

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.8877 of 2013
Date of Decision:29th July, 2015

Mahabir Singh and others

..Petitioners

versus

Gram Panchayat of village Bharri & others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. L.N.Verma, Advocate, for the petitioners.

Mr. Saurabh Bhardawaj, Advocate, for respondent no.1.

Mr. D.Khanna, Addl. Advocate General, Haryana
for respondent nos. 2 and 3.

RAJIVE BHALLA, J.

The petitioners pray for issuance of a writ of certiorari, quashing order dated 6.2.2012 (Annexure P-16), passed by District Development and Panchayat Officer-cum-Assistant Collector 1st Grade, Hisar ordering their eviction and order dated 26.2.2013 (Annexure P-17) passed by District Collector, Hisar, dismissing their appeal.

Counsel for the petitioners submits that the impugned orders directing the petitioners' eviction and dismissing their appeal have been passed in a most casual and arbitrary manner by ignoring jamabandis that record the petitioners' father and after him, the petitioners, as tenants on payment of rent. The dismissal of two earlier petitions, filed by the Gram Panchayat, under Section 7 and the inter-parties civil court decrees, affirming the status of the

petitioners as tenants have been ignored by simply holding that as the Gram Panchayat is owner, of the land in dispute and the petitioners are unauthorised occupants, they are liable to be evicted. The Collector has gone a step further as he has held that Section 13-D of the 1961 Act, empowers authorities under the Act, to ignore Civil Court decrees. Section 13-D, may empower the Collector to ignore a civil Court decree which is without jurisdiction but the 1961 Act does not prohibit a Civil Court from issuing an injunction. The decrees, granting an injunction, after holding that their father and after his death, the petitioners are tenants, under the Gram Panchayat, cannot be ignored. Counsel for the petitioners relies upon a Full Bench judgment of this Court in Gram Panchayat village Batholi Kalan versus Jagar Ram and others, 1991 PLJ 41, to urge that Section 13-D of the 1961 Act, does not empower authorities under the Act, to ignore civil court decrees.

Counsel for the petitioners also relies upon a Full Bench judgment of this Court in Sarwan and Rati Ram versus The Joint Director, Panchayats, Punjab and others 1985 PLJ 262, to urge that as the petitioners are recorded as tenants, they cannot be held to be unauthorised occupants or liable to eviction.

Counsel for the petitioners further submits that the present application, the third in a series of applications, filed by the Gram Panchayat, under Section 7 of the Act, is barred by the principles of *res judicata*, and in support of his argument, relies upon Jee Ram versus The State of Haryana and others, 1980 PLJ 103.

Counsel for the petitioners also submits that the Assistant Collector

has imposed an exorbitant penalty of Rs.10,000/- per acre without considering that a penalty can only be imposed, after determining the benefit derived, after serving a prior notice and then also for a period of three years.

Counsel for the respondents submits that the foundation of the petitioners' case are revenue entries, that record Hari Singh and after the demise of Hari Singh, the petitioners, as tenants of the Gram Panchayat, on payment of rent @ Rs.10/- per harvest, per annum. The entries have been held to be illegal in a suit filed by the Gram Panchayat. The judgment and decree dated 08.09.2010 passed by the Civil Judge (Senior Division), Hisar, has been affirmed by the Additional District Judge, Hisar. Regular Second Appeal No.717 of 2014 Mahabir and others versus Gram Panchayat Bharri, filed by the petitioners, has been dismissed, on 7.3.2014. The foundation of the petitioners' case, namely, revenue entries recording the petitioners as tenants, having ceased to exist, the dismissal of earlier petitions under Section 7 of the 1961 Act and the findings recorded in judgments and decrees passed by Civil Courts, which are, all based upon entries in the revenue record, are no longer relevant. Counsel for the respondents also submits that a perusal of the impugned orders reveals that the land is "shamilat deh" and vests in the Gram Panchayat. The petitioners' father took the land on lease from the Gram Panchayat for a limited period, but, thereafter, took advantage of the illegal entries and refused to vacate the land. The entries in the jamabandis recording the petitioners' father and after his demise the petitioners, as tenants, are

not supported by any relevant fact that may prove the creation of a tenancy by the Gram Panchayat. The penalty awarded by the Assistant Collector is legal and valid as the petitioners have been in unauthorised possession for more than three decade.

Counsel for the respondents further submits that the petitioners' arguments regarding *res judicata* etc. arising from dismissal of earlier petitions, under Section 7 of the Act and the earlier civil Court decree, based upon Jee Ram's case (supra), are no longer good law, in view of a judgment of the Supreme Court in Inder Singh versus Financial Commissioner, Punjab, 1997 (11) SCC, 206, holding that the doctrine or the principle of *res judicata* does not apply to summary proceedings, unless the statute expressly provides so. The 1961 Act does not provide that principles of *res judicata* shall apply to summary proceedings, under Section 7 and even otherwise, as the earlier orders, passed under section 7 are based upon revenue entries that have ceased to exist, the question of *res judicata* or issue estoppel, does not arise.

We have heard counsel for the parties, perused the impugned orders, appraised orders dismissing petitions filed by the Gram Panchayat, under Section 7 of the Act, Civil Court decrees passed in favour of the petitioners and judgments and decrees, including a judgment of this Court, holding that revenue entries recording Hari Singh and after his demise the petitioners as tenants of the Gram Panchayat are illegal.

A brief narrative of the facts would be appropriate.

A perusal of jamabandis for the years 1960-61, 1964-65,

1969-70, 1975-76, 1980-81, 1985-86, 1991-92, 1995-96 and 2000 to 2001, reveal that the land in dispute is recorded as the ownership of the "Panchayat Deh". The jamabandis also record Hari Singh, father of the petitioners, and after his demise, the petitioners as tenants on payment of rent of Rs.10/- per acre, per annum.

The petitioners' father, filed Civil Suit No.73 of 1976, before the Senior Sub Judge, Bhiwani, praying for an injunction against the Gram Panchayat and the three others, who claimed to have taken land in dispute on lease. The suit was decreed on 27.1.1978, by restraining the Gram Panchayat and the other defendants from interfering in the peaceful possession of Hari Singh, except in due course of law by relying upon revenue entries for the years 1960-61 to 1975-76, that record Hari Singh as a tenant, on payment of rent @ Rs.10/- per acre, per annum.

The Gram Panchayat did not file an appeal but instead, filed an application, under Section 7 of the 1961 Act, before the Assistant Collector, Loharu, for ejectment of Hari Singh and one Peerdaan son of Mauji Ram, from land measuring 80K-5M, including the land in dispute. The Assistant Collector, Loharu, dismissed the application on 26.5.1978, by holding that as land is in possession of tenants on payment of Rs.10/-per acre, per annum, they are not unauthorised occupants. The Gram Panchayat filed an appeal which was dismissed by the District Collector, Bhiwani. On 27.12.1978.

After the death of Hari Singh, the Gram Panchayat filed a fresh application under Section 7 of the 1961 Act, seeking to evict the petitioners from the same land by pleading the same facts. The

application was dismissed on 2.1.1996 by relying upon revenue entries recording Hari Singh and after his demise the petitioners, as tenants. The appeal filed by the Gram Panchayat was dismissed by the Collector, on 26.3.1997.

The petitioners, thereafter, filed a suit praying for grant of an injunction against the Gram Panchayat. The Civil Judge (Junior Division), Hisar, dismissed the suit on 2.2.2008, by holding that an injunction cannot be granted against a true owner. The appeal filed by the petitioners, before Additional District Judge, was, however, allowed on 3.2.2010, on the basis of revenue entries recording the petitioners as tenants and the Gram Panchayat was restrained from interfering in the peaceful possession of the petitioners, except in due course of law

After having lost in proceedings under Section 7 of the Act and faced with injunctions by civil Courts, the Gram Panchayat filed a civil suit praying for a declaration that entries in jamabandis recording Hari Singh, and after him, the petitioners as tenants, are null and void. The Gram Panchayat pleaded that it had never leased out the land to the petitioners or their father. Hari Singh, the father of the petitioners, had taken the land on lease, from the Gram Panchayat in an open auction in the year 1972-73 for Rs.75/-, duly proved by cash receipt No.4 dated 13.4.1972, in 1973-74 for Rs.300/- duly proved by cash receipt No.9/85, dated 6.6.1972, for 1974-75 for Rs.100/- duly proved by cash receipt No.9/86, dated 6.6.1974 and for 1975-76 for Rs.310/-, proved by cash receipt No.4/33 dated 24.1.1975, thereby pleading that revenue entries

recording Hari Singh and after his demise the petitioners as tenants of the Gram Panchayat on payment of rent @ Rs.10 per annum, stand rebutted and may be declared illegal.

The petitioners filed a reply, placing reliance, upon entries in jamabandis, recording them as tenants, upon the dismissal of two earlier petitions filed under Section 7 of the 1961 Act and upon two civil court decrees holding that the petitioners are tenants and injuncting the Gram Panchayat from interfering in their possession.

The Civil Judge (Senior Division), Hisar, vide judgment and decree 8.9.2010, held that in the absence of any evidence to prove the creation of a lease or payment of rent, entries in jamabandis from the year 1961-62 onwards, recording the petitioners' father and after his demise the petitioners as tenants, on payment of rent @ Rs.10/-per acre per annum, are illegal and liable to be corrected, in favour of the Gram Panchayat. A finding was also recorded that the petitioners' father had taken the land on lease from the Gram Panchayat, for the years 1972 to 1975, thereby putting paid to the plea of a tenancy commencing in 1960. The petitioners filed an appeal which was dismissed by the Additional District Judge, Hisar on 15.1.2014. The petitioners thereafter filed RSA No.717 of 2014 which has been dismissed on 7.3.2014.

As is apparent from the above narrative, the Civil Judge (Senior Division), Hisar, the Additional District Judge, Hisar and this Court have concurrently held that entries in jamabandis recording the petitioners' father and after him the petitioners as tenants, are

not relatable to or founded upon any right or relevant fact, like a resolution creating a tenancy in favour of petitioners' father, or any evidence of the execution of any lease deed/pattanama or even any evidence of payment of rent @ Rs.10/- per harvest per annum.

Reverting to the facts, the Gram Panchayat, armed with the decree passed by the Civil Judge (Junior Division) Hisar, filed an application under Section 7 of the Act, for eviction of the petitioners. The application was allowed by the Assistant Collector 1st Grade, Hisar, on 6.2.2012, by relying upon the decree holding that entries in the revenue record, recording the petitioners' as tenants, as illegal and ordering the petitioners' eviction and imposing a penalty of Rs.10,000/- per acre, per annum. The petitioners filed an appeal which was dismissed for failure of petitioners to deposit the amount of penalty. The petitioners filed Civil Writ Petition No.5676 of 2012, which was allowed on 31.10.2012, by setting aside the order passed by District Collector, Hisar, and remanding the matter to the District Collector, Hisar, to decide the appeal within three months. The District Collector eventually dismissed the appeal filed by the petitioners, hence, the present writ petition.

The petitioners challenge to the eviction orders is, primarily, based upon entries in jamabandis from 1960-61, onwards, recording the petitioners' father and after his demise, the petitioners as tenants of the Gram Panchayat, on payment of rent @ Rs.10/-per annum per harvest. The petitioners have also raised a plea of res judicata/ issue estoppel, based upon dismissal of two earlier petitions, filed by the Gram Panchayat, under Section 7 of the 1961

Act and press into service two civil court decrees restraining the Gram Panchayat from interfering in the possession of the petitioners on the premise that they are tenants of the Gram Panchayat.

As already recorded, Hari Singh, the petitioners' father, was, admittedly, recorded as "Gair Marausi" on payment of rent @ Rs.10/- per acre, per harvest, i.e., a tenant. The Gram Panchayat, instead of getting this entry set aside, by filing a declaratory suit, as prescribed by Section 45 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the 1887 Act") or filing a suit under Section 13-A of the 1961 Act, for declaration of its title, chose to file petitions under Section 7 of the 1961 Act, which, in view of the existing revenue entry, recording the petitioners' father and after his demise the petitioners as tenants on payment of rent, were rightly dismissed. The Civil Court, decrees, dated 2.2.2008 and 3.2.2010, restraining the Gram Panchayat from dispossessing the petitioners, except in due course of law, were rightly recorded as they are also based upon the then existing entries in jamabandis recording Hari Singh and after his demise, the petitioners as tenants of the Gram Panchayat but as, admittedly, the Civil Judge (Senior Division), Hisar, has, by judgment and decree, dated 8.9.2010, set aside the revenue entries recording the petitioners as tenants and the appeal filed by the petitioners, against this judgment and decree, has been dismissed by the Additional District Judge, Hisar, on 15.1.2014 and the Regular Second Appeal No.717 of 2014 on 7.3.2014, filed by the petitioners, challenging judgments and decrees passed by the Civil Judge, Hisar, and the Additional District Judge, Hisar, has also been

dismissed, the revenue entries recording the petitioners' father and after his demise, the petitioners as tenants of the Gram Panchayat which are the foundation of the petitioners' case, the earlier orders passed under Section 7 and the civil court decrees have ceased to exist. The very foundation of the petitioners' case that they cannot be evicted under Section 7 of the Act as they are tenants of the Gram Panchayat no longer subsists or is available as an argument to impugn the eviction order.

The petitioners' pleas of *res judicata* or issue estoppel, based upon dismissal of petitions, filed under Section 7 of the Act and Civil Court decrees restraining the Gram Panchayat from interfering in the possession of the petitioners are, as already held, based upon revenue entries that are no longer in existence, and, therefore, also not available to the petitioners while impugning the eviction order.

We, therefore, find no reason, whether in fact or in law, to grant any relief to the petitioners, particularly in view of the declaration, affirmed upto this Court, that entries in jamabandis recording the petitioners' father as a tenant on payment of rent of Rs.10/- per harvest per annum, are illegal. The judgments relied by the petitioners are also irrelevant in view of these findings.

The point that survives and requires consideration is the legality of the penalty of Rs.10,000/- per acre per annum, i.e., Rs. 3,19,568/- w.e.f. 24.10.2000. Counsel for the petitioners has argued that penalty has been imposed without assessing the benefit derived, without any notice to the petitioners to show cause against the

proposed assessment and though, a debt can only be recovered for three years, recovery has been ordered for a period of 12 years.

A perusal of the impugned order reveals that the Assistant Collector, has imposed a penalty of Rs.10,000/- per hectare, per annum from the year 2000 under Section 7(2) of the 1961 Act which reads as follows:-

“ 7. Power to put Panchayat in possession of certain lands:-

(1) XX XX XX

(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.”

Section 7(2) of the 1961 Act requires the Assistant Collector of the First Grade to make an assessment of penalty by reference to the benefit derived from the land in possession of an unauthorised occupant. A perusal of the impugned order reveals that the Assistant Collector has not referred to any fact, that would enable us to hold that the figure of Rs.3,19,568/- has been calculated by

reference to the benefit derived by the petitioners. As regards the argument that penalty cannot be recovered for a period beyond three years, suffice it to state, that a penalty is not a debt. The penalty, under Section 7 of the Act, is in the nature of charges, to be recovered for unauthorised use and occupation of public property, namely, property belonging to a Gram Panchayat. The law of limitation that prohibits recovery of a debt after three years, does not apply to a penalty under Section 7 of the Act.

Consequently, we hold that that the revenue entries having been set aside, the petitioners are unauthorised occupants and have been rightly ordered to be evicted, from the land in dispute but as the order imposing penalty has been passed without reference to the benefit derived, the impugned orders are affirmed, insofar as they direct the eviction of the petitioners, but are set aside, insofar as they relate to the assessment of penalty. The writ petition is, therefore, partly allowed and the matter is remitted to the Assistant Collector of the First Grade, Hisar, for a fresh determination of the penalty, in accordance with law, after serving notices upon the petitioners. The eviction order be implemented, within two months of the receipt of a certified copy of this order.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

July 29th , 2015
VK