(2014) 05 P&H CK 0657

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 11426 of 2014

Raj Pal and Another — APPELLANT

Vs

The Financial Commissioner Haryana and Others — RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13-A, 2(g), 2(g)(1), 4, 4(1)

Citation : (2014) 05 P&H CK 0657

Hon'ble Judges : Hemant Gupta, J;Fateh Deep Singh, J

Bench : Division Bench

Advocate : Raj Mohan Singh, Advocate for the Appellant

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order passed by the learned Financial Commissioner on 19.02.2014 whereby the order passed by the Collector on 16.2.2005 and the order passed by the Commissioner on 21.1.2011 were set aside and the petition u/s 13-A of Punjab Village Common Lands (Regulations) Act, 1961 (for short ''the Act'') was dismissed.

2. The claim of the petitioners is that 258 Kanals 16 Marlas out of 3336 Kanals 15 Marlas of land situated in village Khurampur, Tehsil and District Sonepat was reserved for common purposes during consolidation whereas an area measuring 1983 Kanals 5 Marlas is being cultivated by the proprietors continuously according to their share even before consolidation. Since this land was never reserved for common purposes nor used for common purposes, therefore, the proprietors are the owners of the said land. The suit was filed in representative capacity on behalf of all the proprietors. In their reply, the stand of the Gram Panchayat was that the land vest in Panchayat u/s 2(g) of the Act and that this land was not left for the proprietors. After considering the evidence led by the parties, the learned Collector returned a finding that land was left by the proprietors during consolidation and vest in them and the mutation has been wrongly sanctioned in favour of the Panchayat. The appeal against the said order

was dismissed by the Commissioner.

3. The learned Financial Commissioner in a further revision has found that as per the Jamabandi for the year 1971-72, the oldest Jamabandi produced by the petitioners, the land is recorded as shamilat deh hasab rasad rakba khewat in the column of ownership. The land was never recorded as jumla mustarka malkan. Therefore, it is wrong to return a finding that the land in question was created during consolidation proceedings after applying pro-rata cut on the holdings of the petitioners. It was held that the land in question was recorded as shamilat deh hasab rasad rakba khewat even prior to commencement of shamilat deh and therefore it vest in Panchayat in terms of Section 2(g)(1) read with Section 4(1) of the Act.

4. Similar question has been examined by this Division Bench in L.P.A. No. 54 of 2012 titled as ''Gram Panchayat of village Bajghera Vs. The Financial Commissioner (Revenue) Haryana and others'', decided on 07.05.2014, wherein while examining the similar entry in the column of ownership this Court has held on the review of the entire case law that such land vest in Panchayat on the commencement of shamilat law. It has been observed as under:

The Full Bench judgment of this Court in the case of Gram Panchayat Sadhrapur v. Baldev Singh and others, 1977 PLJ 276 is the judgment in respect of the land falling in sub clause (3) of Section 2(g) of the Act, i.e. the land of Shamilat Panna, Patti, and Thola. It was held that such land would vest with the Panchayat only if it is used for the village community or village population. A distinction has been drawn that clause (3) pertains to the residential purpose of the community whereas the land described in the revenue record falling in sub clause (1) is the land of the village. The two clauses operate in different fields, therefore, the land of Patti, Panna, Thola, Taraf and Banjar Qadim falling under sub-section (3) would vest in the Panchayat if it is used for the common purposes. But if the land is described in the revenue record as Shamilat Deh followed by any expressions, the same would vest in the Panchayat in terms of Section 2(g)(1) of the Act.

Thus, the finding recorded by the Commissioner holding that the land does not vest with the Panchayat in terms of Section 2(g) of the Act, is patently illegal and unwarranted. The judgment in Jai Singh and Others Vs. State of Haryana, , referred to by the Commissioner pertains to Jumla Mustrka Malkan Land, which came to be vested in Panchayat consequent to the amendment in the Act by Haryana Act No. 9 of 1992. The issue raised and decided in the aforesaid case has nothing in common with the issue arising in the present case.

5. In view thereof, the land vests in Panchayat in terms of Section 2(g)(1) read with Section 4 of the Act with the commencement of shamilat law. It is land now owned by Panchayat.

6. Still further, to take the land within one of the exceptions contained in second part of Section 2(g) of the Act is concerned, there is no evidence that the petitioners were in possession prior to 26.01.1950. Thus the exceptions carved

out as part of Section 2(g) of the Act are not available to the petitioners.

7. We do not find any illegality or irregularity in the order passed by the learned Financial Commissioner which may warrant interference in the writ jurisdiction of this Court.

