

(2003) 09 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11475 of 2003

Jagdish Singh and Others

APPELLANT

Vs

Director, Rural Development and Panchayats-cum-
Commissioner and Another

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11

Citation : (2004) 136 PLR 693 : (2004) 1 RCR(Civil) 253

Hon'ble Judges : V.K. Bali, J; Jasbir Singh, J

Bench : Division Bench

Advocate : A.S. Cheema and Onkar Rai, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Whereas, title suit filed by the petitioners u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act of 1961") was decreed by the Collector vide impugned order dated 4.3.2002, Annexure P1, same, on appeal, preferred by the Gram Panchayat, was set aside by the Commissioner vide order dated 13.6.2003, Annexure P2. It is against this order of the Commissioner, dated 13.6.2003, Annexure P2, that present petition has been filed.

2. Before we might give brief narration of the facts, it would be appropriate to mention that the plaintiff, who may claim ownership to any property, has to succeed on the strength of his title. In other words, the mere fact that his adversary, arrayed as respondent in the lis, does not have title, would not lead to passing of a decree declaring him to be owner as such. Now the brief facts.

3. The petitioner herein filed a title suit u/s 11 of the Act of 1961 so as to declare them as owners of land measuring 163 kanals 1 marla situated in village Charason, Tehsil & District Patiala. The burden of the plaint was that the land has since been described in the revenue records as "Maqbuja Malkan", i.e., belonging

to proprietors and as per the revenue record, same was never used for any common purpose of the village. It was further pleaded by them that the right holders of the village had partitioned the land and taken possession as per their individual shares before 26.1.1950. In support of their aforesaid contention, they placed reliance upon the Jamabandis for the year 1945-46, 1951-52, 1952-53, 1977-78, 1982-83, 1987-88, 1992-93 and 1997-98.

4. Learned Appellate Court had made a reference to all the relevant Jamabandies that came on records of the case i.e., Jamabandies for the years 1945-46, 1950-51, 1952-53, 1977-78, 1982-83, 1992-93 and 1997-98. It is no doubt true that in the column of ownership, in the Jamabandies for the years, 1950-51 and 1952-53, the land has been described as "Shamlat Deh Hasab Rasad Arazi Khewat" and in the column of cultivation the word "Maqbuja Malkan" (proprietors) has been mentioned. However, in the Jamabandi for the year 1977-78, separate and different khasra numbers have been mentioned in possession of some individuals, some of whom have been described as tenants whereas, with regard to others, there is no mention as to whether they are tenants or proprietors. In the column of ownership, Nagar Panchayat has been mentioned. It is only in the Jamabandi for the year 1997-98 that the petitioners have been recorded to be in possession of Khasra Nos. 58//16, 17, 18, 25, 59//21, 60//1, 61//5, without showing them as to whether they are in possession in the capacity of proprietors or tenants.

5. The significant question that arises from the revenue records, as mentioned above, would be as to whether the petitioners have been able to prove title over the suit land. Before, we may, however, delve upon that point, it is significant to mention that the Commissioner, vide his order dated 13.6.2003, Annexure P2, impugned in the present petition, has accepted the appeal of the Gram Panchayat and set aside the order passed by the Collector on the following four grounds:-

"1. The entries in the revenue record show Nagar Panchayat as owner of land since 1977-78. Entries have been made in the Jamabandi for the respective years. Sh. Jagdish Singh and his family members are living in Haryana and are voters in Haryana. It shows that the respondents are land grabbers of Panchayat land. The respondents are not ordinarily residents of the village and they could not produce any proof like electricity bill, telephone bill, identity card or certificate of any child studying in the village or nearby village. Rather a copy of the voter list showing the respondents as voters of Haryana is attached on the file.

2. Sh. Jagdish Singh, respondent prepared a ration card in Nov., 2001 with the sole purpose to establish his claim on panchayat land. Many of the family members on ration card are not shown as residents of the village Charason. It shows that the ration card has been prepared with the sole purpose of creating evidence to strengthen his claim over panchayat land.

3. Revenue record for the year 1998 shows that land in dispute was leased out in open auction. Thus possession of the respondent or his ancestors is not undisputed (i.e., before 26.1.1950) as laid down by the law.

Revenue entries of land since 1945-46 upto 1952-53 show that land has been marked as Shamlat Deh Hasab Rasad Arazi Khewat and not the exclusive ownership of respondents. Nor the respondents upto 1952-53 are shown possessing the disputed land. In the cultivation column Sulakhan Singh and others figure in the year 1977-78. For the first time, it shows respondents are not in possession since 26.1.1950.

4. The respondents in this case crossed all limits of decency and their greed is limitless. They put all types of pressure on this court to get the favourable decision.

Though, the respondents belong to Jat Sikh community, they tried to pose as persons belonging to weaker section to get sympathy. In fact, the respondents own around 50 acres of land in Haryana. In spite of the fact that they are financially well off and have good source of income from their own land, they tried to influence this court by resorting to all types of pressure. Mutation of the disputed land is affected in the name of Gram Panchayat and it was never challenged by the respondents. The revenue record for the year 1987-88, 1992-93 and 1997-98 shows that the land leased out remained on lease. The respondent being lessee of the land can not claim the ownership of the land. They need to be evicted forthwith and the land rent @ Rs. 5000/- per acre per year may be recovered from the respondents within two months from the passing of this order, failing which 10% interest may also be recovered on the due amount to be recovered from the respondents. The Gram Panchayat is declared owner of the suit land".

6. Without first adverting to the grounds taken by the learned Commissioner in rejecting the claim of petitioners, we would like to mention that even if we assume that as per revenue record, land belongs to the proprietors and there are no basis available on records to show as to how the land, which was described to be belonging to the proprietors, was mutated in favour of the Gram Panchayat for the first time in 1982-83, the fact remains that the petitioners were never recorded to be proprietors in any of the Jamabandies inclusive of Jamabandies for the years 1945-46 and 1952-53. Once, they were never the proprietors of the village and their proprietary holding was never subject to a cut for creating a common pool which was to vest with the Gram Panchayat as shamlat deh, they cannot stake claim to the property as owners. It is in that context that we have observed in the earlier part of the judgment that the plaintiff has to succeed in the matter of ownership on the basis of his title and irrespective of the fact that his adversary is owner or not, once he has failed to prove himself as owner, the suit has to be dismissed.

Coming now to the findings recorded by the learned Commissioner, if it is proved

that the petitioners have their holdings in the State of Haryana, where alone they are residing, there is no question of their being proprietors in the village and naturally, thus, there is no question of their contributing land for a common pool. We may mention here that it is only the land, which after a pro-rata cut is applied in the land of the proprietors and which land, after putting to various uses, is rendered surplus, that still belongs to proprietors and not otherwise. To a repeated question that has since been asked to learned counsel appearing of the petitioners as to whether the petitioners, even now, can show that at any stage, they, their father or grand father were even proprietors in the village, no answer is forthcoming. The findings of the learned Commissioner that the petitioners are not residents of village, they have not produced any electricity bill, telephone bill, identify card or certificate of any child studying in the village or nearby village, thus, appear to be correct. Further, nothing at all has been shown which may contradict the findings of learned Commissioner that the land in dispute was being leased out in open auction and the respondents were lessees. The findings that the petitioners were lessee have been returned on the basis of Jamabandi for the years 1987-88, 1992-93 and 1997-98. These Jamabandis have not been placed on records to show that the aforesaid findings of the learned Commissioner are incorrect. If the petitioners might have taken the land on lease, obviously, they can not deny the title of their landlord as provided u/s 111(g) of the Transfer of Property Act.

Before we may part with this order, all that we would like to mention is that the learned Commissioner, while giving description of the entries recorded in various Jamabandis, mentioned above, has only given extract of the same and it is in that context that we are mentioning that if the petitioners wanted to contradict the findings that they were lessees of the Gram Panchayat, they ought to have produced on records the Jamabandies for the years as mentioned above. In as much as the findings to the effect, as mentioned above are enough to return a finding that petitioners are not owners of the property in dispute, there is no need to go into the conduct of the petitioners, who, it appears, from the order passed by the learned Commissioner, indulged into all unsavoury practices in securing an order in their favour.

Finding no merit in this petition, we dismiss the same in limine.

Sd/-

Jasbir Singh, J.