

(1997) 03 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14973 of 1990

Surjit Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13

Citation : (1997) 116 PLR 477 : (1997) 3 RCR(Civil) 325

Hon'ble Judges : B. Rai, J

Bench : Single Bench

Advocate : P.S. Saini, for the Appellant; V.S. Tomar, for Respondent Nos. 1 and 2 and J.B. Tacoria, for the Respondent

Final Decision : Allowed

Judgement

B. Rai, J.—This petition has been filed under Articles 226/227 of the Constitution of India for quashment of Annexure P1 and also subsequent proceedings for entering the mutation in favour of Gram Panchayat, respondent No. 3.

2. Brief facts are that there is land measuring 273 Kanals in Village Bargat, District Kurukshetra. In the column of ownership of Jamabandi for the year 1984-85, the petitioners and other right-holders of the village are recorded as owners in possession of this land since consolidation proceedings took place in the village. Before the present petitioners, their ancestors were in cultivating possession of this land and it was not utilised as shamilat deh. A decree for declaration regarding partition between the petitioners was passed by a civil Court on November 18, 1983. That decree was not challenged by the Gram Panchayat at any time. Now after about thirty years of finalisation of Consolidation Scheme, respondent No. 2 has written a letter, dated August 3, 1990 Annexure P1 to the tehsildar, Thanesar to record mutation in favour of Gram Panchayat instead of recording it in the names of the petitioners and other right-holders mentioned in the jamabandi for the year 1984-85. It is further alleged that on the basis of Annexure P1, the Tehsildar has initiated proceedings

for the change of mutation in the name of Gram Panchayat. It is further pleaded that earlier also, letters Exhibits P2 and P4 were written by the Deputy Commissioner to the Tehsildar for change of mutation in the name of Gram panchayat. These letters were challenged by filing Civil Writ Petitions 2590 of 1981 and 6229 of 1989. On the statement having been made by the State counsel, the orders impugned were withdrawn. Consequently, those writ petitions were dismissed as infructuous vide Annexures P3 and P5, respectively. It is also pleaded that ownership as recorded in the revenue record was sought to be taken away by the State by inserting Sections 13-A and 13-B in the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1961 by Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974. The Amending Act was challenged by filing various writ petitions and Section 13-A being ultra vires the Constitution, was struck down. It was also alleged that no notice whatsoever was served on the petitioners and they were not summoned at any time before writing the letter, Exhibit P1. It is also pleaded that the order of the Deputy Commissioner on the face of it is wholly illegal and without jurisdiction. There cannot be any change in the revenue record and dispossession of the petitioners without there being any adjudication as required u/s 13-A of the Act of 1981, as amended by Haryana Act No. 2 of 1981. After the adjudication by the Assistant Collector, the petitioners have a right of appeal to the Collector and a revision before the Commissioner. Therefore, the Deputy Commissioner has acted illegally in passing the order, Annexure P1, which deserves to be quashed.

3. On notice, the claim of the petitioners was resisted by the Gram Panchayat and respondents 1 and 2 by filing separate written statements. The Gram Panchayat raised preliminary objection that the impugned order, Annexure P1, passed by respondent No. 2 cannot be challenged under Article 226/227 of the Constitution of India, being purely an administrative order directing the Tehsildar to initiate mutation proceedings in order to give effect to the operation of law in revenue records. The Government vide D.C. letter No. 6136-R-IV-89/27442, Annexure R3/1, directed all the Deputy Commissioners in the State to initiate mutation proceedings in favour of Gram panchayat regarding the land of Panna/Thola Shamilat deh. They pleaded that even otherwise the Tehsildar is duty bound to record mutation to give effect to the mandate of law. Mutation order would be passed by him in Village gathering after hearing all the interested parties and the petitioners would be at liberty to agitate their case before him. Even otherwise, mutation does not confer any ownership right. As such when no right is involved, writ petition is not maintainable. It was further pleaded that prior to consolidation proceedings in 1954-55, there were two charands (one measuring 128 Kanals 15 Marias and the other measuring 158 Kanals 12 Marias) in Village Bargat since long. The total area under shamilat deh charands was, thus, 287 Kanals 7 Marias. The present dispute relates to land measuring 273 Kanals, the break-up of which is as under :

Sl.No. Area Nature of Land 1. 158K-12M Gair Mumkin Charand 2. 38K-19M Gair

Mumkin Abadi Bagrat Shahpurian. 3. 75K-9M Gair Mumkin Saraswati Rasta, Kohlu, Chaupal, Khel Kud, Women latrines, Baisak for cattle, Pond (sic) Total 237K-0M

The said area of 273 Kanals is in Khewat No. 139 and Khata No. 224. Jamabandi for the year 1954-55 is the first Jamabandi prepared soon after the consolidation. The Gram Panchayat also relied upon Wajib-ul-arz of the village, true translation of which is Annexure R3/2, according to which shamilat deh consisting of charands, rastas, pond, baisak for cattle, Chaupal, Mandir etc. were unfit for cultivation at the time of consolidation. Therefore the question of scheme of partition for this shamilat deh did not arise at the time of consolidation. An area of 287 Kanals 7 Marias including 158 Kanals 12 Marias under shamilat patti Shahpurian, was left out, during consolidation, as it is, as shamilat deh Charand wherein proprietors and non-proprietors had equal rights. In Jamabandis for the years 1963-64 and 1969-70, the entries are the same as reflected in the Jamabandi for the year 1954-55 and 1984-85. In the latest Jamabandi for the year 1984-85, the entry in cultivation column is "Khud Kast Maqbuza Malkan" qua all Khasra Numbers of Charand except Khasra Number 809(19K-3M) and Khasra No. 945(2K-8M), where the nature of land is still described as Charand. Shamilat deh charand existed before consolidation which took place in 1954 and the area remained as shamilat deh charand even after consolidation. The suit land squarely fell within the definition of "shamilat deh" given in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and it vested in the Gram Panchayat u/s 4 of this Act: The land in dispute being shamilat deh vested in the Gram Panchayat by operation of law and the Tehsildar was bound to give effect to the operation of law by mutating the land in favour of Gram Panchayat in the revenue records.

4. The same pleas were taken by respondent 1 and 2.

5. I have heard the learned counsel for the parties and have carefully gone through the pleadings and the record. It is not disputed that consolidation operations took place in Village Bargat in the year 1954-55 and the controversy between the parties revolves around the land mentioned therein. The sanction of mutation in respect of land measuring 273 Kanals, according to the learned counsel for the petitioners, belongs to them and other right-holders mentioned in the Jamabandi and they are in cultivating possession of the same. Even before the consolidation, the ancestors of the petitioners and other right-holders were in cultivating possession of that land as owners. Even in the Jamabandi prepared after the consolidation, they are recorded to be the owners and in cultivating possession and, as such, is not a shamilat deh.

6. On the other hand, case of the respondents is that even prior to the consolidation, the land in question was described as Gair Mumkin Charand, Gair Mumkin abadi, Bargat, Shahpurian, Gair Mumkin Saraswati, Rasta, Kohlu, Chaupal, Khel Kud, Women latrines, Basak for cattle and pond etc., as such, a shamilat deh which vests in the Gram Panchayat. Same is the position even after

the consolidation. Thus, the precise question that arises for determination is whether the land mentioned in Jamabandi for the year 1954-55 is shamilat deh, or not. "Shamilat deh" has been defined in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 as amended by Haryana Act No. 9 of 1992 and Haryana Act No. 18 of 1925. The jurisdiction of civil Court having been specifically barred u/s 13, only Collector has the jurisdiction to determine the question whether land or other immovable property is or is not shamilat deh; any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under the Punjab Village Common Lands (Regulation) Act, 1961; or in respect of any matter which any revenue Court, officer or authority is empowered by or under this Act to determine; or to question the legality of any action taken or matter decided by any revenue Court, officer or authority empowered to do so under the Act. The rights of the parties cannot be torched by passing orders like Annexure P1, that too without affording reasonable opportunity of hearing. The Deputy Commissioner has no jurisdiction to pass such orders when competent Authorities have no jurisdiction to pass orders prejudicial to the rights of the parties without giving opportunity to put forth and plead their case. The order Annexure P1 smacks of arbitrariness. It suffers from the vice of unfairness in the eye of law. Therefore Annexure P-I deserves to be quashed.

7. For the reasons recorded above, allowing the writ petition, Annexure P-I is quashed. The authorities shall, however, be at liberty to proceed in accordance with law and procedure.