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**(2015) 04 P&H CK 0178**

**In the Punjab And Haryana At Chandigarh**

**Case No : CWP Nos. 11859 of 1995 and 20208 of 2006**

Raghubir Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision : 10-04-2015**

**Acts Referred:**

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2(g), 2(g)(i), 2(g)(i), 2(g)(iii)

**Citation :** (2015) 179 PLR 240 : (2015) 4 RCR(Civil) 127

**Hon'ble Judges :** Surya Kant, J;Raj Mohan Singh, J

**Bench :** Division Bench

**Advocate :** Amit Jain, for the Appellant; Aman Bahri, A.A.G, Advocates for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Raj Mohan Singh, J.—Vide this common order CWP Nos. 11859 of 1995 and 20208 of 2006 are being decided. Since common issue is involved in the aforesaid writ petitions, therefore, facts are being culled out from CWP No. 11859 of 1995.

2. Petitioners seek quashing of order dated 04.05.1995 (Annexure P-3) passed by Joint Development Commissioner (IRD) Punjab, Chandigarh (exercising the powers of Commissioner)-respondent No. 2.

3. Petitioners have alleged that their predecessors-in-interest filed a civil suit of injunction against the Gram Panchayat in respect of 93 Kanals 6 Marlas of land on the ground that they are proprietors in possession of land much prior to 26.01.1950. Their possession was claimed to be not in excess of their share. Civil Court decreed the suit vide judgment and decree dated 15.01.1964. Mutation was sanctioned by the Assistant Collector, IIInd Grade on 26.04.1966.

4. Gram Panchayat had also filed petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961

Act"), wherein it was directed that firstly the title of the land should be determined, thereafter petition under Section 11 of the 1961 Act was filed by the Gram Panchayat, challenging the decree of the civil Court and the mutation.

5. Respondent No. 3-Collector (District Development and Panchayat Officer) Patiala, dismissed the petition vide order dated 28.04.1989 on the ground that civil Court decree was passed prior to amendment in the year 1976, therefore, the same cannot be challenged under Section 11 of the 1961 Act. Further the petition filed by the Gram Panchayat under Section 11 of the 1961 Act was held to be barred by limitation and the possession of the respondents was held prior to 26.01.1950.

6. The said order was assailed in appeal before respondent No. 2-Joint Development Commissioner (IRD) Punjab, Chandigarh (exercising the powers of Commissioner), who vide order dated 04.05.1995 accepted the appeal and held that land in dispute was Shamlat Deh and was owned by Gram Panchayat under Section 4 of the 1961 Act. The civil Court judgment and decree were not placed on record of the case. The mutation so entered and sanctioned on the basis of alleged judgment and decree of the civil Court, entailed in changing the ownership of the disputed land. The mutation was held to be result of connivance with the then office bearer of the Panchayat as there was no basis of such mutation having coming forth on record.

7. Learned counsel for the petitioners contends that the Collector/respondent No. 3 rightly passed the order dated 28.04.1989, holding that according to Jamabandi for the year 1952-53, the possession of the petitioners was found prior to 26.01.1950 and, therefore, they were entitled to declaration which was rightly given by the civil Court and mutation was rightly entered and sanctioned in their favour. On the other hand learned counsel for the respondent-Gram Panchayat has argued that civil Court decree was based on mala fide as the Court was having no jurisdiction to pass such decree which was specifically barred under the law. Secondly it was not necessary on the part of Gram Panchayat to file separate suit to challenge the decree in question. Learned counsel further relies upon Radha Singh v. Assistant Collector Ist Grade, Pehowa etc., 2011 (5) RCR (Civil) 485 to contend that the Authority under Section 11 of the 1961 Act is competent to examine the legality and validity of judgment and decree passed by civil Court and it was not necessary for the Gram Panchayat to file any separate suit to seek avoidance of civil Court decree on which reliance has been placed by the petitioners.

8. We have heard the arguments of both sides, before dilating upon the question of binding character of decree in question it is necessary to peruse the status of parties as on 26.01.1950.

9. Perusal of Jamabandi for the year 1952-53 (Annexure P-6) reveals the following characteristics:--

"A. The land was recorded as Shamlat Deh Hasab Rasad Zer Khewat in the

column of ownership.

B. Land was shown in possession as self-cultivation Sampuran Singh s/o Kapur Singh, Hazura Singh shareholders residents of the village and Sampuran Singh etc. Mandraja Khewat No. 26 Nisaf Mehma etc. Manraja Khewat No. ...Nisaf share-holders self cultivation Kapur Singh shareholder; and

C. Major portion of land was shown as Banjar Qadim besides the entries of Banjar, Chahi and Bagani."

10. With this nomenclature of land as per Jamabandi for year 1952-53 whether it satisfies the requirement of law in terms of Section 2(g)(iii), 2(g)(viii) and 4(3) (ii) of the Punjab Village Common Lands (Regulation) Act, 1961 of not?

11. For better appreciation of controversy in question, it would be appropriate to reproduce the relevant extracts from Section 2(g) of the 1961 Act.

"2. (g) "Shamilat deh" includes

(1) Land described in the revenue records as Shamilat deh excluding abadi deh.

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(3) Land described in the revenue records as shamilat, Tarafs, Pattis Pannas and Tholas and used according to revenue records for the benefit or the village community or a part thereof for common purposes of village.

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(5) Land in any village described as banjar qadim and used for common purposes of the village, according to revenue records; [...]

but does not include land which-

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(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950.

(viii) was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or..."

12. Section 4 of the 1961 Act is reproduced as under:--

"4. Vesting of rights in Panchayats and non-proprietors:--

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,-

(a) which is included in the shamlat deh of any village and which has not vested in a panchayat under the shamlat law shall, at the commencement of this Act, vest in a panchayat constituted for: such village, and, where no such panchayat has been constituted for such village vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamlat law, be deemed to have been vested in such non-proprietor."

(2) Any land which is vested in a Panchayat under the Shamlat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in Sub-section (2) shall affect or shall be deemed ever to have affected the;-

(i) existing rights, title or interests of persons who, though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedars, Butimars, Basikhopohus, Saunjidars, Muqarrirdars;

(ii) rights of persons in cultivating possession of Shamlat deh, for more than twelve years [immediately preceding the commencement of this Act] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."

13. In order to show that the possession of the petitioners satisfies the ingredients of Section 2(g)(iii) and (viii) of the Act, the plea of the petitioners has to be tested on the threshold of legal position.

14. Section 2(g)(iii) prescribes the following:--

"(a) Land was partitioned before 26.01.1950; and

(b) Was brought under cultivation by individual landholders."

Similarly Section 2(g)(viii) postulates the following:--

(a) Individual cultivating possession of the co-sharers;

(b) Not being in excess of their respective shares;

(c) Not being assessed to land revenue; and

(d) On or before 26.01.1950....."

15. Perusal of Jamabandi for the year 1952-53 reveals that the predecessors-in-interest of the petitioners were shown in cultivating possession as co-sharers. There is mark distinction between "individual cultivating possession" and

"proprietary possession" of the owners in undivided share. No evidence of partition of land and individual cultivating possession of the land as on or before 26.01.1950 have been brought on record. Therefore, condition of Section 2(g) (iii) of 1961 Act cannot come to the rescue of the petitioners. Similarly conditions of Section 2(g)(viii) are also not fulfilled.

16. Most of the land has been shown by the expression Banjar Qadim in the aforesaid Jamabandi. A person could not be presumed to be in cultivating possession on 26.01.1950 if the land is shown to be Banjar Qadim in Jamabandi for the year 1952-53. It is significant to note if the land has not been harvested for four successive crops then such land is classified as Banjar Jadid or new fallow. If it continues to be uncultivated and such entries are maintained for the next four harvests then such land comes under the category of Banjar Qadim or old fallow. It shows that if the land remains uncultivated for eight preceding harvests then only such type of land is Banjar Qadim. Jamabandi for the year 1952-53 was prepared after four years. Therefore, the status of the parties as on date would be that of co-sharers and nature of land has to be presumed to be Banjar Qadim i.e. land remained uncultivated for eight preceding harvests. Therefore, the land could not have been in individual cultivating possession on both counts. Reliance can be placed on Gurdev Singh (deceased) through LRs v. Additional Director, Panchayat, Punjab and another, 2012(3) RCR (Civil) 289 and Gram Panchayat, Balbera, vill. Balbera v. Director, Village Development and Panchayat and another, 2012(4) RCR (Civil) 422.

17. According to revenue record the entry in the column of ownership was found to be of Shamlat Deh followed by the terminology of Hasab Rasab Zer Khewat. Such land vests in Panchayat as Shamlat Deh as per Section 2(g)(i) of the 1961 Act if exclusion clauses are not attracted. Since the exclusion clauses in terms of Section 2(g)(iii), (viii) and 4(3)(ii) are not attracted to the facts of the case, therefore, the land in question is squarely vests in Panchayat as Shamlat Deh with the aid of Section 2(g)(i) of the 1961 Act.

18. Since the land is described as Shamlat Deh Hasab Rasad Zer Khewat in the column of ownership, therefore, in view of Telu Ram and others v. Gram Sabha Manakpur and others, 1976 PLJ 628 it has to be held that all the clauses of Section 2(g) i.e. 2(g)(i) to 2(g)(v) of 1961 Act are independent of each other. Recourse to any of the clauses can be made to the exclusion of other. Similarly, in Shiv Charan Singh and Others Vs. Gram Panchayat Narike and Another, AIR 1978 P&H 207 , it was reiterated that clauses of Section 2(g) of 1961 Act are independent of each other and do not circumscribe the scope of each other in any manner.

19. In view of aforesaid, we are of the considered view that predecessors-in-interest of petitioners were not in individual cultivating possession of the land in question on 26.01.1950 and the petitioners fail to satisfy the ingredients of Section 2(g)(iii) and Section 2(g)(viii) of the 1961 Act. Similarly the requirement of Section 4(3)(ii) of 1961 Act, namely, that a person must be cultivating the

land Shamlat Deh for a period of 12 years immediately preceding the commencement of the 1961 Act without payment of rent/charges in excess of land revenue cannot be subscribed for want of any particulars to that effect on record. Resultantly, on this aspect also case of petitioners cannot succeed.

20. Even on the ground of alleged applicability of civil Court decree, the petitioners have no case in view of the fact that the Authority under Section 11 of the 1961 Act is competent to examine the legality and validity of judgment and decree in question and no separate suit was required to be filed to seek avoidance of such decree.

21. Resultantly, this writ petition is found to be totally bereft of merit and is dismissed as such.