

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).19031/2012

(From the judgement and order dated 20/12/2011 in CWP No.9020/2007 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

SADHU SINGH & ORS. Petitioner(s)

VERSUS

STATE OF PUNJAB & ANR. Respondent(s)

(With prayer for interim relief)

Date: 16/07/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Ms.Shikha Roy, Adv.
Mr.Ajit Kumar, Adv.
Mr.Prahlad Kumar, Adv.
Mr. S.K. Sabharwal, Adv.

For Respondent(s) Mr.Ajay Kr.Singh, Adv.
Mr. Santosh Kumar Tripathi, Adv.

UPON hearing counsel the Court made the following

O R D E R

Whether the Divisional Commissioner was justified in declaring the petitioners as the owners of the land in question only on the basis of entry of their predecessors name in the column of cultivation in the Jamabandi of 1958-59, is the question was raised in the writ petition filed by Gram Panchayat, Bishangarh, Tehsil and District Patiala in the Writ Petition filed against order dated 15.2.2007 passed by the Commissioner. The High Court noted that in the Jamabandis of the years 1950-51 and 1954-55 the land had been recorded as 'Charand', i.e. grazing ground and held that entry of the name of the petitioners' predecessor in the column of cultivation in the Jamabandi of 1958-59 cannot confer upon them title over the Shamlat land.

We have heard learned counsel for the parties and perused the record. The application filed by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 was allowed by the Collector vide order dated 27.1.1983 and it was declared that the land in question is Shamlat Deh and that the predecessor of the petitioners are encroachers. That order was confirmed by Joint Director, Panchayat, who dismissed the appeal of the predecessor of the petitioners by recording the following observations:

"As per the Jamabandi 1950-51 in the column of owner is shown as Shamlat Patti Nungran and in the column of Kashat it is shown as Charand. As per the Jamanandi of the year 1958-59 the name of the appellant is in the column of Kashtkar. Although in the column of Kashtkar there are number of different entries at different point of time but the true position in this respect is this that the said land is being used by the Villagers as a common land as a Charand. That the name of the appellant is shown in the column of Karastkar after the year 1955. The counsel of the appellant at the time of arguments has also admitted that there is no record to show that the appellants are in possession of the land prior to the year 1955. This land is used for the common purpose of the Village and comes under the definition of Shamlat land."

After 17 years, the petitioners filed suit under Section 11 of

the Act, which was dismissed by the Collector vide order dated 14.11.2005, but Joint Development Commissioner (IRD) (Exercising the Powers of Commissioner) reversed the order of the Collector and declared the respondents to be the owners of the land.

The Division Bench of the High Court referred to the entries recorded in Jamabandis, allowed the writ petition filed by the Gram Panchayat and set aside the order of the Commissioner by making the following observations:

"In our view, the aforesaid observations made by the learned Commissioner are total contrary to the revenue record. In the Jamabandis for the years 1950-51 and 1954-55 the land in dispute has been described in column No.4 as Shamlat Patti Nungren and in the column of cultivation as Charand, and in column No.8 as Banjar Kadim. According to Section 2(g) (3) of the Act, such lands fall under the definition of Shamilat Deh. Section 2(g)(3) of the Act provides that "shamilat deh" includes lands described in the revenue records as Shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village. Even in the consolidation proceedings the nature of the land in dispute was described as a Charand. Merely because in the Jamabandi for the year 1958-59, the names of Rakha and Bishna came in the column of cultivation, does not mean that the land was never used for common purposes of the village. When the Shamlat law came into force i.e. 9.1.1954 (i.e. Punjab village Common Lands (Regulation) Act, 1953), the land in question was described as land of Shamlat Patti and is being used as a Charand. Such land, in view of Section 2(g)(3) of the Act, vests in the Gram Panchayat. A Full Bench of this Court in G.P. Sadharaur Versus Baldev Singh, 1977 PLJ 276 has held that all lands described as Shamlat. Tarafs, Pattis shown in the revenue records in the ownership of any Pattis and also recorded to be used for any common purpose of the village shall fall under the definition of Shamilat deh as defined under Section 2(g)(3) of the Act and vest in the Gram Panchayat, and not in the proprietors of the Shamlat Patti. Thus, the entire approach of the learned Commissioner in dealing with the issue is perverse and contrary to the factual position recorded in the revenue record. Therefore, in our view, the impugned order passed by the learned Commissioner is not sustainable being contrary to the factual and legal position as explained above."

In our opinion, the reasons assigned by the High Court for setting aside the order of the Commissioner are legally correct and the impugned order does not call for interference under Article 136 of the Constitution. The predecessor of the petitioners had not challenged the entries made in Jamabandis of 1950-51 and 1954-55 that the land in question was Shamlat Patti Nungren. Therefore, the mere fact that their names were entered in the column of cultivation in the Jamabandis of 1958-59 cannot confer a title upon them.

The special leave petition is accordingly dismissed.

The Sub-Divisional Officer, Patiala is directed to take possession of the land in dispute within one month from the date of receipt/production of copy of this order and hand over the same to Gram Panchayat for being used for common purposes.

The Registry is directed to send a copy of this order to Sub-Divisional Officer, Patiala by fax.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master