

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3845 of 2020
[@ SLP [C] NO.11839/2020]

MANGTA SINGH & ORS.

Appellant(s)

VERSUS

THE STATE OF PUNJAB & ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard learned senior counsel for the appellants at some length where he has made a valiant effort to plead that the reasoning contained in the impugned order is different from the reasoning of the Commissioner whose order the appellant has impugned before the High Court and also in the conspectus of the orders passed earlier. Learned senior counsel has drawn our attention to the order at page 48 of the Collector who has given a finding that the appellants have been in continuous possession before the cut-off date of 26th January, 1950 but on the appeal filed by the Gram Panchayat, the Commissioner set aside that order and remitted it back to the Collector and the plea raised was that the *Jamabandis* were not genuine documents. Learned counsel points out that the appellants are legal heirs of Ishwar Singh whose name was shown in the record of the cultivators prior to the cut-off date. Learned senior counsel has then drawn our attention to the finding

arrived at by the Collector on remand in this behalf which is favourable to him but yet the Commissioner has interfered with the same by an order dated 02.11.2008 in a cryptic manner. The grievance is that the High Court has also dealt with the issue in a cryptic manner and that too on a different ground as the impugned order refers to the fact that the appellants do not fulfill the requirements of Section 2(g) (viii) of the Punjab Village Common Land (Regulations) Act, 1961 (hereinafter referred to as the said Act) as they failed to prove that they are "in individual cultivating possession and are not in excess to their land share".

We have perused the definition of *Shamlatdeh*, as contained in Section 2(g) and it is undisputed that land in question would be *Shamlatdeh* unless it falls within the exclusion Clause. As to what has to be excluded has been set out in nine exclusion Clauses and the relevant exclusion in the present case is Clause (viii) which reads as under:

"(viii) was *shamlatdeh*, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such *Shamlatdeh* on or before the 26th January, 1950."

A reading of the aforesaid provision shows that there is no difficulty so far as that it has four stipulations: (a) it is a *Shamlatdeh* land, (b) was assessed to land revenue, (c) has been in the individual cultivating possession of the co-sharer and (d) not being in excess of their respective shares.

The aforesaid is of course subject to the cut-off date of 26th January, 1950.

The aforesaid being the exclusion Clause, it is our view, that the burden was on the appellants to prove that they satisfied the four parameters of the exclusion clause. The High Court has relied upon (c) and (d) referred to us as aforesaid and thus, the plea of the learned senior counsel for the appellants is that the matter should be remitted back for reconsideration by the competent authority as this was not an aspect analyzed.

We are unable to persuade ourselves to agree with the submission of the learned senior counsel for the appellants for the reason that the reliance having been placed on exclusion Clause in respect of *Shamlatdeh* land, from the inception itself to claim the exclusion, the burden was on the appellants to satisfy all the parameters. If they do not satisfy any of the parameters they are not entitled to the exclusion. The burden cannot be put on the Gram Sabha to satisfy the same. Thus, if the appellants have not led materials to show that they

were in individual cultivatory possession and that such cultivatory possession was not in excess of their respective shares, they have failed to discharge the burden.

We are fortified in our opinion by the judgment of this Court in the case of *Project Officer, IRDP and others v. P.D.Chacko* (2010) 6 SCC 637 where it was observed as under:

"14. An exception clause is normally part of the enacting section, unlike a proviso which follows an enacting part. *Crawford's Interpretation of Laws* (1989), p.128, speaks of exception as follows:

"91. *Exceptions and provisos* - ... The exception, however, operates to affirm the operation of the statute to all cases not excepted and excludes all other exceptions; that is, it exempts something which would otherwise fall within the general words of the statute."

15. It is trite law that an exception clause has to be strictly interpreted and cannot be assumed but be proved. An exception clause is always subject to the rule of construction and in case of doubt, it must befriend the general provision and disfavour the exception. If any category of person claims exception from the operation of the statute it must establish that it comes within the exception."

It is in view of the aforesaid position that despite the best persuasion of the learned senior counsel for the appellants, we are not agreeable to remit the matter back for reconsideration though we do appreciate the submissions made by the learned senior counsel for the appellants.

We, thus, dismiss the appeal leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[HRISHIKESH ROY]

New Delhi;
November 27, 2020.

