

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4298 of 1997
Date of decision: 30.11.2016

Harbhajan Singh (since deceased) through LRs

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Amandeep Kaur, Advocate for the petitioner.

Mr. Yatinder Sharma, Addl. AG, Punjab.

Mr. Naresh Prabhakar, Advocate for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 13.03.1996 (Annexure P-6) passed by Commissioner, Jalandhar Division, Jalandhar, whereby he accepted the appeal filed by the respondent-Municipal Committee and remanded the case to the Collector for fresh decision, in the matter of ejectment under The Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 ('the Act' for short).

Notice of motion was issued by a Division Bench of this Court vide order dated 31.03.1997 and dispossession of the petitioner was stayed. Contesting respondent No.4-Municipal Committee, filed its written statement and the petitioner filed his replication thereto. Thereafter, the writ petition was admitted for regular hearing vide order dated 03.11.1997 passed by a Division Bench of this Court and interim order was ordered to continue. That is how, this Court is seized of the matter.

During pendency of the writ petition, Sh. Harbhajan Singh @ Bhajan Singh son of Bhagat Singh-petitioner died and his legal representatives were brought on record vide amended memo of parties dated 29.06.2015.

Heard learned counsel for the parties.

It is a matter of record that the land in question, on conclusion of consolidation proceedings, was kept in the category of *Jumla Mushtarkha Malkan waa Deeggar Haqdaran Hasab Raqba Khewat*. Petitioner being the proprietor of the village and in that capacity being the co-sharer in the *Jumla Mushtarkha Malkan*, was coming in cultivating possession of the land in question, as co-sharer. However, there was a stray entry in the revenue record, particularly one referred in Annexure R-1, i.e. Jamabandi for the year 1974-1975, showing the petitioner as Tenant Gair Marusi, at the consolidated lease of Rs.80/- per year, which would be of no consequence for the reason that this land had never vested in the Gram Panchayat. Since the respondent-Municipal Committee would step into the shoes of the Gram Panchayat, its status will not be any better than the Gram Panchayat. Respondent-Municipal Committee failed to prove any tenancy or the fact that it ever received any rent from the petitioner.

While filing his replication to the written statement of respondent No.4-Municipal Committee, petitioner took very specific and categorical averments in para 2 of the preliminary objections, which deserve to be noticed here and the same read as under: -

“Denied. It is submitted that respondent No.4 is not the owner of land in dispute which according to the revenue record is the ownership of “Mushtarka Malkan Waa Deegar Haqdaran Hasab Rasad Raqba Khewat” continuously with effect from the time

when the consolidation of Holdings was finalised. Vide mutation No.978 the ownership of land comprised in khasra No.29/12 was changed from “Mushtarka Malkan Waa Deegar Haqdarani Hasab Rasad Raqba Khewat” to Himmat Singh etc. Subsequently vide mutation No.1150 sanctioned on 4.3.1971 on the basis of the order passed by Assistant Director Consolidation of Holdings dated 15.7.59 the ownership of this land was again changed to Mushtarka Malkan. Similarly vide mutation No.984 khasra No.28/6 and 15 which were in cultivation of Mushtarka Malkaan were given to Naryan Singh etc. by Settlement Officer (Consolidation) vide order dated 18.3.1959. Subsequently vide mutation No.987 this land was taken out from the possession of Naryan Singh etc. and was given to Mushtarka Malkan Waa Deegar Haqdarani Hasab Rasad Raqba Khewat in compliance with the orders of Assistant Director Consolidation of Holdings dated 24.6.1959. Since then the disputed land continued to be the ownership of Mushtarka Malkan Waa Deegar Haqdarani Hasab Rasad Raqba Khewat and the ownership of this land did not vest in the Gram Panchayat at any time and the Gram Panchayat did not give this land on lease at any time. It is wrong to say that the petitioner took the land on lease from Gram Panchayat. The entry in Jamabandi Annexure R-1 cannot be relied upon and this was subsequently amended. Copy of the Jamabandi for the year 1984-85 and 1989-90 are attached as Annexure P-7 and P-7/A with this replication. The combined reading of these Jamabandis along with the Jamabandi for the year 1994-95 Annexure P-5 would clearly

show that the petitioner was in possession of the disputed land as co-sharer and the ownership of the disputed land vested in the Mushtarka Malkaan. These entries were never challenged by any proprietor or by the Gram Panchayat. It is wrong to say that the area of Municipal Committee was enlarged and the land in dispute was included in the Municipal Area. It is submitted that only the limits of Municipal Committee were extended but the ownership of the disputed land was not transferred to the Municipal Committee.”

Abovesaid strong and specific averments rightly taken by the petitioner have gone completely uncontroverted by all the respondents. Petitioner also placed on record two Jamabandis for the year 1984-1985 as Annexure P-7 and for the year 1989-1990 as Annexure P-7/A. A combined reading of both these Jamabandis, with whom the presumption of truth is attached, would make it crystal clear that in the column of ownership, it was recorded as *Mushtarka Malkaan waa Deegar Haqdaran Hasab Rasad Khewat*. In the column of cultivation, petitioner Harbhajan Singh son of Bhagat Singh was recorded as co-sharer and rightly so, it being a matter of record.

It is also pertinent to note here that these entries in the Jamabandis (Annexures P-7 and P-7/A) had never been challenged either by any resident of the village or Gram Panchayat or by the respondent-Municipal Committee before any Court of law. In this view of the undisputed fact situation obtaining on the record of the present case, it can be safely concluded that neither the land in question ever fell within the scope of the Act nor the ejectment application of the respondent-Municipal Committee was maintainable against the petitioner.

Since this basic and crucial aspect of the matter was not properly

appreciated by any of the revenue authorities and finally by the Commissioner, Jalandhar Division, Jalandhar, at the time of passing the impugned remand order dated 13.03.1996 (Annexure P-6), a manifest injustice has been done to the petitioner. A wholly unwarranted and avoidable litigation was imposed on the petitioner, at the hands of the respondent-Municipal Committee. In fact, once the land in question was not falling within the definition of public premises, the respondent-Municipal Committee would have no locus standi to move the ejectment application against the petitioner.

The only argument raised by learned counsel for the respondent-Municipal Committee that the management and control of the land in question was with the Municipal Committee, has been found wholly misplaced for the reason that there is no supporting material available on record. During the course of hearing, learned counsel for respondent No.4 could not point out to any relevant material available on record, which may support to his abovesaid solitary argument.

Once the respondent-Municipal Committee was seeking ejectment of the petitioner by moving an application under Sections 5 and 7 of the Act, onus was on the Municipal Committee to prove its case by leading positive evidence. Circumstances of the case were such that it was not possible either for the Gram Panchayat or for Municipal Committee to prove its case, thus, it failed to discharge its onus. As a matter of fact, keeping in view the nature of land in question, it being in the category of *Jumla Mushtarka Malkaan waa Deegar Haqdaran Hasab Rasad Khewat* during all this period, respondent-Municipal Committee was rightly feeling handicapped, right from day one, to bring on record any such relevant material, which may support its case. In the absence of any such material available, learned counsel for respondent No.4 was rightly

unable to advance any meaningful argument before this Court.

Under the abovesaid undisputed circumstances of the case, this Court is of the considered opinion that simply because the impugned order was a remand order, another avoidable round of litigation is not to be imposed on the parties. Neither the facts nor the law is in favour of the Municipal Committee. The land in question was the ownership of the proprietary body of the village. Petitioner was a proprietor of the village and in the capacity of being proprietor, petitioner was a co-sharer in the land of *Jumla Mushtarka Malkaan*.

It goes without saying that in the very nature of things, when the proprietors of the village contributed their land to the extent of their share in the proprietary body, in the common pool, created during the consolidation proceedings for utilization of land for common purposes of the village like school, pond, hospital and cremation ground etc. and some land remained unutilized after having been utilized for the common purposes of the village, said unutilized land had to be put only in the category of *Mushtarka Malkaan waa Deegar Haqdarani Hasab Rasad Khewat*, i.e. the source from which it came. Either the Gram Panchayat or its successor-in-interest i.e. respondent-Municipal Committee had nothing to do either with ownership or possession of such kind of land. Under these circumstances, it is unhesitatingly held that the impugned order (Annexure P-6) passed by the Commissioner, Jalandhar Division, Jalandhar-respondent No.2 cannot be upheld, by any stretch of imagination.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered

view that since the impugned remand order dated 13.03.1996 (Annexure P-6) has been found to be an order without jurisdiction, which would amount imposing another unwarranted round of litigation on the parties, the same cannot be sustained.

Accordingly, the impugned order dated 13.03.1996 (Annexure P-6) passed by the Commissioner, Jalandhar Division, Jalandhar-respondent No.2 is hereby set aside. It is held that petitioner Harbhajan Singh was not liable to be ejected at the hands of respondent-Municipal Committee. The writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, present writ petition stands allowed, however, with no order as to costs.

30.11.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No