

CWP No.7735 of 2013

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.7735 of 2013
Date of decision:21.08.2015**

Bimla Devi

...Petitioner

Versus

Financial Commissioner, Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rakesh Nagpal, Advocate,
for the petitioners.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

Mr. Vinod Gupta, Advocate,
for respondent No.4.

Mr. Hitesh Sood, Advocate,
for respondent Nos.8 and 9.

Rakesh Kumar Jain, J.

The petitioner has challenged validity of the order dated 21.03.2013 passed by respondent No.1.

In brief, respondent No.4 filed an application before the Assistant Collector 2nd Grade, Tohana, for correction of Khasra Girdawari from Kharif 2000 on the ground that he is recorded as Gair Marausi tenant on land measuring 32 kanal 4 marlas, being 1/4th share of the total land measuring 128 kanal 12 marlas, comprised in Khewat No.71, Khatauni No.203 as per the jamabandi for the year 1999-2000. The petitioner filed an objection in the said application about its maintainability on the ground that

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respondent No.4 is not in possession of the suit land, but her objection was rejected by the Assistant Collector 2nd Grade on 05.03.2007. The petitioner challenged that order before the Commissioner, Hisar Division, Hisar. The revision petition was allowed on 24.12.2008 and the order of the Assistant Collector 2nd Grade was set aside. The respondent No.4 challenged order of the Commissioner in revision before the Financial Commissioner. The said revision petition was allowed by the Financial Commissioner without issuing notice on 23.07.2009. The petitioner challenged the order dated 23.07.2009 of the Financial Commissioner by filing CWP No.17782 of 2009. The said writ petition was allowed, order of the Financial Commissioner was set aside on 20.11.2009 and the matter was remanded back to the Financial Commissioner, who again accepted the revision filed by respondent No.4 vide order dated 21.03.2013.

It is further averred that respondent No.4 had also filed a suit for permanent injunction in the Civil Court at Fatehabad against the petitioner as well as other 6 persons in respect of the land in question. The said suit was dismissed by the Additional Civil Judge (Senior Division), Tohana on 08.01.2010. The appeal filed by respondent No.4 was dismissed by the District Judge, Fatehabad on 16.04.2011. The second appeal filed by respondent No.4 bearing RSA No.2041 of 2011 was dismissed by this Court on 23.05.2011 and the SLP(Civil) No.16181 of 2011 was dismissed by the Apex Court on 10.10.2011.

Counsel for the petitioner has submitted that once the Civil Court came to the conclusion that respondent No.4 was not in possession of

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the suit land, there is no question of seeking correction of the Khasra Girdawari.

However, case of respondent No.4 is that he had also filed Civil Suit No.315/ RBT on 23.05.2006 for injunction, which was decreed, though *ex-parte*, but it was held that he is in possession, may not be in the capacity of Gair Marausi tenant, therefore, the Khasra Girdawari has to be corrected only on the basis of possession and not status.

I have heard learned counsel for the parties and examined the available record.

In the matter of correction of Khasra Girdawari, the applicant has to show that he was in possession during the sowing of a particular crop. Respondent No.4 has filed the Civil Suit on 15.04.2007 seeking permanent injunction in the capacity of a tenant on batai tihai over the land in dispute but the said suit has been dismissed consistently by all the Courts upto the Apex Court. Respondent No.4 cannot rely upon the *ex-parte* decision passed in the Civil Suit filed by him on 23.05.2006 because in that case, the present petitioner Bimla Devi was not a party as she is Bimla Devi widow of Jagdish S/o Het Ram and the defendant No.6 in Civil Suit No.315/RBT was Smt. Bimla daughter of Smt. Chander widow of Ruldu S/o Hem Raj. Therefore, the said decision cannot bind the petitioner in which she was not a party, besides the fact that it was an *ex-parte* decree in which respondent No.4 has failed to prove his status of a Gair Marausi tenant on batai tihai. Once it has been held by all the Courts upto the Apex Court that respondent No.4 is not in possession, the judgment relied upon by him dated

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09.09.2009 passed in Civil Suit No.315 RBT is of no use.

Consequently, the present writ petition is found to be meritorious and hence, the same is hereby allowed and the impugned order dated 21.03.2013 passed by the Financial Commissioner, Haryana is set aside.

No costs.

August 21, 2015
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(Rakesh Kumar Jain)
Judge