
(1996) 05 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3726 of 1981

Zail Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 02-05-1996

Acts Referred:

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

Citation : (1996) 114 PLR 458 : (1997) 1 RCR(Civil) 177

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : H.S. Bajwa, for the Appellant; Suresh Amba, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—This writ petition is filed to quash the order of the 2nd. respondent dated 30.11.1978 vide Annexure P-2 as confirmed by the 1st respondent in his order dated 19.12.1980 vide Annexure P-3.

2. The petitioners filed an application u/s 11 of the Punjab Village Common Lands (Regulation) Act 1961 claiming that they are the owners in possession of the land measuring 320 Kanals 8 Marlas, bearing Khewat/Khatuani Nos. 69/146 to 162, 70/163 to 167, Killa No. 1/23, 24, 25, 2/20, 4/26, 5/2, 314, 2/5, 7, 8, 9, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22/6/15,16,17, 24, 25, 8/3, 4, 5, 6, 7, 8, 14,15, 9/1, 10, 11, 71, 72, 20/16, 17/2/23/2, 23/3, 5, 6, 2/23/1 2/24/2/1, 24/1/1, 4/1/1, 2/22/3, 22/4, 22/2, 22/1, 4/1/2, 5/10, 2/21, 1/22, 5/15/1, 2/18/1, 2/18/3, 18/2, 2/19/2, 2/18/4, 19/1, situated in village Mallunangal, Tehsil Ajnala, District Amritsar. According to the petitioners, the said land was allotted to them during consolidation of holdings in the village in lieu of the land of Patti Pero of the village Mallu Nangal of which the petitioners and their ancestors were in the cultivating possession of their shares in the said patti. According to the petitioners, the land of Patti Pero was never used and recorded in the revenue papers for the use of village community and the said land was cultivated by its owners as co-sharers according to their respective shares.

According to the petitioners, the said land did not fall within the definition of Shamlat deh as defined in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961, but it was wrongly mutated in the name of the Gram Panchayat which is respondent No. 3 in this writ petition. Having come to know about the mutation in favour of the Gram Panchayat, the petitioners filed an application u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "Act"). The said application was dismissed by the Collector vide his order dated 30.11.1978 on the ground that the land was mutated in the name of the Gram Panchayat during the year 1961-62 vide mutation No. 1109 and there was no evidence that the petitioners or their ancestors were in possession of the land prior to 1950 and that even according to Jamabandi for the year 1973-74 the Gram Panchayat was shown as the owner of the said land and no right was accrued to the petitioners at any stage. Therefore, he dismissed the application filed by the petitioners. Against the said order of the Collector, Amritsar, the petitioners filed an appeal to the Commissioner, Jalandhar Division, Jalandhar, who allowed the said appeal and set aside of the Order of the Collector dated 7.9.1977 and remanded the matter to the Collector for passing a detailed and well reasoned order after hearing the parties. After remand, the Collector passed his order dated 30.11.1978 vide Annexure P-2 dismissing the application of the petitioners. Again the petitioners preferred an appeal to the Joint Director, Panchayats, Punjab, who by his order dated 18.12.1980 vide Annexure P-3 dismissed the appeal and confirmed the order of the Collector dated 30.11.1978 vide Annexure P.2.

3. Aggrieved by the said orders, the petitioners filed the present writ petition. The petitioners are claiming the ownership of the land of the extent of 320 Kanals 8 Marlas belonging to them as having been allotted to them after consolidation of holdings in the village.

4. The land in dispute was comprised in the Khewat/Khataunis and Killa numbers mentioned in the earlier part of the judgment. In support of their claim, the petitioners are relying on the entries in the Jamabandi for the year 1961-62 which is attached to the writ petition as Annexure P-4. Even in Annexure P-4, in the remarks column, it has been stated that according to mutation No. 1109, change of ownership, the total area 325 Kanals 11 Marlas has been mutated in the name of the Gram Panchayat of the Village, though in column No. 2, it is mentioned as Shamlat Patti Pero according to the shares mentioned in the pedigree table. The Khatauni Nos. mentioned in Annexure P-4 are as follows:-

"81/38 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, and 131."

The Khewat/Khatauni numbers mentioned in the application appear to be different from the Khewat/Khatauni numbers mentioned in Annexure P-4. There is no evidence to correlate the Khewat/Khatauni numbers as mentioned in Annexure P-4 and in the application filed by the petitioners u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961. It is clearly mentioned in

Annexure P-4 that the land has been mutated in the name of the Gram Panchayat according to mutation No. 1109, and the total area which has been mutated in the name of the Grain Panchayat comes to 325 Kanals 11 Marlas. Therefore, it is evident from the Jamabandi of the year 1961-62 that the land has been mutated in the name of the Gram Panchayat and the Gram Panchayat has been shown as the owner of the said land. It has been held in *Shiv Charan Singh and Ors. v. Gram Panchayat, Narike* (1974)76 P.L.R. 321) as follows:-

"If the land as shown in the revenue record as the Shamlat deh it is not necessary to prove that it is being used for the common purposes of the village or for the benefit of the village community. The shamlat land automatically vests in the Gram Panchayat."

5. Further no evidence has been placed before me or before the authorities below by the petitioners to show that they have been in cultivating possession of the land, though the basis of their claim is that they have been in possession of the land and cultivating the same. In the absence of any evidence in this regard, it has to be held that the petitioners cannot be said to be in possession of the land as owners. Thus, the petitioners have failed to prove that they are the owners of the land in question or they have been in possession of the same.

6. The learned counsel for the petitioners placed on record the orders passed by the Civil Courts in Suit No. 151 of 1962 dated 7.1.1963 and suit No. 50 dated 26.2.1973. But it is to be seen that the Civil Court has no right to decide the question of title between the Gram Panchayat and the persons claiming the ownership of the land. The jurisdiction of the Civil Court has been taken away. Further the decree in Suit No. 151 of 1962 on the file of Sub Judge Ist Class, Ajnala was passed on the admission of the Sarpanch but it was a suit filed by Tek Chand and others and none of the petitioners were parties to the said suit. Further the lands which are the subject matter of the suit are situated at village Maghlani Kot. Therefore, there is no relevancy of the judgment of the Civil Court in suit No. 151 of 1962. Suit No. 50 of 1973 relates to the land in village Mallu Nangal, but that suit was filed by Hari Singh, Karnail Singh, Jarnail Singh, Atma Singh, Mota Singh and Kartar Singh. The petitioners were not parties to the said suit. That suit was decreed ex-parte. The petitioners were not parties to the said suit and the subject matter of the suit is also different. Therefore, the petitioners cannot rely on the judgment of the Civil Court in Suit No. 50 dated 26.2.1973 on the file of the Sub Judge Ist Class, Ajnala.

7. In view of my foregoing discussion, I am of the opinion that the writ petition is liable to be dismissed. Even otherwise I do not find any infirmity or illegality in the orders of the authorities below.

8. In the result, the writ petition fails and is accordingly dismissed. There will be no order as to costs.