

(2013) 05 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6916 of 2010

Dera Sanyasian and Another	Vs	APPELLANT
Gram Panchayat and Others		RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2(g), 2(g)(iii), 2(g)(ix), 3

Citation : (2013) 171 PLR 481

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

Bench : Division Bench

Advocate : R.S. Mittal and Mr. C.S. Singh, for the Appellant; Raj Kumar for Ms. Sushma Chopra for Respondent No. 1 and Mr. Nilesh Bhardwaj, D.A.G., Punjab for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—By way of this order, we shall dispose of CWPs No. 13306 of 1999 and 6916 of 2010 as they involve adjudication of similar questions of fact and law. For the sake of convenience, facts are being taken from CWP No. 6916 of 2010. The petitioners pray for issuance of a writ of certiorari, quashing orders dated 19.07.2006 and 08.04.2009, passed by the Collector-cum-Divisional Deputy Director, Village Development and Panchayat, Patiala, and the Director, Village Development and Panchayat Department, Punjab (exercising the powers of the Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act").

2. A brief narrative of facts as discernible from the writ petition and the reply, would be appropriate.

3. The Gram Panchayat of village Karhali, Tehsil and District Patiala, filed two separate petitions under Sections 7 and 11 of the 1961 Act, for declaration of its title and for eviction of Dera Sanyasian, from the land, in dispute. The petitioners filed replies denying the ownership of the Gram Panchayat and pleaded that the

land, in dispute, has been in its possession for the last seventy years. The petitioners also pleaded that income from the land is being used for the welfare of the Dera and as a similar petition filed u/s 7 of the 1961 Act has already been dismissed by the District Development and Panchayat Officer (hereinafter referred to as "DDPO"), Patiala (exercising powers of Collector) on 22.06.1966, the present petition should also be dismissed. The DDPO-cum-Collector, Patiala, consolidated both petitions and dismissed the petition filed u/s 7 of the 1961 Act, by holding that though revenue entries record the Gram Panchayat as owner but as the column of possession, records the possession of Dera Sanyasian, the latter is protected by Section 4(3)(ii) of the 1961 Act.

4. Aggrieved by this order, the Gram Panchayat filed an appeal. The Joint Development Commissioner, Panchayats, Punjab (exercising powers of Commissioner), accepted the appeal, set aside the order passed by the DDPO-cum-Collector, Patiala, and remitted the matter to the DDPO-cum-Collector, Patiala, for adjudication afresh.

5. The petitioners challenged this order by filing CWP No. 13306 of 1999, which was admitted but for reasons best known to the petitioners, they filed a petition u/s 11 of the 1961 Act, for a declaration that the land does not vest in the Gram Panchayat. The Gram Panchayat filed a reply, asserting its ownership on the ground that the land is Shamilat Deh and vests in the Gram Panchayat.

6. The DDPO-cum-Collector, Patiala, afforded an opportunity to parties to lead evidence and after considering their arguments and evidence adduced, held that the disputed land belongs to the Gram Panchayat.

7. Aggrieved by this order, the petitioners filed an appeal which was dismissed by the Director, Village Development and Panchayats Department, Punjab, on 08.04.2009. Hence, the present petition.

8. Counsel for the petitioners submits that proprietors of the village, donated the land, in dispute, to the Dera for religious purposes. The jamabandi for the year 1947-48, Annexure P-1, records that the land, in dispute, is "Shamlat Deh Hasab Rasad Raqba Jaddi" in possession of the Dera through its Mohtamin. The same entry is repeated in jamabandies for the year 1951-52, and 1955-56 (Annexures P-2 and P-3). The Khatauni Pamaish prepared during consolidation also records a similar entry but was wrongly changed from "Shamlat Deh Hasab Rasad Raqba Jaddi" to Nagar Panchayat on the basis of a letter issued by the Government. The land, in dispute, is clearly excluded from Shamilat Deh by Section 2(g)(ix) of the 1961 Act, as it is the site of a religious institution and is used for purposes subservient thereto. The Dera uses the land, in dispute, to generate income for looking after Sadhus, Sanyasies and devotees who visit the Dera and for its upkeep. The impugned orders holding that the Dera has failed to prove its possession or that the land is not excluded from Shamilat Deh, are illegal and void and should be set aside. It is further submitted that in a similar case relating to Dera Joga, Karhail, the Hon"ble Supreme Court has held that the

similar land does not vest in the Gram Panchayat. The same relief may be granted to the petitioners.

9. Counsel for the Gram Panchayat submits that a perusal of jamabandies referred to by the petitioners, reveal that the land, in dispute, is Shamilat Deh. The land came to vest in the Gram Panchayat firstly under the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as the "Pepsu Act") and thereafter under the 1961 Act. The petitioners have not been able to prove any gift or donation to the Dera by any proprietor or group of proprietors. The petitioners have not adduced any evidence that income from the land, in dispute, is used for purposes subservient to the Dera. The petitioners, therefore, cannot derive any benefit from Section 2(g)(ix) of the 1961 Act. Petitioner No. 1 is a religious institution, but still seeks to perpetuate its illegal possession and despite requests by the Gram Panchayat to vacate the land, has refused to return the land to the Gram Panchayat. It is further submitted that the case relating to Dera Joga, Karhail, is different on facts and, therefore, does not apply to the present case.

10. We have heard counsel for the parties and perused the impugned orders.

11. The dispute, in the present case, is whether the land, in dispute, is included in or excluded from Shamilat Deh under. Section 2(g)(ix) of the 1961 Act, and as a consequence, vests or does not vest in the Gram Panchayat.

12. Before we proceed to answer this question, it would be appropriate to briefly refer to the nature of Shamilat Deh land and its inclusion and exclusion from Shamilat Deh, as defined u/s 2(g) of the 1961 Act.

13. Shamilat Deh is the common land of a village, kept apart by proprietors for their common use, as exclusive owners in possession in accordance with their respective shareholdings, calculated in accordance with their proprietary landholdings or land revenue paid, etc. A proprietor, holding a share in Shamilat Deh, could cultivate, partition, gift, sell, mortgage or lease his share in Shamilat Deh and was in essence, absolute, though, joint owner of his shareholding. The Pepsu Act brought about a paradigm shift in the ownership of Shamilat Deh as it extinguished rights, title and interest, held by proprietors in the Shamilat Deh of a village and vested them in a Gram Panchayat. The Pepsu Act was repealed and replaced by the 1961 Act. Section 2(g) of the 1961 Act provides a detailed definition to the expression "Shamilat Deh" by setting out circumstances in which land shall be included in and excluded from Shamilat Deh. The land, included in Shamilat Deh vests in a Panchayat by virtue of Sections 3 and 4 of the 1961 Act.

14. Admittedly, the column of ownership, in the relevant jamabandi, records the words "Shamilat Deh". The land came to vest in the Gram Panchayat under the Pepsu Act and thereafter as it is not excluded from Shamilat Deh by any provision of the 1961 Act is recorded as ownership of the Gram Panchayat. The petitioners contend that the land is excluded from Shamilat Deh u/s 2(g)(ix) of the 1961 Act, as it is used for purposes subservient to a place of worship.

Section 2(g)(ix) of the 1961 Act, reads as follows:-

2(g) "Shamilat Deh " includes:-

- (1) xxx xxx xxx xxx xxx xxx xxx xxx
- (2) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (3) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (4) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (5) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx

but does not include land which:-

- (i) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (ii) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- [(ii-a) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (iii) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (iv) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (v) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- [(vi) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (vii) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx
- (viii) xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx

[(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act]

15. Section 2(g)(ix) of the 1961 Act, excludes land from Shamilat Deh if it is being used as a place of worship or for purposes subservient thereto, immediately before commencement of the 1961 Act. A person invoking Section 2(g)(ix) of the 1961 Act, is required to prove: (a) that the land, in dispute, is being used as a place of worship; or (b) for purposes subservient to the place of worship; and (c) immediately before commencement of the 1961 Act.

16. Admittedly, the land, in dispute, is agricultural land and is not being used as a place of worship. The petitioners are, therefore, required to prove by clear and cogent evidence, that the land, in dispute, which is a large parcel of agricultural land, measuring 347 kanals and 8 marlas i.e. more than 43 acres, is being used for purposes subservient to the religious institution. The petitioners allege that the produce of the land and/or its income is used for providing food and sustenance to Sadhus, Saints and devotees who live in Dera and to the large number of devotees who visit the Dera from time to time.

17. The adjective "subservient" used in Section 2(g)(ix) of the 1961 Act, has to

be understood in its ordinary grammatical sense to denote a purpose that so aids the place of worship, as to be necessary for the place of worship to carry out its duties and obligations. The mere fact that a piece of land is in possession of a religious institution, would not give rise to an inference that the land is being used for a purpose subservient thereto. The use of the land for a purpose "subservient thereto", requires the person raising such a plea to prove that "user" of the land be so intrinsically linked to place of worship, as to be inseparable and essential for functioning of the place of worship. The petitioners apart from proving entries of their possession, prior to 26.01.1950 i.e. prior to enactment of the 1954 and the 1961 Acts, have not adduced any evidence to support their plea that the land, in dispute, is used for any purpose subservient to the Dera. This apart, a perusal of the pleadings referred to in the orders passed by the DDPO-cum-Collector, Patiala and the Appellate Authority reveal that the petitioners have not raised a plea much less adduced any evidence that income from this land is being used for purposes subservient to the Dera. The petitioners' plea that the land is excluded from Shamilat Deh u/s 2(g)(ix) of the 1961 Act, is, therefore, rejected.

18. The petitioners' argument that the land is excluded from Shamilat Deh as it was donated by proprietors, remains unsubstantiated for want of reference to any gift deed or entry in the revenue record that would even remotely suggest a gift to the petitioners by any proprietor or by proprietors as a whole. Even otherwise, the petitioners did not raise this plea whether before the DDPO-cum-Collector, Patiala, or the Appellate Authority. The fact that the land is in possession of a Dera or a religious institution, does not give rise to an inference that the land was gifted to the Dera. A gift, even if, oral, should have been recorded in a mutation or in the relevant jamabandi. The revenue record does not record any gift by proprietors, at any time before or after Shamilat Deh came to vest in the Gram Panchayat.

19. The petitioners' plea that their long possession prior to 26.01.1950 entitles them to relief, in our considered opinion, cannot be accepted. The provisions, that exclude land from Shamilat Deh on account of possession before 26.01.1950, namely sections 2(g)(iii) and (viii) of the 1961 Act, apply to proprietors in cultivating possession.

20. The petitioners are not proprietors but are unauthorised occupants of Shamilat Deh. The Shamilat land came to vest in a Gram Panchayat under the Pepsu Act and thereafter under the 1961 Act. The Gram Panchayat is owner of the land, in dispute, and is entitled to evict the petitioners from the land, in dispute. As regards the plea relating to a Supreme Court judgment in another case, suffice it to state that the judgment has not been placed on record or made available during arguments. The mere fact that the said judgment is referred to in the order passed on 02.06.1998 during mutation proceedings, in our considered opinion, cannot be taken into consideration much less form the foundation of the petitioners' plea of title. The order dated 02.06.1998 even

otherwise, relates to a mutation which is a mere fiscal entry that neither confers nor divests a party of its title. The petitioners are mere unauthorised occupants and even if they are recorded in possession prior to 26.01.1950, are not entitled to the benefit of Section 4(3)(ii) of the 1961 Act. In view of what has been held hereinabove, we find no reason to differ with the findings recorded by the DDPO-cum-Collector, Patiala, and the Appellate Authority holding that the land, in dispute, vests in the Gram Panchayat. The writ petition is consequently dismissed but with no order as to costs.