
(2015) 04 P&H CK 0331

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 8027, 9101 and 9716 of 1991

Rajinder Singh and Others

APPELLANT

Vs

Additional Director Panchayats-cum-Commissioner, Punjab,
Chandigarh and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2(g), 2(g)(1, 2(g)(i), 2(g)(iii)

Citation : (2015) 04 P&H CK 0331

Hon'ble Judges : Rajive Bhalla, J;Amol Rattan Singh, J

Bench : Division Bench

Advocate : S.K. Singla, for the Appellant; P.S. Bajwa, A.A.G and Hardip Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—By way of this order, we shall decide Civil Writ Petition Nos. 8027, 9101 and 9716 of 1991. As facts that require consideration and questions that require an answer are common to these writ petitions, facts are being taken from Civil Writ Petition No. 8027 of 1991.

2. The petitioners pray for issuance of a writ in the nature of certiorari, quashing order dated 31.01.1991 (Annexure P-8), passed by the Additional Director Panchayat, Punjab, Chandigarh (exercising the powers of Commissioner), holding that the land, in dispute, vests in the Gram Panchayat.

3. Counsel for the petitioner submits that the land, in dispute, was recorded as the ownership of "Shamilat Deh Hasab Hissis Mundarja Shajra Nasb" (the proprietary body), and in possession of right holders/proprietors, before 1947. A perusal of entries in jamabandi for the year 1956-57, proves that khasra Nos. 139 etc. were "Banjar Qadim" and in possession of proprietors on the date of coming into force of the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as "the 1954 Act). Ranjodh Singh son of Mehma Singh, a

proprietor and predecessor-in-interest of the petitioners was in possession of some of these khasra numbers. A perusal of the "register karavai", reveals that the name of petitioners' predecessor is recorded against khasra Nos. 5, 6 and 15, of Rectangle No. 24 (wrongly typed as 25 in Annexure P-3). The Consolidation authorities, have wrongly recorded it to be in the ownership of the Nagar Panchayat. The jamabandi for the year 1966-67 (Annexure P-4), however, records the name of Joginder Singh etc. sons of the petitioner (Civil Writ Petition No. 8027 of 1991) followed by similar entries in jamabandies for the years 1971-72, 1976-77 (Annexure P-5). The entries in jamabandies prove the continuous possession of proprietors, before 1950 thereby excluding the land in dispute from the "Shamilat Deh" of the village.

4. Counsel for the petitioner further submits that as the land is not "Shamilat Deh", the petition, filed under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") was rightly decided by the Collector, in favour of the petitioners after placing reliance upon order dated 06.06.1958 and other evidence. The Additional Director, Panchayats, has, however, reversed this order without assigning any reason but by merely recording that the land is recorded as the ownership of the Nagar Panchayat, it vests in the Gram Panchayat. The Additional Director Panchayats, has ignored that entries in relevant jamabandies record that the land is "Banjar Qadim" and in possession of proprietors. The Gram Panchayat was, therefore, required to prove that the land, in dispute, was used for common purposes of the village, but as the Gram Panchayat has failed to produce any such evidence, the land, in dispute, is excluded from the "Shamilat Deh" of the village. The land, in dispute, is also excluded from "Shamilat Deh" under Section 4(3)(ii) of the Act, as it was in possession of the petitioners", 12 years before the enactment of the 1961 Act, without payment of rent etc.

5. Counsel for the Gram Panchayat submits that a perusal of the revenue record reveals that even before 1950, the land in dispute, was "Banjar Qadim", thereby negating the plea of cultivating possession of proprietors or the petitioners' so called predecessors. The petitioners have failed to produce any evidence to prove that Ranjodh Singh was their predecessor. A perusal of the revenue record reveals that the petitioners are not recorded in possession whether cultivating or otherwise of any part of the land before 1950 or before the coming into force of the 1954 Act or the 1961 Act. The land was admittedly "Banjar Qadim", i.e., land that has remained fallow for eight or more harvests and could not be in cultivating possession of any one. The petitioners have not produced any evidence to prove that the land was not used for common purposes. The petitioners, therefore, cannot claim any right, title or interest in the land, in dispute, whether under Section 2(g) or Section 4(3)(ii) of the Act.

6. We have heard counsel for the parties, perused the impugned order as well as the entire paper book.

7. The petitioners, filed an application, under Section 11 of the Act, claiming

ownership of the land, in dispute, by pleading its exclusion from the "Shamilat Deh" of village, Bhagwanpur Jattan, Tehsil and District Patiala, on the premise that khewatdars of the village were in possession, 12 years before the enforcement of the 1961 Act, without payment of rent etc., but in the same breath pleaded that the land was "Banjar Qadim". The Collector allowed the petition by holding that as on the date of promulgation of the Pepsu Village Common Lands (Regulation) Act, 1954 (Shamilat Law), the land was "Banjar Qadim" and in possession of "Maqbuza Malkan", the land does not vest in the Gram Panchayat. The Collector also held that the Gram Panchayat has failed to prove that the disputed land was ever used for common purposes or was given on lease or auctioned.

8. Aggrieved by this order, the Gram Panchayat filed an appeal. The Additional Director, Panchayats, vide order, dated 31.01.1991, accepted the appeals, reversed the order passed by the Collector and held that as jamabandies for the year 1951-52, 1960-61, 1971-72 and 1976-77, record the "Nagar Panchayat" as owner, the fact that it was recorded as "Shamilat Deh Hasab Hissis Mundarja Shajra Nasb" before 1950, is irrelevant. The argument that the land is "Banjar Qadim" and is not used for any common purposes, was rejected by holding that the land was used for common purposes.

9. A due consideration of the arguments, the impugned orders and the relevant record reveal that the common question that calls for an answer, in these writ petitions, is whether the land, in dispute, which was admittedly recorded as "Shamilat Deh Hasab Hissis Mundarja Shajra Nasb", before enactment of the "Shamilat Law, is included in or excluded from the "Shamilat Deh" of the village?

10. Admittedly, the land, in dispute, was recorded as "Shamilat Deh Hasab Hissis Mundarja Shajra Nasb", i.e. the common land of the village. Before enactment of the 1954 Act, the "Shamilat Deh" of a village was owned and possessed by proprietors, to the exclusion of non-proprietors, in accordance with their share holdings. The share holding of proprietors was calculated in accordance with the expression "Hasab Hissis Mundarja Shajra Nasb" or such like similar expressions that followed the words "Shamilat Deh". The "Shamilat Deh" of a village came to vest in a Panchayat, under the 1954 Act. The 1954 Act was, however, repealed by the 1961 Act. Section 2(g) of the 1961 Act provides a detailed definition of the expression "Shamilat Deh". Section 2(g)(1 to 5) of the 1961 Act provide the circumstances in which land shall be included in the "Shamilat Deh", of a village, whereas sub-sections (i to ix) provide the circumstances in which such land shall be excluded from the "Shamilat Deh" of the village. Thus, if a person, including a Gram Panchayat, approaches the Collector with a plea that the land is included in the "Shamilat Deh" of the village, the onus to prove such an inclusion would lie upon the person who claims inclusion of land in the "Shamilat Deh" of the village, in accordance with Section 2(g)(1 to 5) of the Act. Where, however, a person alleges that the land is not included in the "Shamilat Deh" of a village, he shall be required to prove that it is "not" so included by reference to the exclusion

clauses enacted by Sections 2(g)(i) to (ix) of the 1961 Act.

11. The petitioners filed a petition claiming that the land, in dispute, is excluded from the "Shamilat Deh" of the village. The onus, therefore to prove that the land in dispute is not included in the "Shamilat Deh" of the village, by reference to any one or more of the exclusion clauses enacted by Section 2(g) of the Act, lay upon the petitioners.

12. As his first argument, counsel for the petitioners asserts that as the land was in possession of proprietors, before 1950, it is excluded from "Shamilat Deh", under Section 2(g)(iii) or (viii) of the 1961 Act. The argument, in our considered opinion is both legally and factually flawed. Section 2(g)(iii) and (viii) of the 1961 Act, as their primary condition excludes only such parcel of land from "Shamilat Deh" as was in cultivating possession of a proprietor. Section 2(g)(iii) and (viii), read as follows:-,

Section 2(g) reads as follows:-

2. Definitions.--

(g) "Shamilat deh" includes--

(1) Lands described in the revenue records as Shamilat deh or Charand excluding abadi deh"

(2) XX XX XX

(3) XX XX XX

(4) XX XX XX

(5) XX XX XX

but does not include land which-

(i) XX XX XX

(ii) XX XX XX

(ii-a) XX XX XX

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

(iv) XX XX XX

(v) XX XX XX

(vi) XX XX XX

(vii) XX XX XX

(viii) was Shamilat Deh was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their

respective shares in such shamilat deh on or before the 26th January, 1950.

(ix) XX XX XX"

13. Section 2(g)(iii) and (viii) of the 1961 Act, apart from other mandatory conditions, require proof of cultivating possession, as opposed to mere proprietary possession. A perusal of jamabandies, appended with the writ petition, reveals that the land, in dispute, was "Banjar Qadim" (uncultivated fallow) and, therefore, could not be in the cultivating possession of proprietors or the petitioners" or their so called predecessors, before 26.01.1950, so as to exclude it from Shamilat Deh, whether under Section 2(g)(iii) or (viii) of the Act.

14. The arguments that as Ranjodh Singh, their predecessor, is recorded in possession of a part of the "Shamilat Deh" and the Assistant Collector, in his order dated 06.06.1958, has held that the land does not vest in the Gram Panchayat, the land in dispute should be excluded from "Shamilat Deh", must also fail. At this stage, it would be appropriate to point out that the petitioners have not placed any material on record to prove that Ranjodh Singh son of Mehma Singh was their predecessor. The petitioners have in fact averred, in their pleadings, that Ranjodh Singh son of Mehma Singh was their vendor. The petitioners have not produced or proved any sale deed or other document of title to prove that they purchased the land, in dispute, from Ranjodh Singh. Even if we were to accept that Ranjodh Singh was their predecessor or vendor, the absence of any evidence on record to prove that Ranjodh Singh was ever in cultivating possession of any land in the "Shamilat Deh" of the village, much less the land, in dispute, negates the very foundation of these pleas.

15. The petitioners, however, press order dated 06.06.1958, passed at the behest of Ranjodh Singh, into service by urging that the Assistant Collector has held that the land is not "Shamilat Deh". A perusal of order dated 06.06.1958, reveals that it refers to land measuring 100 bighas without referring to any particular khasra number. This apart, the Assistant Collector was exercising the power of a revenue officer, under the Punjab Land Revenue Act, 1887, a power to summarily determine the rights of parties. A summary adjudication of rights by a revenue officer, in exercise of power, under the Punjab Land Revenue Act, 1887, is not binding before a forum vested with authority to decide a question of title, i.e. the Collector, exercising power under Section 11 of the 1961 Act. Furthermore, the absence of any evidence to prove that the land purchased from Ranjodh Singh is the land which is subject matter of these petitions and the absence of any evidence that the petitioners purchased the land in dispute from Ranjodh Singh, renders order dated 06.06.1958, irrelevant, for the purpose of the present proceedings.

16. The petitioners also rely upon a copy of the "Register Karvai", prepared during consolidation, appended with the writ petition as Annexure P-3, to assert that it records the name of Ranjodh Singh son of Mehma Singh, thereby proving that Ranjodh Singh was a proprietor. The document Annexure P-3 pertains to the

private land of Ranjodh Singh and not to the "Shamilat Deh" of the village or the land, in dispute. The mere fact that Ranjodh Singh may have owned land in a village, does not necessarily confer the status of a proprietor "with a share in the "Shamilat Deh". This apart, there is no evidence on record as to the share holding of Ranjodh Singh. Even if we were to presume that Ranjodh Singh was a proprietor but as the petitioners have failed to prove that Ranjodh Singh, sold the land in dispute to them or that Ranjodh Singh was in "cultivating possession" of any land in the "Shamilat Deh" of the village prior to 1950, the mere fact that Ranjodh Singh may have been a proprietor is on its own irrelevant for excluding the land from the "Shamilat Deh" of the village.

17. The plea that the petitioners' possession is protected by Section 4(3)(ii) of the Act, must also be rejected as Section 4(3)(ii) of the Act protects the rights of a person in "cultivating possession" of the land in "Shamilat Deh" for more than 12 years, immediately preceding the commencement of this Act, i.e., the 1961 Act, without payment of rent etc. Section 4(3)(ii) of the 1961 Act reads as follows:-

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

(ii) rights of persons in cultivating possession of shamilat 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."

18. The land, as referred to earlier, was "Banjar Qadim" and, therefore, could not be in cultivating possession of any person much less the petitioners or their so called predecessors or Ranjodh Singh or any right holder, so as to be protected by Section 4(3)(ii) of the Act.

19. The argument that as the land was "Banjar Qadim", it would only vest in the Gram Panchayat if it was used for any common purpose, must also fail. The Director, Panchayats has recorded a finding that the land was used for common purposes. The petitioners have not controverted this finding by reference to any relevant document or evidence. The argument also disregards the fact that it was for the petitioners, who claim exclusion of the land from the "Shamilat Deh" of the village, to prove that on the coming into force of the 1961 Act, the land was still "Banjar Quadim" and not used for common purposes. It would be appropriate to point out that the inclusion and exclusion clauses of Section 2(g) provide for inclusion or exclusion by reference to dates set out in these subsections but where a sub-section is silent as to the date of its operation, the exclusion or inclusion clause, shall operate by reference to the date of enactment of the 1961 Act, i.e. 04.05.1961. A reference in this regard may be made to a judgment of this Court in *Pala Ram and Others Vs. State of Haryana and Others*, (2013) 2 RCR(Civil) 1005 . The petitioners have not adduced any evidence to prove that on the date of coming into force of the 1961 Act, the land in dispute was still "Banjar Quadim" or was "not" used for common purposes.

20. Consequently, as the petitioners have not been able to prove the exclusion of the land in dispute from the "Shamilat Deh" of the village, the impugned orders are affirmed and the writ petitions are dismissed, but with no order as to costs.