
(2010) 07 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15466 of 2008

Surjeet

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 2(2)(vii)

Citation : (2010) 4 RCR(Civil) 31

Hon'ble Judges : Rajive Bhalla, J

Judgement

Rajeev Bhalla, J.

1 The petitioners pray for issuance of a writ in the nature of certiorari for quashing the order dated, 18.8.2004, 26.9.2005, 02.05.2007 and 06.08.2008, passed by the Assistant Collector, Ist Grade Guhla, the Collector, Kaithal, the Commissioner, Ambala Division Ambala and the Financial Commissioner, Haryana respectively, holding that the petitioners have to right, title or interest in the land in dispute.

2 After the order of ejectment, passed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) attained finality, the petitioners filed a petition under Section 13 (A) of the Act, praying for a declaration that the land in dispute does not vest in the Gram Panchayat as it is recorded in the individual cultivating possession of the petitioners prior to 26.1.1950. In support of this plea, the petitioners placed reliance upon the jamabandi for the year 194546 (Annexure P1) and the documents prepared during consolidation allotting new khasra numbers etc. The respondents controverted the pleadings by asserting that as the order of ejectment has attained finality, the petition should be dismissed. It was further asserted that even as per Annexure P1, petitioners' predecessors were not in cultivating possession. The Collector, dismissed the application by holding that the petitioners have failed to establish their claim. The appeal and revision filed by the petitioners were dismissed by the Commissioner and the Financial

Commissioner respectively.

3 Counsel for the petitioners submits that the jamabandi for the year 194546 (Annexue P1) records that Mehar Singh, Sher Singh and Gurdial Singh are in cultivating possession of Shamilat Deh Hasab Rasad Iraj in equal shares. Sher Singh is the father of petitioners No. 1 and 2 and the grand father of petitioners No. 3 and 4. As the jamabandi (Annexure P1) clearly proves the cultivating possession of the petitioners predecessors, prior to 26.1.1950, the land is excluded from Shamilat deh by operation of the proviso (viii) to Section 2(g) of the Act. The orders passed by the Assistant Collector, the Collector, the Commissioner and the Financial Commissioner, rejecting the entry in the jamabandi are therefore, a nullity. It is further argued that the Courts below have ignored the Khatoni paimish and the Khatoni aksshazra while holding that the petitioners have failed to connect the land referred to in Annexure P1 with the land in dispute. It is submitted that the perusal of these documents clearly establishes that the land referred to in Annexure P1 was allotted to the petitioners during consolidation. It is prayed that in view of the errors committed by the authorities below, the writ petition be allowed and a declaration be issued that the land in dispute does not vest in the Gram Panchayat.

4 Counsel for the respondents, on the other hand, submits that the finding recorded by the authorities below, that the petitioners have failed to connect the land in dispute with the land referred to in the jamabandi for the year 194546, does not suffer from any error. It is further submitted that jamabandi for the year 194546, records that a part of the land is a passage whereas the other land is Gair Mumkin, thereby putting aid to the petitioner argument that their predecessors were in selfcultivation of the land in dispute. It is argued that as the petitioners have failed to prove the ingredients of proviso (viii) to sub Section 2(g) of the Act, the writ petition should be dismissed.

5 The dispute in the present case is whether the land in dispute was in the cultivating possession of the petitioners predecessors prior to 26.1.1950 so as to exclude it from Shamilat deh as postulated by proviso (viii) to Section 2(g) of the Act, which reads as follows :

Section 2(g) (1 to 6) xxx = (i) to (vi) xxx

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

6 An applicant claiming the benefit of proviso (viii) would be required to prove, that (a) the land in dispute is Shamilat deh, (b) in individual cultivating possession prior to 26.01.1950 (c) not in excess of his share and (d) was assessed to land revenue.

7 The jamabandi for the year 194445 (Annexure PI) describes the land as shamilat deh thereby establishing the first ingredient. The jamabandi further

records that the land is in the selfcultivation of Mehar Singh, Sher Singh and Gurdial Singh, in equal shares. Sher Singh is admittedly the father of the petitioners No. 1 and 2 and the grandfather of respondents No. 3 and 4. If true this entry would entitle the petitioner to claim that they have fulfilled the second ingredient.

8 A perusal of columns No. 7 and 8 of the jamabandi however, negate the entry of "selfcultivation". Column No. 7 of the jamabandi describes khasra No. 301, as "Min passage". Column No. 8 describes the land as gair Mumkin i.e. land that cannot be cultivated. It therefore, belies comprehension as to how the petitioners' predecessors could be in "selfcultivation" of a passage and of land described as Gair Mumkin. The entry in column No. 5 of the jamabandi, recording the selfcultivation of Sher Singh is an error or a manipulation. When faced with the words "Min passage" and "Gair Mumkin" in column Nos. 7 and 8 of the jamabandi, counsel for the petitioners express his inability to explain these entries. It is thus beyond doubt that the petitioners' predecessors were not in cultivation possession of the land referred to in Annexure PI. The second ingredient of provision (vii) has therefore, not been established.

9 The third and fourth ingredients have not been established as the petitioners have failed to prove, that their predecessors were in possession according to their share and the land was assessed to land revenue as column No. 11 of the jamabandi is silent.

10 The petitioners having failed to prove the ingredients of proviso (viii) to Section 2(g) of the Act, cannot be heard to urge that the land is dispute is not Shamilat deh. In view of what has been stated hereinabove, the writ petition is dismissed with no order as to costs.