

(2014) 04 P&H CK 0248

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 6872 of 2014

Mehar Singh

APPELLANT

Vs

The Director

RESPONDENT

Date of Decision: April 9, 2014

Citation: (2014) 4 RCR(Civil) 9

Hon'ble Judges: Hemant Gupta, J; Fateh Deep Singh, J

Bench: Division Bench

Advocate: Ashish Aggarwal, Senior Advocate, Advocate for the Appellant; Vijay Singh Kajla, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The challenge in the present writ petition is to an order dated 18.03.2013 passed by the learned Commissioner exercising the powers conferred u/s 11(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act") whereby appeal of Gram Panchayat was accepted against an order dated 28.09.2001 passed by the Collector dismissing the petition filed by Gram Panchayat u/s 11 of the Act. The learned Commissioner has returned a finding that Nagar Panchayat was recorded as owner and the possession of the petitioner is recorded only over 16 Kanals of land comprising in Khasra No. 41/5 and 41/6 as per Jamabandi for the year 1960-61. It has been held that the petitioner has not been able to prove that this land was in his possession even prior to consolidation. The petitioner also could not prove extent of his share in the shamilat deh. Nagar Panchayat Deh has been shown as continuous owner of land in Jamabandi for the year 1960-61. It has also been held that the petitioner has not been able to prove continuous cultivating possession of the land in question prior to 26.01.1950. Thus the land in question does not fall in Exception (viii) of Section 2(g) of the Act.

2. Learned counsel for the petitioner relies upon Jamabandi for the year 1944-45 said to be on record of the Collector as Ex. P-1. A copy of the said Jamabandi has

been attached with the writ petition as Annexure P-2. The said Jamabandi records shamilat deh hasab rasad khewat as the owner and maqbuza malkan in the column of possession. The land is banjar qadim. Neither the petitioner nor any other proprietor is reflected in possession of any part of such land described in the revenue record as shamilat deh hasab rasad khewat. In the Jamabandi for the year 1952-53 (Annexure P-3), the petitioner or his predecessor-in-interest is recorded in possession of Khasra No. 186 measuring 20 Bighas. The land is described as Rosli, an un-cultivable land. In the Jamabandi for the year 1960-61 (Annexure P-5), the petitioner is recorded as owner of land measuring 16 Kanals comprising in Khasra No. 41//14 and 41//15 measuring 16 Kanals, the old Khasra number being 186 (min). The land is again described as banjar qadim.

3. Learned counsel for the petitioner has vehemently argued that the nature of the land is required to be determined with reference to the commencement of Shamilat Law as on 09.01.1954. On the said date, the land is described as shamilat deh hasab rasad khewat i.e. as per the share of the proprietors in the village. Since such land is banjar qadim and there is no proof that land has been reserved for common purposes, therefore, it does not vest in Panchayat in terms of Clause 5 of Section 2(g) of the Act. Therefore, the finding recorded by the learned Commissioner that it does not fall within the exception (viii) of Section 2(g) of the Act is not sustainable as exception will be applicable only if the land is a shamilat deh.

4. We have heard learned counsel for the petitioner and find no merit in the present petition. Section 2(g) of the Act defines the shamilat deh to include the land described in the revenue record as shamilat deh excluding abadi deh. The land in question is described as shamilat deh hasab rasad khewat even prior to consolidation. Such land falls within Clause 1 of Section 2(g) and vest with Panchayat in terms of Section 4 of the Act. Similar question has been examined by this Court in C.W.P. No. 11722 of 1999 titled "Kashmir Singh & others v. Joint Development Commissioner (IRD), Punjab, Chandigarh & others" decided on 26.4.2006; Rama Sarup & others v. State of Haryana & others, 2006 (4) RCR (Civil) 350; [Des Raj and Others Vs. State of Haryana and Others](#), and C.W.P. No. 18665 of 1998 titled "Gram Panchayat of Village Tulewal, Tehsil and District Patiala v. Joint Commissioner (IRD), Punjab and others" decided on 26.2.2013. In Kashmir Singh's case (supra), the Bench while examining the land, which was recorded as "Shamilat Deh Hasab Hissa Andraj Shijra Nasab", held to the following effect:

"The land in question of which declaration has been claimed, as has already been noticed, is recorded as "Shamilat Deh Hasab Hissa Andraj Shijra Nasab". Therefore, the land which is recorded as "Shamilat Deh" in the revenue records in terms of Section 2(1)(g) of the 1961 Act is "Shamilat Deh". It is to vest in the Gram Panchayat in terms of Section 4(i)(a) of the 1961 Act. The fact that it is also recorded as "Hasab Hissa Andraj Shijra Nasab" i.e. as per share in the pedigree table is not of any significance in view of the fact that the said land has not been partitioned and

brought under cultivation by individual land holders before 26.1.1950. A perusal of Section 2(g) of the 1961 Act shows that it is in two parts. The first part relates to the land which is included in the "Shamilat Deh" and the second part relates to the land which are excluded. In terms of clause (iii) which is in the second part of section 2(g) and relates to the land to be not included as "Shamilat Deh" it has to be shown that the land has been partitioned and brought under cultivation by individual land holders before 26.1.1950. Then such land would be excluded from "Shamilat Deh". In terms of the exclusion clause (iii) of the second part of Section 2(g) it was open to the proprietors and share holders before the commencement of the 1961 Act to partition or bring into cultivation the land of the "Shamilat Deh". The land in question admittedly has not been partitioned or brought under cultivation by an individual land holder.

Therefore, it does not come in the second part of Section 2(g) of the 1961 Act so as to be excluded from "Shamilat Deh". As such the land recorded as "Shamilat Deh" is further mentioned as "Hasab Hissa Andraj Shijra Nasab" is of no significance as the land has not shown to be partitioned as per the share in the pedigree table before 26.1.1950 which is the date fixed so as to exclude the land from "Shamilat Deh". Consequently, the land which is recorded as "Shamilat Deh" in the revenue records is "Shamilat Deh" within the meaning of Section 2(g) and is to vest in the Gram Panchayat in terms of Section 4(1)(a)."

5. In *Des Raj's* case (supra), it has been held that the common nature of land is determined by the expression "Shamilat Deh" and not by the expression "Hassab Hissa Mundarja Paimana Hakiat". The latter expression denotes the manner of calculating the shareholding of proprietors in Shamilat Deh prior to its vesting in a Gram Panchayat. The expression "Makbuja Malkan" refers to the possession in common of the proprietary body with no particular proprietor being in exclusive possession. It has been held that land described as Shamlat Deh Hassab Hissa Mun-darja Paimana Hakiat," is Shamilat Deh vesting in Panchayat. Since the land is described in the revenue record as shamilat deh and the possession of the petitioner is not proved to be prior to 26.01.1950, we do not find any error in the order dated 18.03.2013 passed by the Commissioner which may warrant interference in the writ jurisdiction of this Court.

Dismissed.