

(2012) 03 P&H CK 0437
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12905 of 2009

Gram Panchayat, Mavi Sappan

APPELLANT

Vs

Director, Rural Development and Panchayat Deptt, Punjab
and others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 11(2), 2(g)(viii), 4(3)(ii)

Citation : (2012) 3 RCR(Civil) 246

Hon'ble Judges : Rakesh Kumar Jain, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : Umesh Kumar Kanwar, for the Appellant; Baljinder Singh, Advocate
For the Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The petitioner Gram Panchayat has challenged order dated 08.04.2009 (Annexure P-5) passed by the Director, Rural Development and Panchayat Department, Punjab (Exercising the Power of Commissioner) by which appeal filed by respondent Nos. 3 and 4 u/s 11(2) of the Punjab Village Common Lands (Regulation) Act, 1961 [for short "1961 Act"] against the order dated 12.02.2008 (Annexure P-3) passed by the Divisional Deputy Director, Panchayats-cum-Controller, Patiala, in respect of land falling in Khasra No. 52//16(8-0), 17(8-0), 18(7-8), 57//21/2(6-7), 22(8-0), 52//15/2(3-0) and 57//23(8-0), total measuring 11 Kanals 15 Marias, situated in village Mavi Sappan, Tehsil and District Patiala, has been allowed. The case set up by respondent Nos. 3 and 4 is that the land in dispute is not Shamilat Deh as it was Banjar Kadim and in possession of Makbooja Malkan as on 09.01.1954 when Shamilat Law came into force in the erstwhile Pepsu Area and was never used for common purposes.

2. The Collector dismissed the petition filed by respondent No. 3 and 4 with the

following observations:

After hearing arguments of the Id. Counsels of both the parties, I have come to the conclusion that the Gram Panchayat is owner of this land as per revenue record, and the applicants produced the revenue record, in support of their claim, as per that their continuous possession from 26.1.50 is not proved. The respondent produced jamabandi for the year 1963-64, as per that there are no entries to show the possession of the applicants rather on the area claimed by the applicants bearing khasra No. 57//21/2(6-7), 23(8-0). the possession of Sh. Tehal Singh etc. and on Khasra No. 52//15/2(3-0), 16(8-0), 17(8-0), 18(7-8) of Sh. Amroo etc, has been shown, from which it is crystal clear that the continuous possession of the applicants from the years 1950 is not there. Apart from this the mutation of this land was entered in the name of Nagar Panchayat in the year 1957 which has not been challenged by the applicants or any other person in the competent court. As such this mutation has attained finality. In this regard, the Division Bench of Hon"ble Punjab and Haryana High Court in Shisha Singh and other v. State of Punjab, 2005(4) RCR (Civil) Page 656 has categorically held that if such mutation has not been challenged under the Revenue Act then such mutation attains finality. The applicants has filed the present application after such a long period of 55 years which is time barred. In this context. 1997(4) R.C.R. (Civil) 498 : 1997(2) PLJ 375 Gram Panchayat Kakra v. Addl Director Consolidation is especially worth mentioning. The applicants failed to establish their possession from 26.1.50. The Gram Panchayat Mavi Sappan is the owner of this land. Therefore as there is no weightage in the petition of the applicants, as such, the same is rejected. Order was pronounced in the open court.

3. However, the Commissioner reversed the order of the Collector by observing that "I have come to the conclusion that the possession of the appellants through their ancestors is continuous prior to 26.1.1950, this land neither came in possession of Panchayat, it does not fall within the definition of shamilat. The Gram panchayat failed to establish that this land was ever used for common purposes of the village. Counsel for the petitioner has argued that as the land was recorded as Banjar Kadim, even in the year 1954, the finding recorded by the Commissioner that it was in continuous possession of predecessors-in interest of respondent Nos. 3 and 4 prior to 26.01.1950 and is, thus, excluded from the definition of Shamilat Deh purportedly in terms of Section 2(g)(viii) of the 1961 Act is patently illegal because Section 2(g)(viii) of the 1961 Act requires a person claiming exclusion from shamilat deh to prove that the land was assessed to land revenue and was in individual cultivating possession of co-sharers not being in excess of their respective shares in such Shamilat Deh on or before 26.01.950. The land, in dispute, as admitted, by respondent Nos. 3 and 4, in their petition filed u/s 11 of the 1961 Act, was Banjar Kadim as on 08.01.1954. The land, therefore, could not be in the cultivating possession of the respondents or their predecessors on or before 26.01.1950. Hence, order of the Commissioner reversing the order of the Collector is patently illegal. Even if the matter is examined from the angle of Section 4(3)(ii) of the 1961 Act, the

respondent. Nos. 3 and 4 could not prove that 12 years immediately before the date of commencement of the Act, the land was in their cultivating possession.

No other point has been argued.

In view of the aforesaid discussion, the present writ petition is allowed, impugned order dated 08.04.2009 (Annexure P-5) is hereby quashed. However, order dated 12.02.2008 (Annexure P-3) is restored.