

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

-.-

**C.W.P No. 4250 of 1995 (O&M)  
Date of Decision: 18.10.2016**

Prem Singh & Ors.

..... Petitioners

Vs.

Commissioner, Punjab & Ors.

.... Respondents

**CORAM: HON'BLE MR.JUSTICE MAHESH GROVER  
HON'BLE MR.JUSTICE DR. SHEKHER DHAWAN**

Present: - Mr. Amit Jain, Advocate, for the petitioners.

Mr. Gaurav Garg Dhuriwala, DAG, Punjab.

Mr. Kanwaljit Singh, Sr. Advocate, with  
Mr. Padam Kant Dwivedi, Advocate,  
for applicant/respondent No.3.

**MAHESH GROVER, J.(ORAL)**

Present writ petition is directed against the order dated 08.09.1994. The petitioners claim to be in possession of Khasra No.33/5, 33/6, 33/7 and 34/19, total measuring 31 kanals 4 marlas prior to the year 1950 and thus, seek protection of provision Section 4(3)(ii) of the Punjab Land Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act').

The Panchayat filed proceedings under Section 7 of the Act, while petitioners filed petitions under Section 11 of the Act. The petition under Section 7, initiated by the Gram Panchayat, was dismissed, whereas petition under Section 11, filed by the petitioners, was accepted by making a reference to the revenue record to conclude that the petitioners were in

possession of the disputed land prior to the year 1950. Findings were reversed in an appeal preferred by the Gram Panchayat. It was held that Section 4(3)(ii) would render the question of possession irrelevant while deciding the question of title. Besides this it was recorded that the petitioners were not in continuous possession of the disputed land prior to the year 1961, in view of jamabandies for the years 1952-53, 66, 67, 71, 72, 76, 77, 81, 82 and 1986-87.

After hearing learned counsel for the parties, we are of the opinion that benefit of Section 4(3)(ii) is available to a person if he establishes the fact of being in cultivating possession continuously for a period of 12 years prior to 26<sup>th</sup> January 1950. For the sake of reference Section 4(3)(ii) is extracted hereunder:-

**Section 4 Vesting of rights in Panchayat and non-proprietors.-**

Section 1,2------(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) .....

(ii) rights of persons in cultivating possession of shamilat deh, for more than twelve years (immediately preceding the commencement of this Act), without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.”

On perusal of the impugned order, it is clear that the matter has been dealt cursorily, though provisions of Section 11 being mandatory require the matter to be decided in the manner of a civil suit. For the aforesaid reasons, particularly when there is no documentary evidence

available on record, we are of the opinion that it is a fit case to be remanded back for a decision afresh. Consequently, we accept the writ petition and set aside the impugned order dated 08.09.1994. Noticing that the dispute is already going on for some time and the interest of the Gram Panchayat may suffer, if the matter is delayed, we direct the Collector not to grant more than two opportunities to each party while recording the evidence. The proceedings be concluded within a period of six months from the date when the parties put in appearance. Parties are directed to put in appearance before the Collector on 10.01.2017.

**(MAHESH GROVER)**  
**JUDGE**

**(SHEKHER DHAWAN)**  
**JUDGE**

**October 18, 2016**  
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