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(2012) 04 P&H CK 0172

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 814 of 2011

Gram Panchayat Balbera Village Balbera		APPELLANT
	Vs	
Director Village Development and Panchayat Punjab and Another		RESPONDENT

Date of Decision: April 17, 2012

Acts Referred:

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 11, 2(g)(iii), 2(g)(viii), 7

Citation: (2012) 4 RCR(Civil) 422

Hon'ble Judges: Rakesh Kumar Kain, J; Rajive Bhalla, J

Bench: Division Bench

Advocate: Hardeep Singh, for the Appellant; J.S. Puri, Additional Advocate General, Punjab for Respondent No. 1 and Mr. Vikas Mehsempuri, Advocate, for the Respondent

Judgement

Rajive Bhalla, J.
The Gram Panchayat Balbera, Tehsil and District Patiala, prays for issuance of a writ for quashing order dated 1.1.2010 passed by Director. Village Development and Panchayat, Punjab (exercising powers of Commissioner). Counsel for the petitioner submits that the Gram Panchayat filed a petition u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act"), but in the meanwhile, respondent No. 2 filed a petition u/s 11 of the Act, claiming ownership of the land in dispute. The Collector-cum-Divisional Deputy Director Panchayat, Patiala, vide order dated 19.7.2006, dismissed the petition filed by respondent No. 2 by holding that the Gram Panchayat is the owner of the land in dispute. Respondent No. 2, thereafter, filed an appeal, which was allowed by holding that as respondent No. 2 is in continuous possession, the land does not vest in the Gram Panchayat. It is further submitted that respondent No. 2 entered the disputed land as a Chakotedar but after expiry of the lease period, did not return the land

to the Gram Panchayat. Respondent No. 2, therefore, has no right to challenge the ownership of the Gram Panchayat. It is argued that as the land is, admittedly, Shamilat Deh and respondent No. 2 has not produced any evidence of his cultivating possession, whether in terms of section 2(g)(iii) or 2(g)(viii) of the Act, the impugned order should be set aside.

2. Counsel for respondent No. 2 submits that the land in dispute is "Shamilat Deh Hasab Rasad Zare Khewat", in possession of Makbuja Malkan, thereby establishing that respondent No. 2 was in possession prior to 26.1.1950. The appellate authority, therefore, rightly allowed the appeal and accepted the application filed u/s 11 of the Act by holding that the land is excluded from Shamilat Deh. It is also argued that the Gram Panchayat has not produced any documentary evidence to prove that the land was leased out to respondent No. 2 or that respondent No. 2 entered the land as a lessee. The writ petition should, therefore, be dismissed and order passed by the appellate authority should be affirmed.

3. We have heard counsel for the parties and perused the impugned orders.

4. Respondent No. 2 filed a petition u/s 11 of the Act claiming that the land does not vest in the Gram Panchayat as it was in cultivating possession of his forefathers before 26.1.1950. In support thereof, respondent No. 2 relied upon jamabandi for the year 1941-42, which records the possession of "Makbuja Malkan". The Collector dismissed the petition by holding that respondent No. 2 has not been able to prove his "cultivating possession" before 26.1.1950 and as even otherwise, respondent No. 2 had taken the land on lease from Gram Panchayat. The appellate authority has reversed this order by holding that as the land is recorded in possession of "Makbuja Malkan", it proves the "cultivating possession" of respondent No. 2"s forefathers.

5. We have considered the order passed by the appellate authority and have no hesitation in holding that the order is perverse, arbitrary and legally incorrect. The expression "Makbuja Malkan" denotes the possession of the proprietary body in common with no particular co-sharer being in possession of any part of the land, much less in "cultivating possession". Sections 2(g)(iii) and 2(g)(viii) of the 1961 Act exclude land from Shamilat Deh, if it is proved that it is in "cultivating possession", pursuant to a partition or in "cultivating possession" as a co-sharer. Respondent No. 2 was required to produce revenue record to show that the land in dispute was in "cultivating possession" of his forefathers prior to 26.1.1950 whether pursuant to a partition amongst proprietors or pursuant to an arrangement amongst co-sharers.

6. A perusal of the impugned order and the record reveals that no such evidence, whether in the shape of revenue record or any other material, was placed before the Collector, the appellate authority or has been placed before this court. In the absence of any evidence that respondent No. 2 or his predecessors were in "cultivating possession" of the land in dispute, the appellate authority has committed an error in holding that as the

expression "Makbuja Malkan" denotes cultivating possession, it is sufficient to exclude land from Shamilat Deh. It would also be necessary to point out that the Collector has recorded a clear finding that respondent No. 2 took the land on lease from Gram Panchayat, but after expiry of the lease period, did not return the land to the Gram Panchayat. In view of what has been stated hereinabove, we allow the writ petition, set aside the order dated 1.1.2010 passed by the Director Village Development and Panchayat (exercising the powers of Commissioner) and restore the order dated 19.7.2006 passed by the Collector-cum-Divisional Deputy Director Panchayat, Patiala, but with no order as to costs.