

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**CWP-17394-1991 (O & M)
Reserved on: 03.11.2023
Pronounced on: 30.11.2023**

HARKISHAN DASS (DECEASED) THROUGH LRS. AND OTHERS
.....Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Sukhpal Singh, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. Arun Takhi, Advocate
for respondent No. 6- Gram Panchayat.

SURESHWAR THAKUR, J.

FACTUAL BACKGROUND

1. The brief facts of the case are that the petitioner-Harkishan Dass and Others instituted a civil suit for injunction, for thereby restraining defendants i.e. Gram Sabha Mehangerwal and Gram Panchayat Mehangerwal, from interfering in their lawful possession over lands measuring 43693.8 marlas situated in village Mehangerwal bearing Khewat No. 186 Khatauni No. 791 to 836. The said suit was decreed through an order made on 27.04.1967 (Annexure P-12) but on the basis of a compromise effected between the parties. The relevant portion of the compromise decree rendered by the civil court concerned

is extracted hereinafter.

"The defendant has admitted the plaintiffs to be the owners to the extent of 52/192nd share out of the entire Shamlat Deh, measuring 61612 kanals 15 Marlas, mentioned in the plaint. Besides this, the defendant has also admitted the plaintiffs to be the owner of Khasra No.1444/1317, measuring 21 Kanals 18 Marlas. The parties will be bound by the decision of the Revenue Assistant regarding Abadi land and land under Baras, manure pits and the remaining land under cultivation. The remaining claim of the plaintiffs regarding Chakota' stands dismissed. The statements of the parties to this effect have been reduced to writing. The suit is decreed in terms of the above compromise, and parties are left to bear their own costs of the suit."

2. Further, it is averred in the petition, that the Gram Panchayat, Mehangularwal, acted upon and abided by the Civil Court decree till the end of 1979, but reversed its stand from 1980 onwards, and denied the title of the petitioners qua their claimed thereins share thus to the extent of 52/192 share of the land. To safeguard their title, the petitioners and respondent No. 7 applied in 1982, for correction of the revenue record, by way of attestation of a mutation on the basis of the aforesaid compromise decree. Mutation No. 1234 of village Mehangularwal was accordingly entered in the revenue record in favour of the petitioners.

3. The aforesaid mutation was contested by the Gram Panchayat Mehangularwal, and the same was rescinded by the Assistant Collector concerned through an order made on 31.12.1985 (Annexure P-21).

4. The petitioners and respondent No. 7 filed an appeal thereagainst before the Collector concerned which was allowed through

an order drawn on 25.06.1986 (Annexure P-24).

5. Feeling aggrieved, the Gram Panchayat Mehngarwal preferred an appeal against the order passed by the Collector concerned before the learned Commissioner (Appeals) Jalandhar Division, Jalandhar. However, the said appeal became dismissed through an order drawn on 05.12.1988 (Annexure P-25).

6. Feeling dis-satisfied from the afore, the Gram Panchayat concerned filed revision petition bearing No. 320 of 1988-89, before the learned Financial Commissioner (Appeals) Punjab. Through an order drawn on 19.12.1990 (Annexure P-27), the said revision petition became accepted and order passed by the Commissioner Jalandhar Division as well as by the Collector were set aside and the order passed by the Assistant Collector First Grade became restored.

7. The afore orders (Annexure P-21) and (Annexure P-27) whereby the mutation of change of ownership as was entered on the basis of a Civil Court decree, rather becomes rejected, thus has caused pain to the petitioners herein and has led them to institute thereagainst, thus the instant writ petition before this Court.

Contention(s) of the learned counsel for the petitioners.

8. The learned counsel for the petitioners submits that

(i) the compromise decree passed by the competent Civil Court in the year 1967, could not be ignored by the statutory authorities constituted under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as the 'Act of 1961'). In support of the above submission, he argues that since prior to the introduction of an amendment in the 'Act of 1961', thus through the Punjab Act No. 19 of 1976, whereby through a statutory provision

becoming incorporated thereins, thus a bar of jurisdiction, became created vis-a-vis the Civil Courts rather against theirs, trying suits qua lands carrying the revenue designation of *shamlat deh* lands. Therefore, he submits that since the Civil Court decree (supra) became rendered in the year 1967. Resultantly, when it was rendered prior to the coming into force of the said amendment in the 'Act of 1961', thereby thereafters only, there is a well made bar of jurisdiction against the entertainment of a suit, thus by the Civil Courts, but in respect of lands designated as *Shamlat deh* lands. In consequence, he argues that unless the said compromise decree passed by the Civil Courts rather became declared as collusive or became declared to be obtained by fraud, thus by a competent Civil Court, thereupon, the said compromise decree, could not be ignored by the authorities, constituted under the 'Act of 1961' or by other revenue authorities concerned. The relevant statutory provisions incorporated in the year 1976, thus creating a bar upon the Civil Courts concerned, against their exercising jurisdiction in respect of suits including lands designated as *shamlat deh* lands thus becomes extracted hereinafter.

13. Bar of Jurisdiction in Civil Courts:-

No civil court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat under this Act ; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine].

(ii) That the disputed lands clearly falls outside the definition of '*shamlat deh*' as given in Section 2(g)(iv) of the 'Act of 1961', provisions whereof are extracted hereinafter. The said fact is argued to be confirmed not only by the civil Court decree but also by the orders Annexures P-2/A to P-2/D, passed earlier in Section 7 petitions rather by the statutory authorities concerned, which orders too are final and binding between the parties.

2. In this Act, unless the context otherwise requires-

xxxxxx

(g) '*shamilat deh*' includes -

- (1)
- (2)
- (3)
- (4)
- (5)

but does not include land which -

- (i) xxxx
- (ii) xxxx
- (iii) xxxx

(iv) having been acquired before the 26th January, 1950 by a person by purchase or in exchange for proprietary land from a co-sharer in the shamlat deh and is so recorded in the Jamabandi or is supported by a valid deed [and is not in excess of the share of the co-sharer in the shamlat deh].

- (v) xxxx
- (vi) xxxx
- (vii) xxxx
- (viii) xxxx
- (ix) xxxx

(iii) He further rests his argument on a judgment passed

by the Hon'ble Apex Court in case titled as **Byram Pestonji Gariwala**

Vs. Union Bank of India, reported in **1991 (4) SC 15**, whereins, it has been expostulated, that a consent decree constitutes *resjudicata* and is binding upon the parties. Moreover, when no limitation is prescribed in Section 37 of the Punjab Land Revenue Act, 1887 or in any other provision thereof, for effecting a mutation in respect of the said compromise decree (supra).

Contentions of the learned counsel for respondent No. 6- Gram Panchayat.

9. (i) The learned counsel for respondent No. 6 submits, that the consolidation of holdings took place in the village in the year 1966-67. He further submits that no document has been produced by the petitioners, to connect the suit lands which is alleged to have been purchased by their ancestors rather with the land in possession and ownership of the Gram Panchayat, as such, no benefit can be derived by the petitioners by invoking the provisions of Section 2(g)(iv) of the 'Act of 1961', provisions whereof have been extracted above.

(ii) The then Sarpanch without any authority of law had compromised the suit on 27.04.1967, as, the then Sarpanch had never been authorized by the Gram Panchayat to enter into any such compromise. Therefore, since the compromise amounted to transfer of the land, which could be done, thus only with the prior approval of the State Government, through a resolution becoming passed by the Panchayat concerned, whereas, neither the said apposite resolution becoming passed nor it becoming approved by the Government. Therefore, it is argued that the action of then Sarpanch, to enter into a compromise rather was in violation of the statutory rules and thereby was not binding on the Gram Panchayat. Consequently, since the Civil

Court decree was obtained by the petitioners in collusion with the Sarpanch, therefore, the same was never required to be acted upon.

(iii) Learned counsel for the petitioners further submits that the compromise is not in writing and signed by the parties besides the Civil Court decree dated 27.04.1967 is not in confirmity with the provisions of Order 23 Rule 3 of the CPC.

(iv) It is apt to mention here that the petitioners also filed a civil suit for rendition of accounts and for recovery of 52/192 share of the profits and income of the suit land. Through an order drawn on 17.01.1992 (Annexure RW-6/1), the suit of the plaintiffs became dismissed. Feeling aggrieved the petitioners filed appeal thereagainst before the Appellate Authority concerned. However, the said appeal also became dismissed through an order drawn on 27.08.1992 (Annexure RW-6/2).

For the reasons to be assigned hereinafter the arguments of the learned counsel for the petitioners are rejected and the arguments for the learned counsel for the respondent-Gram panchayat are accepted.

10. From a reading of the compromise decree, which becomes extracted hereinabove, it becomes unfolded that thereins there is a clear reflection that the disputed thereins lands were *shamlat deh*. The Gram Panchayat concerned was the defendant in the said suit. It was defended through its Sarpanch. Therefore, in terms of Rule 5 of the Punjab Village Common Lands (Regulations) Rules, 1964 (hereinafter for short called as 'the 1964 Rules'), rules whereof are extracted hereinafter, there was necessity of compliance of two conditions, inasmuch as, the panchayat was required to form an opinion, that the apposite exchange

vis the apposite resolution of the panchayat concerned rather was required to be accorded by the Government.

5. Exchange of land [Sections 5 and 15(2) (f)]: *A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may, with the prior approval of the Government transfer any land in shamlat deh by exchange with the land of an equivalent value.*

11. In addition, Rule 12 of 'the 1964 Rules', rules whereof have extracted hereinafter, prescribe that the panchayat may with the approval of the Government rather sell land in the *shamlat deh* vested in it under the 'Act of 1961' but for a limited purpose.

12. Purposes for which land may be sold. [Sections 5 and 15(2)(f)]:- (1) *A Panchayat may, with the previous approval of the Government, sell land in shamlat deh vested in it under the Act for-*

(i) the purpose of constructing building for Block Samiti Office or any department of or institution recognized by the Government; (ii) the purpose of any industrial or commercial concern; or (iii) executing such a scheme as may be a source of recurring income for the benefit of the inhabitants of the village; (iv) residential purposes of the inhabitants of the village; (v) for the purpose of financing the construction of buildings for schools and for veterinary and civil dispensaries in the Sabha area-

(2) Where it is proposed to sell the land in Shamlat deh under sub-rule(1), the Panchayat shall forward to Government a copy of its resolution passed by a majority of the threefourth of its members proposing to sell the land through the Panchayat Samiti and Divisional Deputy Director, Panchayati Raj stating -

- (a) xxxxxx;*
- (b) xxxxxx;*

(c) xxxxxxx;
(3) xxxxxxx”

12. Moreover, Sub Rule (3) of Rule 16 of 'the 1964 Rules', provisions whereof have been extracted hereinafter, prescribe that a Sarpanch so appointed, to defend a case is not competent to compound or admit the plaintiffs claim, thus without authorisation becoming bestowed by the panchayat, thus by a resolution being made in writing by the full house of the Gram Sabha.

16. Procedure where a Panchayat sues or is sued in its representative capacity. [Section 15(2)(h)] :-

(1) xxxxxxx;
(2) xxxxxxx;

(3) The Sarpanch or panch so appointed shall not be so competent to compound or admit claim of the party suing the Panchayat without prior authorization by the Panchayat by a resolution in writing passed in a meeting specially called for the purpose. If any decree or order is passed by the Court as a result of fraud, misrepresentation, concealment of facts or collusion with the opposite party the Sarpanch or Panch shall be personally liable for the loss caused to the Panchayat.

13. Conspicuously, the above rules were in force at the time of passing of the compromise decree. Therefore, the said rules did require strict compliance thereto becoming made by the then Sarpanch of the Gram Panchayat concerned, who compromised the plaintiffs suit.

14. However, evidently, the compromise decree (supra) does not disclose, that there was compliance with any of the above alluded statutory provisions. Moreover, nor any evidence appears to have been adduced before the Assistant Collector, thus displaying that any of the above provisions became complied with, so as to enable the learned

Civil Court concerned to make an un-vitiated and unflawed compromise decree.

15. Though, the said compromise decree became passed thus before coming into being of the above extracted statutory provision i.e. Section 13, as engrafted in 'Act of 1961' whereby thereafter only, there was thus an ouster of jurisdiction of the learned Civil Court rather to entertain and to make adjudication vis-a-vis *shamlat deh* lands. In addition, though there is no declaratory decree passed by the Civil Court concerned, thus declaring the compromise decree (supra) to be null and void.

16. Nonetheless, it appears that the lack of adduction of material (supra), by the petitioners before the Assistant Collector concerned, thus, *prima facie* explicitly speaks, that the compromise decree rather became procured by the petitioners, thus in collusion with the then Sarpanch of the Gram Panchayat concerned, who for reasons (supra) had no authority to compromise the plaintiff's suit.

17. Moreover, since the compromise decree became executed, only after expiry of the period of limitation, for thus valid execution thereof being made, thereby the said belated/time barred execution, rather became made, of a compromise decree, thus *per-se* is an acquiescence of the petitioners, that it became stained with a vice of nullity, thus emanating from infraction being caused, to the above referred statutory rules, which were in force at the time of passing of the Civil Court decree. Therefore, the evident suppression of all the said material, by the petitioners before the Assistant Collector concerned, thus irrespective of no declaratory decree being pronounced by the Civil Court concerned, rather annulling the compromise decree,

yet thereby the petitioners acquiesce to the said decree being made in complete transgression of the Rules (supra). Resultantly, there was no occasion for the Assistant Collector concerned, to abide by the compromise decree.

18. Further, support to the above inferences, is derived from a reading of Annexure R-6/2, whereby the petitioners appeal, before the Collector concerned against the order drawn on 17.01.1992 by the Assistant Collector First Grade, Hoshiarpur, became dismissed. Consequently, thereby the petitioners civil suit for rendition of accounts and for recovery of 52/192 share of the profits and income of the suit land became concurrently dismissed.

19. The relevant part of the said made order become extracted hereinafter.

“5. I have considered the arguments of both the sides and gone through the record of the case. The argument of the learned counsel for the appellant that the decision of the civil court having been passed before the year 1976 amendment shall prevail is supported by many judgments of the High Court. However, the mere fact that an injunction for restraining the Gram Sabha and Gram Panchayat Mehngarwal from interfering in the possession of the plaintiffs Harkishan Dass etc. was decreed on the basis of a compromise, cannot be taken as a verdict on the title to the suit land as has been held in 1986 All India Land Laws Reporter page 572 referred to above. On the basis of this decree, therefore the appellant cannot claim title of the suit land. It has also not been denied by the appellant that necessary permission was not taken by the then sarpanch before he made a statement in favour of the plaintiffs before the Senior Sub Judge and so the decree appears to be void-abnito. The rejection of the mutation

on the basis or the civil court decree has been upheld even by the learned Financial Commissioner, I am therefore, unable to disagree with the findings of the learned A.C.Ist Grade. The appeal is accordingly dismissed. The file be consigned into the Record Room. Announced in open court. ”

20. The legal sequel thereof, is that, the filing of the said suit for rendition of accounts by the petitioners, but fortifies an inference that the said made dismissal orders, became rested on the plank that the suit lands were *shamlat deh*, and, that thereins the petitioners had no right, title and interest but on the premise of theirs becoming entitled to become bestowed with the beneficent grace of any of the savings clause(s) to the definition of *shamlat deh*, as exist in Section 2(g) of the 'Act of 1961'.

Final order of this Court.

21. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders/annexures are maintained and affirmed.

22. No order as to costs.

23. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

30.11.2023

kavneet singh

KAVNEET SINGH
2023.12.02 16:31
I attest to the accuracy and
authenticity of this order/judgment

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**