
(2012) 05 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 13595, 13611, 13612, 13613, 13614, 13615, 13616, 13617, 13618, 13596, 13597, 13601, 13602, 13604, 13605, 13607, 13608, 13598, 13599, 13600, 13626, 13620, 13621, 13603, 13625, 13609, 13619, 13628, 13629, 13624, 13622 and 13623 of 1998

Joginder Singh

APPELLANT

Vs

Joint Development Commissioner (IRD) and Another

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2, 2(g), 2(g)(1), 2(g)5)

Citation : (2013) 1 RCR(Civil) 177

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

Bench : Division Bench

Advocate : Sarjit Singh, with Mr. Jagdev Singh, for the Appellant; Jagdeep Bains, Advocate for the Gram Panchayat, for the Respondent

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—By this order we shall dispose of above-captioned writ petitions as they involve adjudication of common questions of law and facts. However, for convenience, facts are being taken from CWP No. 13595 of 1998. The petitioner prays for issuance of a writ of certiorari for setting aside order dated 12.5.1998 (Annexure P-3) passed by the Joint Development Commissioner (IRD), Rural Development & Panchayat Department, Punjab, whereby appeal filed by the Gram Panchayat has been allowed by reversing the order of Collector (DDPO), Patiala, dated 2.6.1997.

2. Counsel for the petitioner submits that the sole question that arose for adjudication was whether on the appointed day, i.e., 22.4.1961, the land, in dispute, was Banjar Qadim. The Collector decided the issue in favour of the petitioner though by holding that the land was Banjar Qadim on 9.1.1954 but the Commissioner has, while reversing the order passed by the Collector, failed to decide this point. The Commissioner has not recorded any opinion as to whether

the land was or not Banjar Qadim on 22.4.1961.

3. Counsel for the petitioner relies upon jamabandis for the years 1957-58 (Annexure P-4) and 1961-62 (Annexure P-5) in support of his contention that the land in dispute was Banjar Qadim on the coming into force of Punjab Village Common Lands (Regulation) Act, 1961 (for short "the 1961 Act"). Counsel for the Gram Panchayat, on the other hand, submits that the land in dispute is recorded as "Barani" in jamabandi for the year 1961-62 and as the jamabandi reflects the situation that existed five years before recording of a jamabandi, it is apparent that before coming into force of the 1961 Act, the land was no longer Banjar Qadim and, therefore, could be excluded from Shamilat deh on the ground that it was Banjar Qadim and not used, according to the revenue record, for common purposes. It is contended that as the petitioner's case is not covered by Section 2(g)5) of the 1961 Act, the Appellate Authority, has rightly reversed the order passed by the Collector, while accepting the appeal filed by the Gram Panchayat.

4. We have heard counsel for the parties and perused the impugned order. The petitioner approached the Collector by way of a petition u/s 11 of the 1961 Act, seeking a declaration that the land in dispute does not belong to the Gram Panchayat, inter alia, on the following grounds that (a) the petitioner is in possession thereof pursuant to a partition before 26.1.1950 and (b) the land has been used for grazing of cattle and was Banjar Qadim on 9.1.1954, i.e. the date of enforcement of the PEPSU Village Common Lands Regulation Act, 1954 (for short "the 1954 Act"). The Collector issued notice to the Gram Panchayat and, after considering the evidence adduced by parties, held that as the petitioners have proved their possession before 26.1.1950 and as the land was not reserved for any common purpose and was Banjar Qadim on 9.1.1954, it does not vest in the Gram Panchayat. Aggrieved by this order, the Gram Panchayat filed an appeal. The Appellate Authority reversed the order passed by the Collector by holding that the petitioners have not been able to prove their cultivating possession before 26.1.1950 and as the petitioners are clearly recorded as lessees of the Gram Panchayat in jamabandi for the year 1971-72, and thereafter, in possession as unauthorized occupants in the years 1977-78, 1983-84 and 1986-87, they do not have any right or title in the land in dispute. However, while deciding as above, the learned Commissioner did not decide, much less, advert to the plea accepted by the Collector that the land is excluded from Shamilat deh as it was Banjar Qadim on 9.1.1954. A perusal of the order passed by the Commissioner reveals that finding recorded by the Collector has not been referred to, much less, considered or decided while accepting the appeal filed by the Gram Panchayat. At this stage, we would like to clarify that land described as "Shamilat deh" vests in a Gram Panchayat by virtue of the 1954 Act. A reading of Sections 2(g)(1) and Section 3 of the 1961 Act reveals that only such "Shamilat deh" is excluded, from vesting in a Gram Panchayat, as is provided by Section 2(g) or Section 4 of the 1961 Act, The mode and manner of vesting and exclusion of land from Shamilat deh is contained in Section 3(1)

and 3(2)(i) of the 1961 Act, which read as follows:

3. Lands to which this Act applies:

(1) This act shall apply and before the commencement of this Act that Shamilat Law shall be deemed always to have applied to all lands which are Shamilat deh as defined in clause (g) of Section 2.

(2) Notwithstanding anything contained in subsection (1) of Section 4:-

(i) Where any land has vested in a Panchayat under the Shamilat law, but such land has been excluded from Shamilat deh under clause (g) of Section 2 other than the land so excluded under sub-clause ii-a) of that clause, all rights, title and interest of the Panchayat in such land as from the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1995, shall cease and all such rights, title and interest shall vest in the person or persons in whom they were vested, immediately before the commencement of the Shamilat law;

(3) xx xx xx xx

5. A landowner, claiming that his land is excluded from "Shamilat deh", shall be required to prove the ingredients of the exclusion clause, from the date set out, in the clause so invoked. Where, however, an exclusion clause does not set out any date, the landowner could be required to prove the ingredients, of the exclusion clause, as on the date of enactment of the 1961 Act i.e. 4.5.1961. A petitioner, who claims exclusion of the land from Shamilat deh on the ground that it was Banjar Qadim, will have to prove this fact as on 4.5.1961, i.e., the date of coming into force of the 1961 Act as the 1954 Act, does not contain any such exemption or exclusion clause. However, as the Commissioner has not decided whether the land was Banjar Qadim, and if so, on which date, we allow the writ petition and other connected petitions, set aside the order passed by the Appellate Authority and remit the matter to the Appellate Authority i.e. Joint Development Commissioner (IRD), Rural Development & Panchayat Department, Punjab, to decide the appeal afresh, particularly by adjudicating the aforementioned issue, and in accordance with law, within three months of the parties putting in appearance, on 30.5.2012. A photocopy of this order be placed on the files of connected cases.