
(2005) 09 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14753 of 2005

Shisha Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11

Citation : (2006) 142 PLR 89 : (2005) 4 RCR(Civil) 657

Hon'ble Judges : J.S. Narang, J; Baldev Singh, J

Bench : Division Bench

Advocate : Raj Kumar Garg, for the Appellant;

Final Decision : Dismissed

Judgement

J.S. Narang, J.—The petitioner had filed an application u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") seeking declaration that the land, which is subject matter, does not vest the Gram Panchayat having been defined as "Jumla Mustarka Malkan wa Diggar Haqdaran Hasab Rasad Khewat". The parties had been given the opportunity to put up their respective claims supportable by documentary evidence. The Jamabandis for the year 1962-63, 1963-64, 1969-70, 1974-75 and the documents sanctioning mutation No. 3190 Ex.P5, Jamabandi for the year 1979-80, 1984-85, 1989-90, 1994-95, 1999-3000 and Khasra Girdawari for the year 2000-01, had been produced before the learned Collector. The ocular evidence had also been recorded. After hearing learned Counsel for the parties, learned Collector has come to the conclusion that the land in dispute had been reflected as the ownership of Nagar Panchayat from 1962-63 and that the Nagar Panchayat has been in possession of the land, which is the subject matter. The petitioner had not been able to prove his possession prior to January 26, 1950 and further he had not been able to prove that the land in question was the result of pro rata cut from his land. This land had been mutated in the name of Gram Panchayat vide sanctioning mutation No. 3190, duly reflected in the

Jamabandi subsequently. This mutation was never ever challenged by anyone and that the land was being given on lease by the Gram Panchayat and the income derived therefrom was being used for the common purposes of the village. The order of learned Collector dated September 28, 2005, was further challenged by way of an appeal before the learned Commissioner, which has been dismissed vide order dated July 8, 2005. Both the orders have been made subject matter of challenge in the present petition.

2. Learned Counsel for the petitioner has argued that the status of the land had always been defined as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Khewat and that by virtue of a letter issued by the Government, the nature of the land could not have been changed and, therefore, the mutation has been incorrectly sanctioned. He further contends that dehors the sanctioning of the mutation, the status of the land would remain the same. The land would be the land of the right holders and that they would be entitled to the right of the land. Learned Counsel has placed reliance upon a judgment of this Court rendered in re: Mohinder Singh v. The Commissioner, Ferozepur Division, Ferozepur and Ors. 1992 P.L.J. 711.

3. We have heard learned Counsel for the petitioner and have also perused the paper book as also the orders impugned before us.

4. Learned Counsel for the petitioner has not been able to address meaningful arguments as to why Mutation No. 3190 Ex.P5 sanctioned in favour of the Gram Panchayat, reflected in the Jamabandi for the year 1979-80 had ever been questioned. By filing an application u/s 11 of the Act, the declaration in regard to the land cannot be asked for. There is a proper procedure under the provisions of law for the purpose of challenging the mutation which is sanctioned by the revenue authorities. It is the plea that the mutation was sanctioned on the basis of a letter received from the Government and that this shall not confer the right of ownership in favour of Gram Panchayat. if that be so, the petitioner was well within his rights to have challenged the mutation sanctioned accordingly. Admittedly, the petition u/s 11 of the Act had been filed on February 7, 2002 and that challenge to the aforestated mutation was never ever made by the petitioner. Further, the petitioner has not been able to show as to whether the petitioner is a khewatdar of the village and has been in possession of the land in question prior to January 26, 1950. The petitioner has also not been able to establish that pursuant to the pro rata cut of consolidation from the lands of the Khewatdars, the Bachat land has come into existence. Learned Collector has come to a categoric finding that the land, which is the subject matter of challenge, was shown as the ownership of Nagar Panchayat from 1962-63 and that Nagar Panchayat has been in possession of the said land. The mutation sanctioned in favour of the Gram Panchayat having not been challenged, the petitioner is estopped from seeking declaration u/s 11 of the Act. So far as the judgment rendered in Mohinder Singh's case (supra) is concerned, the same is not applicable to the facts of this case as in that case, there is no reference that

the mutation was sanctioned in favour of the Gram Panchayat and that it is only on the basis of a letter from the Government the change in the revenue record had been reflected and that the Gram Panchayat had not been able to substantiate its claim in regard to the title accordingly.

5. In the case at hand, the petitioner has not been able to establish his possession prior to January 26, 1950, and further the aforesaid mutation sanctioned in favour of the Gram Panchayat had never been questioned. Thus, for the lack of production of evidence by the petitioner in regard to substantiating his possession prior to January 26, 1950 and the mutation having not been challenged, the authorities below have correctly opined accordingly. We do not find any illegality, perversity or unreasonableness in the orders passed against the petitioner.

6. In view of the above, the petition is dismissed being devoid of merit. No costs.