

CWP No. 6373 of 1994. [O&M]
Date of Decision: 20th January, 2016.

Petitioners through
Mr. Ashok Verma, Advocate

Gram Panchayat Jarthal & Ors. Respondents through
Mr. S.S.Khurana, Advocate for
respondent No.1.
Ms. Kirti Singh, Deputy AG, Haryana

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SURYA KANT, J. [ORAL]

[3]. The respondent – Gram Panchayat claiming itself to be the owner of suit land filed the eviction petition alleging that the petitioners are trespassers and in its un-authorised possession.

Since there was an injunction decree passed by the Civil Court not to dispossess the petitioners except in the due course of law, a resolution was passed and eviction proceedings were initiated.

[4]. The petitioners contested the proceedings mainly on the ground that the Gram Panchayat had no concern whatsoever with the suit land which was in the lawful possession of the *Dholidar* who had executed a 99 years' lease in their favour on 08th February, 1985 for a sum of ₹42000/- and, thus, the petitioners entered into possession of the land lawfully as lessees of the *Dholidar*. The petitioners' plea that the Gram Panchayat had given the land as a '*Dholi*' and it was left with no right, title or interest therein did not find favour with the Assistant Collector 1st Grade who passed the eviction order. The petitioners' appeal was also turned down by the Collector *inter-alia* referring to the Jamabandi for the year 1986-87 in which the subject land was duly recorded as '*shamlat-land*'.

[5]. This Court though granted *ad-interim* injunction against dispossession, but the petitioners have been restrained from cutting the trees from the land.

[6]. The petitioners' case rests upon the alleged lease-deed dated 08th February, 1985 [P-3] said to have been executed by Laxman Dass Chela Maharam Dass Chela Shri Chhabil Dass – *Dholidar*, resident of village Panchgawan, Tehsil & District Rewari, who is said to have given the entire land to them for 99 years' lease for a consideration of ₹42000/-, out of which ₹36000/- were allegedly received in 'advance'.

[7]. As against it, the Gram Panchayat's claim relied upon the

entries in the revenue record. In the Jamabandi for the year 1986-87 or 1991-92, the subject land is recorded to be owned by '*Panchayat Deh*' and cultivated by Laxman Dass Chela Maharam Dass Chela Shri Chhabil Dass who is recorded as '*Dholidar*' without payment of rent "on account of charitable purposes".

[8]. We have heard learned counsel for the parties at a considerable length and gone through the record.

[9]. The first issue that deserves to be clarified is as to who is a '*Dholidar*'? *Dholidar* is a person to whom rent free grant is given by the village community for benefit of temple, mosque and shrine or for rendering any requisite service. [See: **Durga Dass alias Dawarka Dass Chels v. Commissioner, Hisar Division, Hisar (2012) 2 PLR 394**]. It is undeniable that decades ago in the rural areas like Petitioners' village there used to be acute scarcity of drinking water for inhabitants and cattle both. A part of the community land meant for common purposes used to be given for setting up '*Piyau*' [place for drinking water of human beings] and '*Dholi*' where drinking water for the domestic cattle was collected. Some cultivable agricultural lands were also attached to the '*Piyau*' or '*Dholi*' for the sustenance of the person/his family who was entrusted with the responsibility of running the said *Piyau* or *Dholi* without any further remuneration. It was actually a purely charitable social service rendered mostly by the poor to whom the Gram Panchayat/community would give some adjoining land for their survival. This is how the land in dispute in the instant case was also given to a *Mahant* [religious person] who did not have any natural hereditary lineage and whose estate was to be

inherited following the practice of Guru to Chela [disciple]. It is for this precise reason that the first *Dholidar* recorded in the revenue record is Chhabil Dass from whom the subject land came to his Chela – Maharam Dass and then to his Chela Laxman Dass.

[10]. It is worth noticeable that the land given to a *Dholidar* continued to be owned by the village community or the Gram Panchayat but the person in whose favour interest like *Dholi* was created were duly protected and were given the status like an 'occupancy tenant' under Section 4[1] and [3] of the 1961 Act, the relevant part whereof is extracted below:-

“4. Vesting of rights in Panchayats and non-proprietors.

- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,-

(a) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at the commencement of this Act, vest in a panchayat constituted for: such village, and where no such panchayat, has been constituted for such village; vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the

panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the -

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars.....”

[11]. As regard to the ownership of Gram Panchayat qua the subject land, the petitioners can not be permitted to blow hot and cold for the reason that in their civil suit [R-1] titled as **Mohan Lal & Ors. Vs. Gram Panchayat & Ors.** filed against the Gram Panchayat as well as their *Dholidar/lessor*, they themselves averred in Para No. 2 as follows:-

“2. That the owner of the agricultural land mentioned in Para No. 1 of the plaint except the land comprised in Rect No. 25, Killa No. 26[2-2], Gair Mumkin Chah Pukhta which vest in respondent No. 3, is respondent No. 1 but respondent No. 3 is cultivating the land as Dholidar without any rent for the purpose of 'Punarth' and on the land comprised in Rect. No. 25, Killa No. 26 mentioned in Para No. 1 of the plaint he has made 'Pukhta Chah' and in lieu of that cultivation he arranges the drinking water for the cattle from that”.

[12]. Since the Gram Panchayat which gave the land to the *Dholidar* for a specific common purpose, namely, to provide drinking water to the domestic animals/cattle and the *Dholidar* apparently failed to perform that duty and instead of utilising of the land for the given purpose, he is claimed to have leased out it to the petitioners,

the relationship of *Dholi* between the Gram Panchayat and the *Dholidar* stood terminated. It lost its legal sanctity and was no longer subsisting in the eyes of law. We say so for the reason that there was no power given to a *Dholidar* expressly or impliedly to sublet the land and that too for a purpose other than *Dholi*.

[13]. This Court in **Om Parkash and another v. Commissioner, Ambala Division, Ambala and others (2015) 4 PLR, 333** held that*"The right to create a "Dholi" flows from custom but the terms and conditions of a Dholi are settled by private covenant, leaving it to each settler to prescribe his particular set of conditions. The recipient of a Dholidari grant is required to discharge, in return, certain religious, social or charitable obligations. A Dholi may be temporary but subsists only so long as the "Dholidar" continues to perform his obligation. A Dholi tenure is inalienable but whether it is heritable and in what manner, depends upon the terms & conditions of a Dholi."*

[14]. A Division Bench of Lahore High Court in **Sewa Ram v. Udegir (AIR 1922 Lah. 126)**, considered the concept of '*Dholi*' and it was held that '*dholi*' tenure may be a rent free grant for the benefit of a temple or mosque or shrine or to a person for religious purpose and the grant continues till the holder carries out the duties of his office and can be terminated on failure to carry out the said duties. The petitioners' contention before this Court that the Gram Panchayat was not the owner of the land or that the eviction petition was maintainable, thus, has no legal or factual basis and merits outright rejection.

[15]. The subsequent amendment in the 1961 Act or any other Statute conferring ownership rights on the *Dholidar* also does not improve the petitioners' case for two reason. Firstly, the *Dholi* in the instant case stood terminated way back when the *Dholidar* stopped using the land for the defined purpose. Secondly, the right, if any, conferred under the amended Statute can be availed only by the person in whom such right is vested. The petitioners thus have no right or interest to retain possession so long as the alleged lessor-Dholidar has not perfected his title. No order declaring Laxman Dass as owner of the subject land has been produced before us.

[16]. Faced with this, learned counsel for the petitioners contends that though the Gram Panchayat had passed a resolution claiming penalty of ₹250/- per annum per acre but the Assistant Collector has imposed a penalty @ ₹15000/- per annum, i.e., about ₹4000/- per acre. We have given our thoughtful consideration to the submission and are of the view that no interference in this regard is called for as the petitioners have been enjoying possession of the subject land all these long years. The only concession that can be granted to them is that let such penalty be deposited by them for the subsequent period also at the rate as was fixed by the Assistant Collector without any further revision.

[17]. Learned counsel for the petitioners then urges that out of the total 38 kanals 14 marlas land, a 2 kanals 2 marlas land was the private property of Mahant Laxman Dass, where they are said to have constructed a house and no eviction proceedings with regard to that piece of land could be filed by the Gram Panchayat.

[18]. It is not expedient for this Court to express any views on the afore-said plea for want of relevant material on record. The authorities are directed to ascertain the correct facts and if it is found that 2 kanals 2 marlas land was actually owned by a private person who is said to have leased out the same to the petitioners, in that event, they need not be dispossessed from such land pursuant to the impugned eviction orders.

[19]. With liberty afore-mentioned, the writ petition is dismissed. Dasti.

(SURYA KANT)
JUDGE

January 20, 2016.
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(P.B.BAJANTHRI)
JUDGE