

CWP No.11936 of 2010

[1]

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

**CWP No.11936 of 2010
Date of decision:27.05.2016**

Babu Ram

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.K.Garg Narwana, Sr. Advocate, with
Ms. Shweta Nahata, Advocate, for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Ms. Shashi Jain, Advocate, and
Mr. H.V.Jain, Advocate, for respondent Nos.5 to 8.

Rakesh Kumar Jain, J.

Bishan Dass, father of the petitioner, was allegedly in cultivating possession of the land in question under the ownership of Ishwar Dass Jain. Ishwar Dass Jain, owner of the land in question, died in the year 1993 and Bishan Dass died in the year 1997. The petitioner along with his brothers filed an application for correction of Khasra Girdawari of the land in question for the crop Khariff 1997, Rabi 1998 to till date by incorporating their names in cultivating possession as heirs of Bishan Dass. The spot was inspected by the then Tehsildar and it was found that the land in question is filled with dirty water of the town, surrounded by the factories, residential area and is not cultivable. Thus, the A.C. 2nd Grade, Panipat, dismissed the

CWP No.11936 of 2010

[2]

application on 18.08.2004 on the ground that the possession of the petitioner is not established and, therefore, correction could not be ordered in regard to cultivation by the petitioner and his brothers in place of their father. Appeal filed by the petitioner to the Collector-I, Panipat was dismissed on 28.02.2005. The Commissioner, Rohtak Division, Rohtak, in his order dated 21.03.2007, while dismissing the revision petition, also observed that an application was again filed by the petitioner on 02.03.2004 to the A.C. 2nd Grade in order to inspect the site, which was inspected by the A.C. 2nd Grade on 14.06.2004 in the presence of both the parties but it was found that the land in question has been recorded as “vacant” rather the entries of Banjar Kadim/Jadid have also been made in the revenue record. On request of the petitioner before the Collector, the site was again inspected by the then Tehsildar on 22.02.2005 and it was reported thereafter that it is filled with dirty water and part of it is filled by the growth of ‘sarkandas’. Still aggrieved, the petitioner filed the revision before the Financial Commissioner, which was dismissed on 18.05.2010 and hence, the present petition has been filed.

Counsel for the petitioner has vehemently argued that his father Bishan Dass was recorded as a ‘Gair Marausi’ in the land in question till his death in the year 1997 and as soon as he died, the petitioners along with other heirs of Bishan Dass stepped into his shoes as tenants and are continuing in possession of the land in question as there is no order of eviction against Bishan Dass or even against them by any competent authority. In support of his submissions, he has relied upon a Division

CWP No.11936 of 2010

[3]

Bench of this Court in the case of **Ram Sarup vs. Ram Chander etc.**, 1976 Current Law Journal (Civil) 103, in which it has been held that presumption of continuity of possession is to be presumed once the possession is established unless rebutted, a judgment of the Supreme Court in the case of **Ambika Prasad Thakur and others etc. v. Ram Ekbal Rai (dead) by his legal representatives and others etc.**, AIR (SC) 605 in respect of presumption of continuance as it was held therein that if a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forward and backward may sometimes be drawn, a judgment of this Court in the case of **Ram Kumar vs. Jagdish and others**, 1986 PLJ 19 (SB) in regard to continuance of possession as it has been held therein that father of the plaintiff was in possession and then it has to be shown that how and under what circumstances father of plaintiff surrendered possession and the defendants had to prove that as to when they had entered into possession, and a judgment of this Court in the case of **Mansu vs. Shadi Ram**, 1996 PLJ 2015.

On the other hand, counsel for the respondents has argued that the land in question has been recorded continuously from 1995 onwards as Banjar Qadim/Jadid and it cannot be described as “land” as provided in the Punjab Security of Land Tenures Act, 1953 and as has been held by this Court in the case of **Nemi Chand Jain vs. Financial Commissioner, Punjab and another**, 1963 PLJ 137 and in the case of **Munshi Ram etc. vs. Financial Commissioner Haryana etc.**, 1979 PLJ 182.

It is also submitted that if a finding is based upon spot

CWP No.11936 of 2010

[4]

inspection in which the Financial Commissioner has taken a possible view, then the interference is not warranted if the impugned order is not perverse or contrary to any statutory provisions or evidence on record, as has been held in the case of **Ram Niwas vs. The Financial Commissioner, Haryana and others**, 2001 HRR 396, and placed a strong reliance upon a Single Bench judgment of this Court rendered in the case of **Bhag Singh vs. Arjan Singh and others**, 1982 PLJ 9.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The application filed by the petitioner on 22.09.1998 is only for the purpose of correction of Khasra Girdawari alleging that Bishan Dass, father of the petitioner, was cultivating the land in dispute as a tenant at Will/Hissa Bill Mukta @ ₹150/- per year and after the death of Bishan Dass on 23.04.1997, the petitioner has entered into possession as a tenant and is in possession at the spot. It is alleged in the application that the petitioner had many times asked the respondents for correction of Khasra Girdawari but to no effect and hence, the application was filed.

Chapter 9 of the Punjab Land Records Mannual and Chapter IX of the Punjab Land Administration Mannual deals with the preparation of Khasra Girdwaris on the basis of crop inspection. It is not in dispute that the land in question has been inspected thrice, every time in presence of both the parties and has been found to be infested with 'sarkandas', dirty stagnated water and surrounded by industrial and residential area. The land is described as Banjar Qadim/Jadid in the revenue record, meaning thereby

CWP No.11936 of 2010

[5]

it has not been put to use for which it has allegedly taken on rent by Bishan Dass (since deceased).

In view of the aforesaid facts and circumstances, the judgments relied upon by the petitioner are not at all applicable rather the judgments relied upon by the respondents especially in **Bhag Singh's case (supra)** is squarely applicable, in which the following observations have been made:-

“2. After hearing the counsel of the parties, I am of the view that this appeal deserves to succeed. After going through the entire record of the case, I find that in Khasra Girdawari Exhibit D-4, which is for the period Kharif 1952 to Rabi 1956, in the column of possession Arjan Singh and others are shown, but so far as the other entries as to the crop sown, or whether cultivation was being done on the land in dispute, the columns are blank. Therefore, it is not shown that during the aforesaid period the defendants cultivated the land in dispute, because for agricultural land, the occupation would only be by cultivation. In the absence of cultivation it will be presumed that the owner of the land was in possession. Therefore, the rule of continuity of possession would not arise in such a case.”

In view thereof, I do not find any reason to take a different view from what has been taken in **Bhag Singh's case (supra)** and hence, the present petition is hereby dismissed being denuded of any merit.

May 27, 2016
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(Rakesh Kumar Jain)
Judge