

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 209

Date of Decision: *September 01, 2015*

1. **Civil Writ Petition No.5761 of 2015 (O & M)**

Sahab Singh & others

..... PETITIONER(S)

VERSUS

Learned Collector, Karnal & others

..... RESPONDENT(S)

. . .

2. **Civil Writ Petition No.14097 of 2015**

Sahab Singh & others

..... PETITIONER(S)

VERSUS

Commissioner, Rohtak, Division, Rohtak & others

..... RESPONDENT(S)

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CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
 HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. B.S. Bedi, Advocate, for the petitioners.

Ms. Kirti Singh, Deputy Advocate General, Haryana.

Mr. Sachin Mittal, Advocate, for Gram Panchayat,
village Ichhanpur.

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Jaspal Singh, J

1. By this common judgment, we intend to dispose of Civil Writ Petition No.5761 of 2015 and Civil Writ Petition No.14097 of 2015 as the controversy involved is identical

2. Facts giving rise to these petitions are that Gram Panchayat, village Ichhanpur, Tehsil Assandh, District Karnal, preferred ejectment/eviction petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'Act') against the petitioners in the Court of Assistant Collector 1st Grade, Assandh. Petitioners raised a question of title and the Assistant Collector 1st Grade, vide order dated January 31, 2014, disposed of the petition holding that there arises question of title and the parties were directed to file appropriate proceedings under Section 13-A of the Act.

3. Dis-satisfied with the said order, Gram Panchayat preferred an appeal before Collector, Karnal which was accepted vide order dated November 12, 2014 whereby order dated January 31, 2014 passed by Assistant Collector 1st Grade was set aside. The petitioners then filed revision against order dated November 12, 2014 passed by the Collector, Karnal before learned Commissioner, Rohtak, which was dismissed vide order dated May 12, 2015 upholding the order passed by the Collector. Aggrieved against the said orders, petitioners have approached this Court.

4. Assailing the impugned orders, it has been contended by learned counsel for the petitioners that Collector failed to appreciate the legal and factual aspect of the case while deciding appeal preferred by Gram Panchayat vide order dated November 12, 2014. A perusal of the impugned orders reveals that Collector has decided appeal(s) treating the same as regular suit for adjudication of question of title under Section 13-A of the Act. Learned Collector has misread and misplaced the facts while holding that possession of petitioners is unauthorized and land in dispute vests in Gram Panchayat as per Section 2(g) clause (6) of the Act. The findings and observations made by Collector in this regard are totally erroneous, without jurisdiction and against record. Infact, during consolidation, land was left for *Jumla Mushtarka Malkan* vide Scheme Istemal. It was left on prorata cut basis from the land of proprietors of the village. Moreover, in Scheme Istemal, no khasra number of the land left for cultivation for Panchayat has been mentioned. The land is being cultivated by the petitioners as per their respective shares since 1950. The Gram Panchayat has no right as the land in question does not come within the purview of *Shamlat Deh*. Thus, impugned orders are not sustainable in the eyes of law and liable to be set aside.

5. It has further been urged that though, no order has been passed for ejectment of petitioners from the land in dispute by the Competent Authority, petitioners are being dispossessed. Such an action of the Gram Panchayat is impermissible.

6. We have given an anxious thought to the aforesaid submissions made by learned counsel and have meticulously scrutinized the impugned orders.

7. Undisputably, Gram Panchayat preferred a petition under Section 7 of the Act for ejectment/eviction of the petitioners. Though, said petition was disposed of by Assistant Collector 1st Grade observing that since the question of title is involved, parties should avail remedy under Section 13-A of the Act but Gram Panchayat being aggrieved against the said order, preferred an appeal before the Collector, Karnal. On the basis of *missal haqayat* pertaining to the year 1957-58, *shartwajib ul arj* and Scheme Istemal. Learned Collector came to the conclusion that land in question was recorded as *Jumla Mushtarka Malkan* and respondents have never been in possession prior to 1977-78. It was left for common purpose of the village inhabitants and vests in Gram Panchayat. Learned Collector has rightly concluded in this regard on the basis of the documents available on file. Moreover, it is also proved on record that land in dispute was leased out to petitioners by the Gram Panchayat in the year 1977-78 but after expiry of lease period, they did not deliver back its possession to the Gram Panchayat, rather, unauthorisedly perpetuated their possession. Even lease money/rent was not paid. It is well neigh recognized principle of law that a lessee is precluded from raising a question of title. The orders passed by

Collector have been upheld by learned Commissioner. We are, thus, of the view that there is no illegality or impropriety in the impugned orders.

8. As far as the other contention that there is no specific order of ejectment passed by the Competent Authority is concerned, it is suffice to say that such a contention is misplaced. Admittedly, Gram Panchayat preferred a petition under Section 7 of the Act seeking eviction/ ejectment of the petitioners. Though, Assistant Collector 1st Grade disposed of the said petition directing the parties to get the title dispute settled by filing an application under Section 13-A of the Act but in appeal that order was set aside. The Gram Panchayat was held to be the owner of land in question, meaning thereby, the petition under Section 7 of the Act was allowed. Thus, Gram Panchayat is fully competent to get the petitioners evicted in pursuance of the order passed by Collector and upheld by the Commissioner.

9. In the light of what has been discussed above, we do not find any merit in these petitions. As such, both the petitions stand dismissed.

(Jaspal Singh)
Judge

(Surya Kant)
Judge

September 01, 2015

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