(2012) 05 P&H CK 0165

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 619 of 2012 (O and M)

Rampal		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: May 2, 2012

Acts Referred:

- Punjab Village Common Lands (regulation) Act, 1953 - Section 3
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 11, 16, 2(g)(5), 2(h), 4

Citation: (2012) 168 PLR 694(1) : (2013) 2 RCR(Civil) 82

Hon'ble Judges: Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench: Division Bench

Advocate: Rakesh Gupta, for the Appellant;

Judgement

Satish Kumar Mittal, J.

In this Letters Patent Appeal, the appellant has challenged the order dated 04.08.2011 passed by the learned Single Judge, whereby the writ petition (CWP No. 13495 of 2011) filed by the appellant challenging the orders dated 18.04.2006 (Annexure P-7) and 23.04.2008 (Annexure P-8) passed by the Collector and Commissioner, respectively, has been dismissed. Though this appeal is barred by limitation, and along with the appeal, the appellant has filed an application (CM. No. 1637 of 2012) for condonation of delay of 200 days in filing the appeal, yet without taking the said delay into consideration, we have heard the learned counsel for the appellant on merits and gone through the impugned order passed by the learned Single Judge.

2. In this case, vide order dated 18.04.2006, the Collector had dismissed the title suit filed by the appellant u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act of 1961") while coming to the conclusion that the land in dispute, which in the revenue record was described as Shamlat Deh, vested in the Gram Panchayat u/s 3 of Punjab Village Common Lands (Regulation)

Act, 1953 (hereinafter referred to as ''the Act of 1953'') and mutation to that effect was entered in favour of the Gram Panchayat on 22.8.1959, and further the appellant had failed to prove his possession over the land in dispute prior to 26.1.1950. He had also failed to prove that he was one of the proprietors of the village and was having any share in the common land. In appeal, the said order was affirmed by the Commissioner vide order dated 23.04.2008.

3. The writ petition filed by the appellant challenging those orders has been dismissed by the learned Single Judge. Hence this appeal.

4. After hearing the learned counsel for the appellant and going through the orders passed by the revenue authorities as well as by the learned Single Judge, we do not find any merit in this appeal. Undisputedly in the revenue record, i.e., jamabandi for the year 1949-50 (Annexure P1) the land in question has been recorded in the column of ownership as Shamlat Deh Hasab Rasad Zar Khewat. In view of Section 3 of the Act of 1953, which reads as under, such land vests in the Gram Panchayat:-

3. Vesting of rights in Panchayats and in non-proprietors.- Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land:-

(a) which is included in Shamilat deh of any village, shall, on the appointed date, vest in a Panchayat having jurisdiction over the village;

(b) which is situated in the Abadi deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of the Act vest in the said non-proprietor.

5. Accordingly, in the present case mutation of ownership with regard to the land in dispute was sanctioned in favour of the Gram Panchayat vide Mutation No. 605 dated 22.8.1959. None of the proprietors challenged the said mutation or raised any grouse about vesting of the said land in the Gram Panchayat.

6. Thereafter, on 4.5.1961, the Act of 1961 came into force with Saving Clause as provided u/s 16 of the Act. In the year 2004, the appellant, after his ejectment, filed title suit seeking declaration that he was owner of the land in dispute and the mutation in the name of the Gram Panchayat was wrongly entered as the land in dispute does not fall under the definition of Shamlat Deh. Therefore, the Gram Panchayat is not entitled to get him ejected from the land in dispute, which is in his possession since long.

7. The title suit of the appellant was dismissed by the Collector and it was held that the land in dispute falls under the definition of Shamlat Deh and vests in the Gram Panchayat, and the appellant had failed to establish that he is in individual cultivating possession of the land in dispute on or before 26.1.1950. Thus, the

appellant had failed to prove that his case falls under any of the exemptions/exclusion clauses i.e. (iii) and (viii) of Section 2(g)(5) of the Act of 1961. Furthermore, Section 4 of the Act of 1961 provides that any land which has vested in the Panchayat under the shamilat law (Act of 1953) shall be deemed to have been vested in the Panchayat under the Act of 1961, except the case falling under three clauses mentioned in sub-section (3) of Section 4 of the Act of 1961. Section 4 of the Act of 1961 reads as under:-

4. Vesting of rights in Panchayat and non-proprietors.- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,-

(a) which is included in the shamilat deh of any village and which has not vested in a Panchayat under the shamilat law shall, at the commencement of this Act, vest in a Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall, on the commencement of shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (I) and in sub-section (2) shall affect or shall be deemed ever to have affected the-

(i) existing rights, title or interests of persons, who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqarrirdars;

(ii) rights of persons in cultivating possession of shamilat deh, for more than twelve years immediately preceding the commencement of this Act without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.

8. A bare perusal of sub-section (2) provides that any land which vests in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under the Act of 1961. The word ''shamilat law'' has been defined in Section 2(h) of the Act of 1961, which reads as under:

shamilat law" means -

(i) in relation to land situated in part of the territory which immediately before the 1st November, 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953; or

(ii) in relation to land situated in part of the territory which immediately before the 1st November, 1956, was comprised in the State of Patiala and East Punjab States Union, the Pepsu Village Common Lands (Regulation) Act, 1954.

Undisputedly, the area of village Aakri, immediately before 1st November, 1956, was part of the territory of the State of Punjab. Therefore, the ''shamilat law'' means the Act of 1953. Thus, in our opinion, in view of Section 4(2) of the Act of 1961, the land in question, which vested in the Panchayat, on coming into force of the Act of 1953 and mutation of which was sanctioned in favour of the Panchayat in the year 1959, shall be deemed to have been vested in the Panchayat under the Act of 1961.

9. Sub-section (3) of Section 4 of the Act of 1961 provides three exceptions to clause (a) of sub-section (1) and in sub-section (2). Exception (i) deals with the existing rights, title or interests of Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqarrirdars. This exception is not relevant in the present case. Exception (ii) protects the rights of persons who were in cultivating possession of shamlat deh for more than twelve years immediately preceding the commencement of the Act without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon, though the land under their possession may be shamilat deh. Exception (iii) deals with the rights of a mortgagee to whom such land is mortgaged with possession before 26th January, 1950. This exception is again not relevant in the present case. Once the shamilat land is deemed to have been vested in the Panchayat, it can be ordered to be divested from the Panchayat on the title suit filed by a person only if he establishes any of the aforesaid three exceptions. But in the present case, the appellant has failed to establish that his case falls under any of the three exceptions. Therefore, the land in dispute cannot be ordered as divested from the Panchayat and to be declared under the ownership of the appellant.

10. During the course of arguments, learned counsel for the appellant while referring to the Jamabandi for the year 1949-50 (Annexure P1) where in the column of possession the Makbooza Malkan has been recorded, tried to assail the findings recorded by the revenue authorities to the effect that the appellant has failed to prove his individual cultivating possession since 26.1.1950. However, during the course of arguments, it has not been disputed that the appellant is not the proprietor of the village nor he had led any evidence to that effect. It is well settled that the possession of Makbooza Malkan recorded in the revenue record cannot be deemed to be the individual cultivating possession of a proprietor. In order to prove that the case of the appellant falls under Exceptions (iii) or (viii) of Section 2(g)(5) of the Act of 1961, he has to establish that in the revenue record he has been recorded in individual cultivating possession of the land prior to 26.1.1950. This is not the

position here. In the instant case, in the revenue record the appellant has never been recorded in individual cultivating possession of the land in question nor he was the proprietor of the land, then the question that he was one of the Makbooza Malkan also does not arise. Thus, in our view, the learned Single Judge has rightly come to the conclusion that the land in question vests in the Gram Panchayat and the appellant had failed to prove his possession over the same prior to 26.1.1950.

No merit. Dismissed.