz, to prove that the land was used for grazing of cattle, a common purpose, the land belongs to the Gram Panchayat.

8. We have heard counsel for the parties, perused the impugned orders and find no reason to issue the writ as prayed for.

9. Before we record our opinion on the questions posed, it would be necessary to record that we do not intend to record any finding on the question whether the land, in dispute, is forest land or as to the validity of the notification issued under the Forest Act declaring the land, in dispute, as a forest. The adjudication, in hand, is confined to answering a question of title, with respect to the land, in dispute.

10. Admittedly, the column of ownership of all relevant jamabandies records that the land, in dispute, is Shamilat patti Albela, Patti Hushail and Patti Gulab. The "Shamilat" land of a patti is owned and possessed by members of a patti, in accordance with their respective share holdings. The Shamilat, i.e., common land of a patti may be used for common purposes by members of a patti, to the exclusion of all else. The user to which such land shall be put is recorded in the "Wajib-ul-Arz", of a village. The Pepsu Village Common Lands (Regulation) Act, 1954, declared that all "Shamilat Deh" of a village shall vest in a Gram Panchayat. The 1954 Act did not make an exception to this vesting of "Shamilat Deh" on account of the nature, quality, user, ownership or possession of proprietors and members of a patti. The 1954 Act was, however, repealed and re-enacted as the 1961 Act. Section 2(g) of the 1961 Act defines "Shamilat Deh". Section 2(g)(3) of the 1961 Act provides that land recorded as "Shamilat Patti" shall vest in a Gram Panchayat, if it is used according to the revenue record for the benefit of the village community or a part thereof or for common purposes of the village. Section 2(g)(v), though similarly worded, is in the negative. Section 2(g)(3) and (v) of the 1961 Act read as follows:-

2. Definitions.-

(g) "Shamilat deh" includes-

(1) XX XX XX

(2) XX XX XX

(3) lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village

[.....]

but does not include land which-

(i) XX XX XX

(ii) XX XX XX

(ii-a) XX XX XX

(iii) XX XX XX

(iv) XX XX XX

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village.

11. The land of a "Shamilat Patti" of a village shall be included in "Shamilat Deh" or excluded from "Shamilat Deh" if it is used or not used as per the revenue record for the benefit of the village community or a part thereof or for common purposes of the village. The onus to establish the ingredients of Section 2(g)(3) or Section 2(g)(v) of the 1961 Act lies upon the person, who alleges that the land is included in or excluded from "Shamilat Deh". The expression "revenue record" used in Section 2(g)(3) and Section 2(g)(v) of the 1961 Act refers to documents that are part of the record of rights or any other relevant document prepared by a revenue officer. The document that generally records the user to which Shamilat land of a village or a "Patti" is to be put is called the "Wajib-ul-Arz", i.e., a document that records the customs, rules and regulation of a village. A presumption of truth attaches to an entry in a "Wajib-ul-Arz", u/s 44 of the Punjab Land Revenue Act, 1887.

12. The Gram Panchayat has produced copies of two separate "Wajib-ul-Arz" in the shape of Exs.A-6 and A-7, relating to the years 1915-16 and 1952-53, respectively. An extract from the "Wajib-ul-Arz" of the year 1915-16 reads as follows:-

13. The "Wajib-ul-Arz" for the year 1952-53 is similar and, therefore, need not be reproduced. A perusal of entries in the "Wajib-ul-Arz" reveal that residents of village, including owners and cultivators of the Patti, are entitled to use the land for a common purpose, namely, grazing their cattle. The entry in the "Wajib-ul-Arz" fulfills the ingredients of Section 2(g)(3) of the 1961 Act. The petitioner has not adduced any evidence to rebut the presumption of truth attached to entries in the "Wajib-ul-Arz" or any other "revenue record" to the contrary. The mere fact that the land may have been entrusted to the Forest Department, by a body of private individuals or members of the patti, in our considered opinion, is not sufficient to exclude the land from "Shamilat Deh" or to hold that the petitioner or the Society are owners of the land, in dispute. A reference to a relevant extract from the order passed by the Director, Rural Development and Panchayat, Punjab, exercising the powers of "Commissioner" would, at this stage, be necessary, which reads as follows:-

After hearing the arguments of both the parties and after carefully going through

the record of the lower court and Wajib-ul-Arz, it is clear that the inhabitants of the village have the right for grazing their catties over the Shamlat land of the village and nobody can raise any objection regarding this as per the Wajib-ul-Arz. For this purpose, no fee etc. shall be charged. Except to this, the cultivators and proprietors can graze their cattles on the land which is araji shamlat pattian, gair mujra. As per the jamabandi for the year 1952-53, 1956-57, 1962-63 and 1998-99, the owner of the land in dispute is "shamilat deh". It is clear from the revenue record that this land is being used for common purposes. The cultivation individual possession of Babu Singh and any other resident of the village is not proved on the land in dispute from the jamabandi for the year 1944-45. The adverse possession can not be claimed in this case because for claiming adverse possession, the appellant should have been in cultivation possession since 26.1.1950. It is clear from the revenue record that this land has been used for charang, share-aam and cremation purposes. The Gram Panchayat is owner of this land in dispute. Therefore, the appeal is dismissed and the order of the Collector are upheld.

14. The Collector and the Appellate Authority have recorded concurrent findings of fact that the land, in dispute, is "Shamilat Deh", on the basis of entries in the "Wajib-ul-Arz", read along with Section 2(g)(3) of the 1961 Act.

15. A submission by counsel for the petitioner that as the Gram Panchayat withdrew its petition u/s 11 of the 1961 Act, after the matter was remanded to the Collector, the Gram Panchayat is prohibited from asserting its title, in our considered opinion, is misconceived. The question of ownership, came up for consideration before the Financial Commissioner, who, vide order dated 14.08.2001, noticed the error committed by the Assistant Collector and the Collector, set aside these orders and directed that the matter be placed before the Collector, Roopnagar, exercising power under the 1961 Act, to decide the question of title. The petitioner has not challenged the order passed by the Financial Commissioner, whether in the present proceedings or by a separate writ petition. The petitioner has participated in proceedings before the Collector and the Appellate Authority without challenging the order passed by the Financial Commissioner. The petitioner, therefore, cannot be heard to urge that the Financial Commissioner had no jurisdiction to direct that the matter be decided by the Collector, Roopnagar. In view of what has been stated hereinabove, we find no reason to accept the petition much less to hold that the impugned orders suffer from any error of jurisdiction or of law. The writ petition is, consequently, dismissed, but with no order as to costs.