Gram Panchayat, Ambala

v.

Dedar Singh & Others

(Supreme Court Of India)

SHIVARAJ V. PATIL HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

C. A. No. 5194 of 1998 with No. 1258 of 1999 | 29-01-2004

1. The appellant made an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for brevity "the Act") seeking eviction of the respondents from the land in question stating that the said land had vested in the appellant Gram Panchayat and the respondents were in unauthorised occupation. It may be also mentioned that the respondents claimed declaration of their rights and title over the very land under Section 11 of the Act. The Deputy Director, Rural Development, after hearing the parties and after considering the rival contentions, passed the order on 2.12.1994, recording the finding thus:

"I have come to the conclusion that the disputed land is in possession of the respondents since 1948-49. All the khewatdars have partitioned land before 26.1.1950. Hence the disputed land does not come in the definition of shamilat deh under Section 2(g). The mutation of this land has been wrongly sanctioned as according to the law the mutation cannot be changed on the basis of letters. This land is still shamilat deh hasab rasad khewat. The mutation in the name of Nagar Panchayat is wrong. The copy of wasul-erz reveals that the land of the village comes in Ghaghair river and can be partitioned. As the possession of the respondent is very old, hence the disputed land is declared in the ownership of the respondents. Hence the application of the petitioner is rejected and notice issued to the respondents is recalled."

2. The appellant, being aggrieved by the said order, took up the matter in appeal before the Joint Development Commissioner, who again, after examining the records keeping in view the rival contentions advanced on behalf of the parties,

did not find any good ground to take a different view than the one taken by the Deputy Director, by stating thus:

"The land, as is evident from the entries in the revenue record, is shamilat deh hasab rasad khewat in the possession of makbooja malkan (Jamabandi for 1948-49, Ext. R9). As such, the land does not vest in Gram Panchayat in the definition under Section 2(g) which governs shamilat land, Ext. R8 naksha hawdarwar clearly shows Bakhtaur Singh as co-sharer in the land. Bakhtaur Singh is none else than the father of the respondents. No revenue record has come on file which may entitle the Gram Panchayat to this land. The nature of the land is to be seen from the day the shamilat law came into force. All old entries show that the land is of the category of shamilat deh hasab rasad khewat. The land was never used for any common purpose nor has it been put to any auction as alleged. Even if they did so, they were not competent and that action of theirs may also not have stood in the way of the respondents. Finally, it may be safely declared that the Gram Panchayat has no locus standi to eject the respondents as the land in question does not vest in it. The Collector has rightly dismissed the application of the Gram Panchayat."

In view of the findings recorded, as reflected above, the Appellate Authority dismissed the appeal. The matter did not rest thereat. The appellant filed writ petition before the High Court. The High Court categorically recorded that once the right-holders had partitioned the land before the commencement of the Act, the Gram Panchayat could not be declared to be the owner on the basis of certain letters resulting in the change of mutation in favour of the Gram Panchayat. The entries in the revenue record to the effect that shamilat deh hasab rasad khewat does not mean that the land vests with the proprietary body. In this view of the matter, the writ petition was also dismissed. Hence, this appeal.

3. The learned Counsel for the appellant strongly contended that the findings recorded against the appellant that the land in question did not vest in the Gram Panchayat is erroneous, having regard to the records that were produced. She drew our attention to the entries made in Jamabandi for the years subsequent to 1950. She also relied upon the decision of this Court in Sukhdev Singh v. Gram Sabha Bari Khad, (1977) 2 SCC 518, in support of her submissions.

4. In opposition, the learned Counsel for the respondents made submissions supporting the impugned order adopting the reasons given by the original as well as the Appellate Authority. He added that in the light of the concurrent findings of fact recorded, this Court may not interfere with the impugned order.

5. We have considered the respective submissions made on behalf of the parties. A firm finding of fact has been recorded based on the evidence placed before the authorities that the respondents were in possession and the land was partitioned prior to 26.1.1950. As per the definition of "shamilat deh"# contained in Section 2(g) of the Act and in view of the exclusion clause thereof, it is also stated thereunder which lands are not included in the said definition. Exclusion Clause (iii) to Section 2(g) states that the land which has been partitioned and brought under cultivation by individual landholders before 26.1.1950 is not included within the definition of "shamilat deh". Further, even under exclusion Clause (viii) to Section 2(g), if a land was assessed to revenue and had been in the individual cultivating possession of co-sharers before 26.1.1950, such land is also excluded from the definition of "shamilat deh". Though the specific provision is not referred to in the order of the Deputy Director and the Appellate Authority, a clear finding is recorded that the land had been partitioned prior to 26.1.1950 and the respondents were in possession of the respective shares. The decision in Sukhdev Singh (supra), cited by the learned Counsel for the appellant, in our view, does not support the case, having regard to the concurrent findings of fact recorded in the case on hand. The said judgment of this Court was on the facts of that case, particularly relying upon the admitted Jamabandi entry for the year 1914-15 which was long prior to the Act coming into force. This Court, noticing that certain fact was not controverted in that case, on facts, concluded that once the land was shown as "shamilat deh", its nature could not be altered by change in the entry subsequently. Under the circumstances, we do not find any good ground or a valid reason to disturb the impugned order. Consequently, the appeals are dismissed.

6. No costs.