
(2016) 01 P&H CK 0127
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8706 of 2015 (O&M)

Karam Singh

APPELLANT

Vs

State of Punjab and Anr.

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2(g)

Citation : (2016) 1 LawHerald 619

Hon'ble Judges : Surya Kant; P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : Mr. KK Gupta, Addl. AG Punjab and Mr. Harsh Bungar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J. (Oral)- The controversy in this case is whether the suit land is shamlat deh within the definition of Section 2(g) of the Punjab Village Common Land (Regulations) Act, 1961 and consequently vests in the Gram Panchayat - respondent No.2 or it stands excluded from shamlat deh in view of Section 2(g) (viii) for the reason that it was allegedly in individual cultivating possession of the petitioner or his forefathers on or before 26.01.1950?

2. The Collector as well as the Appellate Authority under the Act have answered it against the petitioner.

3. It may be mentioned here that earlier this Court remanded the case to the Appellate Authority for fresh adjudication of the controversy and also to examine the correctness of original jamabandi for the year 1944-45. This Court in the earlier round of litigation i.e. CWP No.11306 of 2003 (Gram Panchayat Chachowal, Tehsil Nakodar, District Jalandhar v. The Joint Development Commissioner (IRD) partly allowed on 27.09.2012 held as follows:-

"The finding recorded by the Appellate Authority, in our considered opinion, is

palpably incorrect. The entry in the relevant jamabandi for the year 1944-45, that one Mehru is in possession and as the land is "Barani", it would not automatically exclude it from "Shamilat Deh". The respondents have not adduced any evidence on record that Mehru was a co-sharer, in "Shamilat Deh" and if so to what extent. The extent of share holding is an important factor for proving exclusion of land from "Shamilat Deh" in terms of Section 2(g)(viii) of the 1961 Act. This apart, the private respondents have failed to prove payment of land revenue. The jamabandi produced by private respondents, appears to have been tampered with. At this stage, we would like to point out that the original entry is retained by the Patwari and is referred to as the "Parat Patwar". A copy is forwarded to the office of Collector and is called the "Parat Sarkar". The "Parat Patwar" and "Parat Sarkar" should record the same entries but if, there is any material difference between the "Parat Patwar" and the "Parat Sarkar", the documents would be inherently unreliable. We have perused copies produced by the petitioner and the private respondents and are prima-facie satisfied that copy produced by private respondents "may" have been "interpolated". A copy of the "Parat Patwar" of jamabandi for the year 1944-45, retained by the patwari, does not contain any entry recording the cultivating possession of Mehru as it records the words "Makbuja Malkan" and describes the land, in dispute, as "Kallar", whereas the copy obtained from the "Parat Sarkar" records "Mehru" in possession as a co-sharer and the land as "Barani". The private respondents are unable to explain this discrepancy. It would be necessary to order an enquiry into the matter. It would also be necessary to point out that in jamabandies prepared after 1944-45, Mehru and after Mehru, the private respondents are recorded as "tenants". The Appellate Authority failed to discern that a "tenant" cannot take benefit of Section 2(g)(viii) of the 1961 Act, which is only available to proprietors".

4. In purported compliance of the above reproduced order the appellate authority has gone into the correctness of the translated version of the jamabandi for the year 1944-45 as well as 1953-54 and has vide the impugned order dated 06.02.2015 concluded as follows:-

"After hearing the arguments of the parties and perusing the record I have come to this conclusion that Jamabandis for the year 1944-45 and 1953-54 (Parat Sarkar) whose certified copies are Exhibit A-6 and A-8 annexed by the Appellant to prove his claim, in that entry in the column of cultivation has been cut from Makbuja Malkan and has been made to Makbuja Mehru s/o Malooka shareholder and by cutting in some numbers in the description of kind of land, i.e. land from Gair Mumkin is changed to Barani. The appellant has tampered with the record and by submitting the same in the court has tried to take order in his favour, for which he is not at all entitled."

5. The petitioner while questioning the above-stated findings has placed on record the jamabandis for the year 1931-32 to contend that the entry in the jamabandi for the year 1944-45 are in conformity with the previous revenue

record.

6. As against it, the Gram Panchayat has also placed on record the jamabandis for the years 1928-29, 1932-33, 1936-37 and 1944-45 to oppose the petitioner's claim.

7. Both the parties have taken their respective and categorical stand that the jamabandis now placed on record by them do pertain to the land in dispute. These jamabandis were admittedly not produced before the Appellate Authority and were not the subject-matter of consideration while passing the impugned order dated 06.02.2015 (P21).

8. Since it is sought to be contended that the entries in the revenue record of prior to the year 1944-45 has also direct bearing on the title dispute between the parties, it appears to us that the matter again requires consideration by the Appellate Authority with reference to the old entries in the revenue record now referred to by the parties and which were admittedly not considered by the forums below. There, however, must come an end to the practise of producing one after the other documents on the pretext of "interest of justice".

9. The Appellate Authority shall give only one opportunity to each party to produce additional evidence, if any, comprising official documents only.

10. Since the record now produced or to be produced, is likely to be in Urdu, the appellate authority would take the assistance of an adept Translator and language expert for understanding the true nature of different entries. The translated copies shall also form part of the record.

11. The petitioner no doubt has made out a debatable case which requires re-consideration by the appellate authority, but it cannot be overlooked that he is enjoying the fruits of the subject land from last many decades and if finally the Gram Panchayat is found to be its true owner, it shall surely be entitled to be suitably compensated.

12. We thus direct the Appellate Authority to obtain appropriate security from the petitioner for the current crop year so that in the event of rejection of petitioner's claim, the Gram Panchayat is adequately compensated for that year.

13. It is only with a view to enable the authorities to reconsider the additional documents especially the revenue record comprising jamabandi for the year 1928-29 onwards (produced on record by one or the other party) that we conditionally allow this writ petition and set aside the appellate order with the limited purpose to enable the Appellate Authority to pass a fresh comprehensive order. The appeal shall be decided afresh at the earliest and not beyond 30.04.2016.

14. Parties are directed to appear before the Appellate Authority on 08.02.2016.