
(2009) 03 P&H CK 0144
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2152 of 1985

Joginder Singh now represented by his L.Rs APPELLANT
Vs
Gram Panchayat, Village Balian, District Sangrur and others RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 3 PLR 270 : (2009) 4 RCR(Civil) 511

Hon'ble Judges : Ranjit Singh, J

Advocate : Mr. Amarjit Markan, Advocate. Mr. K.S. Sandhu, Advocate. Mr. P.C. Goyal, Addl. A.G., Punjab., Advocates for appearing Parties

Judgement

Ranjit Singh, J.—The petitioner seeks quashing of order, Annexure P6, passed by the Joint Director, Panchayats, Punjab, exercising powers of Commissioner. Through this order, the Commissioner has allowed the appeal filed by the Gram Panchayat against the order passed by the Collector, dismissing the application of the Gram Panchayat for ejectment of the petitioner from the land in dispute.

2. The petitioner (now represented through his L.Rs) claims to be a share holder and proprietor of Village Balian, Tehsil and District Sangrur. The consolidation in village Balian took place in the year 1957. As per the revenue record, disputed land was shown as Mushtarka Malkan by the consolidation authorities in the jamabandi for the year 195859 in the ownership column of Khasra Nos. 249 to 251 and 475. Copy of the jamabandi is annexed as Annexure P1. This jamabandi was produced before the authorities. The petitioner also claimed that this land remained in possession of the proprietors and even was not in the control of Gram Panchayat for the purposes of management. Suddenly, however, on 15.5.1964, mutation No. 1041 was entered in the name of Gram Panchayat. The averments and the record would show that this mutation was done on the basis of letter No. 6858R(2)61/623957 dated 22.9.1961, issued by Deputy Secretary, Government Punjab, Revenue Department, Chandigarh. Thus, the land was mutated in the name of Gram Panchayat by Assistant Collector IInd Grade, Sangrur. The petitioner claims that this mutation was done at the back of the

proprietors and would have no value in the eyes of law. It is also pleaded that the mutation does not confer any title and on the basis of this wrong entry in favour of Gram Panchayat, the appeal of the Gram Panchayat could not have been allowed. There are subsequent entries made in the jamabandi in the name of Gram Panchayat, which are also annexed with the case.

3. The Gram Panchayat filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, "the Act"), for eviction of the petitioner on the basis of entry made in its favour on the basis of letter of Deputy Secretary. The petitioner filed a detailed written statement. Respondent Gram Panchayat examined one Sh.Dev Raj, Social Education and Panchayat Officer, Sangrur, who tendered jamabandi for the year 1975/76 (Annexure P4). The petitioner, however, placed on record the basic jamabandi for the year 1958/59 (Annexure P1) and mutation No. 1041 (Annexure P2). He also examined Shamsher Singh, Overseer, who proved the construction of house in Khasra No. 475/81. Lachhman Dass, Panchayat Secretary, was produced to prove that Panchayat had never auctioned the disputed land since 1958. Balbir Singh was examined to prove long possession of Joginder Singh. Taking into consideration this evidence led by the respective parties, the Collector dismissed the application of Gram Panchayat on 14.8.1981. The operative part of the order is reproduced below :

"From considering the evidence and various documents produced by the parties and after hearing the learned counsel, I hold that the applicant Gram Panchayat is not the owner of the above land and that the respondent is rightly in possession of the same. Under the circumstances the application of Panchayat fails and is dismissed with no order as to costs."

4. Feeling aggrieved against the order, the Gram Panchayat filed an appeal under Section 7(2) of the Act. Without considering the evidence and relying upon the jamabandi in favour of Gram Panchayat only, the Appellate Authority has accepted the appeal. This order is accordingly impugned by the petitioner through the present writ petition.

This writ petition came up for hearing before this Court on 26.4.1985. While issuing notice of notice, dispossession of the petitioner was stayed. The writ petition was ultimately admitted on 9.8.1985.

5. Reply has been filed. Preliminary objection is raised to the effect that the petitioner has not placed on record any document to show his share in the Shamlat Deh. It is also stated during consolidation holdings that the land was left unallotted out of the common pool and reserved for common purposes under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, "1948 Act"). It is otherwise conceded that in the jamabandi for the year 1958/59, the land is shown as `Mushtarka Malkan Haqdarani Hasab Rasad Raqba Khewat. Reference is then made to Khasra No. 909 to say that the land is now shown belonging to Nagar Panchayat. Reference

is also made to the application moved by the Gram Panchayat, leading to passing of the order impugned in the present writ petition. It is also urged that even if it is accepted that Gram Panchayat is not the owner, then entire village proprietors body is the owner of the suit land and the control thereof would continue to be with the Panchayat by virtue of Section 23A read with Rule 16 of 1948 Act.

I have heard the learned counsel for the parties.

6. Learned counsel for the petitioner contends that disputed land does not fall within the definition of Shamlat Deh as defined under Section 2(g) and as such, Gram Panchayat is not the owner of the land. He would also refer to the entries where the disputed land was shown as Jumla Mushtarka Malkan to urge that the proprietors would be owners of this land. The counsel would also make a grievance that the Appellate Authority did not take into consideration the evidence, which was led by the petitioner and has simply passed the order on the basis of one or other entries, showing Gram Panchayat to be the owner. Submission is that these entries were made on the basis of a letter issued and not on account of any other material, which would have necessitated change in the columns of jamabandi. Counsel would further submit that change of entries in the name of Gram Panchayat only on the basis of letter issued by the Deputy Secretary could not have been done and this fact apparently is not taken into consideration by the Appellate Authority. In support of his submission, learned counsel has drawn my attention to the case of Mohinder Singh v. Commissioner, Ferozepur Division, Ferozepur, 1993(1) RRR 400 : 1992 PLJ 711. This was also a case where Government letter was taken into account while sanctioning mutation in favour of Gram Panchayat. This Court took a view that it is not proper and that Government letter could not form the basis for making change in the revenue record. It is further held that the change, if any, should have been made on the basis of some independent evidence. Accordingly, the change made and shown in the jamabandi on the basis of a Government letter was held not sustainable.

7. It is not in serious dispute that entries in the jamabandi in the name of Panchayat had been made on the basis of letter issued by Deputy Secretary. It is also not disputed that earlier jamabandi produced on record showed that the land belongs to the right holders or proprietors of the village. In addition, the petitioner had led sufficient evidence in support of his plea to show his possession as well as right over the disputed suit land. The evidence is available on record to show that on a portion of land bearing Khasra No. 475/81, the petitioner had constructed a residential house, which is, thus, in a abadi deh. It was, thus, incumbent upon the Appellate Authority to take into consideration all the evidence that was led in this case and not to base its finding merely on the basis of revenue record in the form of jamabandies. Perusal of the impugned order would show that while allowing the appeal, Appellate Authority has not only relied upon entries in Jamabandi but has made reference to the fact that the land was left for augmentation of income for Gram Panchayat under Section 18 of the Act. However, it can not be denied that entries in Jamabandi are made on

the basis of a letter issued by the Deputy Secretary. Appellate Authority has also observed that when the Panchayat is shown owner, then there is no need to prove that land was ever used for common purpose. It is, thus, held that the entry is sufficient to prove ownership of the Gram Panchayat. Thus, reliance is ultimately on the entry which is made on the basis of a letter. It would, thus, be appropriate to remit the case back to the Appellate Authority to reconsider the entire issue on the basis of evidence available on record and then take a fresh decision. Appellate Authority would be at liberty to take into consideration the law as laid down in this regard. It is noted in the impugned order that land was left un allotted out of common pool. It seems that the land was reserved for common purposes. Full Bench of this Court in *Jai Singh v. State of Haryana*, 2003(2) RCR(Civil) 578 (P&H), has observed that all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilised or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat etc.

8. To be fair to the counsel for the petitioner, he has referred to Division Bench judgment in the case of *Gurjant Singh and another v. Commissioner, Ferozepur Division, Ferozepur and another*, 2000(2) RCR(Civil) 437 : 2000(2) PLJ 7 to urge that Management and control of bachat land does not vest in Gram Panchayat. In the present case, there is no clear finding that the land in dispute is a bachat land. It would, thus, require determination on the basis of evidence as to what is the status of the land in dispute and upon that would depend whether it would be in the ownership of the Gram Panchayat or the proprietor.

9. Accordingly, the order Annexure P6 is quashed and the matter is remitted back to the Appellate Authority to take a fresh decision. This was the course followed in *Mohinder Singh's* case (*supra*). The Appellate Authority would not take into consideration the evidence, which is already available on record. The parties, through their counsel, are directed to appear before the Appellate Authority on 21.4.2009.

The writ petition is disposed of in the above terms.