
(2012) 03 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19652 of 2010

Rahul and others	Vs	APPELLANT
State of Haryana and others		RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 45
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A

Citation : (2012) 3 RCR(Civil) 243

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

Bench : Division Bench

Advocate : Vikram Singh, for the Appellant; Shruti Jain, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The petitioners have prayed for issuance of a writ in the nature of certiorari for quashing fard badar No. dated 08.07.2008 (Annexure P-10), ordered by respondent No. 3, by which mutations entered in their names on the basis of decree passed u/s 13A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) [for short "1961 Act"] have been set aside, contrary to the provisions of Section 45 of the Punjab Land Revenue Act, 1887 [for short "1887 Act"] and Paras 7.29 and 7.30 of Chapter 7 of the Record of Rights of the Punjab Land Record Manual [for short "Manual"]. In brief, the petitioners have averred that various land owners, including predecessors-in-interest of the petitioners, filed a suit u/s 13A of the 1961 Act, which was decreed on 29.03.1991, on the basis of which mutation No. 5280 was entered on 19.02.1999, which was declared to be disputed by respondent No. 3 vide his order dated 14.06.2000 and was referred to SDM, Pehowa, who did not accept the mutation because there was a reference of mutation No. 4957. CWP No. 4228 of 2003 was filed assailing order of the SDM, Pehowa dated 31.05.2001, in which respondent No. 2 made a statement that mutation was sanctioned on 18.11.2003. Consequently, mutation Nos. 5273, 5756, 6326,

6503, 6504, 6520, 6550, 6562, 6563, 6610, 6893, 6976 and 7474 were sanctioned and jamabandis were accordingly prepared, but the aforesaid mutations were set aside vide fard badar No. 1 dated 18.07.2008, without issuing any notice or affording an opportunity of hearing to the petitioners, who also moved an application to respondent No. 3 in this regard but to no avail, therefore, the present writ petition.

2. After notice of motion, respondent Nos. 1 to 3 filed a joint reply and the petitioners filed replication thereto.

3. Counsel for the petitioners has submitted that once mutations have been sanctioned, and incorporated in the jamabandis, they cannot be varied through Fard Badar except for a clerical error as any substantial modification can be made therein only in accordance with the orders of a Civil Court of competent jurisdiction. In this regard, he has referred to Section 45 of the 1887 Act and paras 7.29 and 7.30 of Chapter 7 of the Manual, which are reproduced as under:

45. Suit for declaratory decree by persons aggrieved by an entry in a record.-- If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.

7.29. Order for the correction of clerical mistakes in records to be obtained on the fard badar.- Jamabandi entries not enumerated in the preceding paragraph should not be varied in subsequent records without first obtaining orders for their variation on mutations entered for this purpose except where the variation merely consists in the removal of a clerical mistake, that is to say, of a mistake which has been made in copying the entries of one jamabandi into another or in incorporating a mutation in a jamabandi and the correction of which does not involve the alteration of any mutation order. Subject to the exception noted below, orders for the correction of such mistakes in subsequent records should be obtained on the fard badar, the form of which is given below:-

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Serial No.

Number of holding in new Jamabandi

Number of holding in last Jamabandi

Patwari's report

Field Kanungo's report

Orders of the attesting officer.

When a clerical mistake is detected in any jamabandi after it has been finally attested and filed, the patwari should make the necessary entries about it in the first four Columns of the fard badar. His report in the fourth column should be as brief as possible. For instance, if any filed has been omitted by mistake from any holding the report should merely state that such and such field has been omitted, and if any proprietor's share has been entered as one-half instead of one-third, the report should merely state that the share should be one third and not one-half. The girdawar should, from time to time, examine the fard badar entries and enter his own report in column 5 of the fard badar. His report should also be as brief as possible and where he finds that he has nothing to add to the patwari's report, he should merely put his signature in this column. In passing orders upon any fard badar entry the revenue officer should see whether it actually relates to a clerical mistake which, under the present instructions, should be dealt with in the fard badar, and he finds that it relates to such a mistake, he should record an order for the correction of the mistake in question in column 6. Otherwise he should order that the fard badar entry in question should be considered as cancelled. It will not be necessary to hear the parties concerned in connection with the disposal as fard badar entries. The fard badar prepared to remove the clerical mistake shall be decided by the Circle Revenue Officer

The only clerical mistakes in jamabandi entries, orders for the correction of which in a subsequent record should not be obtained on the fard badar, are those which cannot be conveniently described in the fard badar. The difficulty of describing a clerical mistake in the fard badar may, for instance, arise where the mistake relates to the share of an owner whose name enters into several difficult combinations in the jamabandi entry relating to the same holding.

A few blank sheets of the jamabandi sizes will be stitched to the patwari's copy of each jamabandi. When the next jamabandi is prepared a copy of the fard badar attested by the girdawar will be attached to the Government copy of that jamabandi.

The Collector and Assistant Collector 1st Grade should examine fard badars from time to time in order to see that the procedure prescribed in connection therewith is properly understood and followed by the subordinate revenue staff.

7.30. Mutation of correction not to be made. -When an entry has been incorporated in the jamabandi a mutation should not be entered up or sanctioned for the purpose of correcting it, except to correct a clerical error (where this cannot be done by a fard badar) or in consequence of a patent fact. The party aggrieved by such an entry must seek his remedy by suit.

4. Counsel for the petitioners has also relied upon a Division Bench judgment of this Court in the case of Tarlok Singh v. Financial Commissioner Co- operation, Punjab, Chandigarh and others, 2004(3) R.C.R. (Civil) 548.

5. On the other hand, counsel for the respondents has submitted that the land in question was originally owned by Municipal Council, Pehowa, which was later on transferred from Nagarpalika to Shamilat Deh Hasab Rasad Jar Khewat and mutation No. 4957 was entered in that regard. Thereafter, Civil Suits were filed u/s 13A of the 1961 Act in the Court of Assistant Collector 1st Grade, Pehowa, who, vide his order dated 29.03.1991, decreed the same declaring the petitioners to be the owners of the suit land, as a result of which the aforesaid mutations were sanctioned. However, while deciding mutation No. 4957 on 31.01.2007, respondent No. 3 rejected the aforesaid mutations entered on the basis of order passed u/s 13A of the 1961 Act as the alleged mutations were wrongly incorporated in the jamabandi for the year 2004-05. It is submitted that by way of fard badar No. 1 dated 05.06.2007, entered by Halqa Patwari, which was sanctioned by respondent No. 3 on 08.02.2008 (according to the petitioners on 08.07.2008), the land was mutated in the name of Municipal Council, Pehowa, while rejecting all the mutations, entered in the name of the petitioners and others.

6. The question, thus, arises is as to "whether entries in the revenue records/ mutations, consequent upon the decree passed by the Assistant Collector 1st Grade, which were further incorporated in the jamabandis, can be set aside/ corrected by way of fard badar or could be set aside/corrected by way of a Civil Suit u/s 45 of the 1887 Act and the revenue authorities have only limited jurisdiction of correcting clerical errors by way of fard badar, in terms of paras 7.29 & 7.30 of the Manual?

7. There is no dispute regarding the facts of this case. Admittedly, substantial variations have been made in the entries in jamabandi by way of fard badar No. 1, as the earlier mutations were cancelled. It is categorically provided in Section 45 of the 1887 Act that where a person is aggrieved by an entry in the record of rights, the jurisdiction of the revenue court is barred as the only remedy available is to file a Civil Suit under Chapter VI of the Specific Relief Act, 1877. Insofar as paras 7.29 & 7.30 of the Manual are concerned, it only permits the correction of clerical mistakes appearing in the previous jamabandi which have crept in to the current jamabandi. In this regard, reliance is placed upon the law laid down in Tarlok Singh's case (supra) and it is, therefore, held that impugned fard badar (Annexure P-10) is patently illegal as it contravenes the provisions of Section 45 of the 1887 Act and paras 7.29 & 7.30 of the Manual and as the respondent No. 3 had no jurisdiction to make substantial changes/variations in the jamabandi, which can only be carried out by way of a Civil Suit, in terms of Chapter VI of the Specific Relief Act, 1877. In view of the aforesaid discussion, the present writ petition is hereby allowed and the impugned order/fard badar (Annexure P-10) is hereby set aside accordingly, leaving it to the respondents to

seek their remedy in accordance with law. It is also clarified that this order shall not be construed to be an opinion on the rights of parties.