

HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.23230 of 2014
Date of decision:13.7.2016

Surinder Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Ajay Jain, Advocate for the petitioners.
Mr.R.S.Doon, AAG, Haryana.
Mr.R.A.Sheoran, Advocate for respondents No. 1 to 4.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant writ petition is directed against the order dated 25.8.2014 (Annexure P-5), passed by the Financial Commissioner Revenue, Haryana, whereby he set aside the ejectment orders, which were passed by the subordinate revenue authorities, directing ejectment of private respondents No. 5 to 12. Petitioners claim that they have purchased the land and on the basis thereof, they sought ejectment of the tenants-respondents, because the tenants did not pay 1/3rd share of the crop towards rent.

Facts of the case are hardly in dispute. Tenants-respondents were admitted to be old tenants on the suit land. Nobody ever sought their ejectment and they were recorded as *Gair Marausi* (tenants at will). In the column of rent, 0.70 paisa per *Bigha Pukhta* was recorded. In the jamabandi for the year 1953-54, father of the private respondents-tenants was recorded as tenant and in the column of rent, *Lagan Parta Sarkari*, i.e. only land revenue, was recorded. Respondents-tenants inherited the tenancy.

It is nobody's case that tenants were ever sought to be dispossessed or ejected by anybody all through. The present petitioners claim to have purchased the land in the year 1990 and filed the ejectment petition against the private respondents-tenants without joining other co-sharers.

It is a matter of record that the land had not been partitioned and in addition to the petitioners, there are other co-sharers. It is also a matter of record that *Batai Tehai* (1/3rd share) had never been recorded in the column of rent, in any revenue document at any point of time. In spite of the above-said undisputed fact situation obtaining on the record, Assistant Collector 1st Grade, Charkhi Dadri vide his order dated 11.8.2003, ordered the ejectment of private respondents-tenants. They filed appeal which was dismissed by the Collector vide his order dated 26.5.2005 (Annexure P-3). Their revision also failed before the Commissioner, Hisar Division, who passed the order dated 7.8.2009 (Annexure P-4). The above-said orders were challenged by the tenants before the Financial Commissioner by way of ROR No.106 of 2009, which came to be allowed by the Financial Commissioner Revenue, Haryana, by passing the impugned order dated 25.8.2014 (Annexure P-5). Hence this writ petition, at the instant of the land-owners.

Heard learned counsel for the parties.

So far as the above-said material facts are concerned, learned counsel for the petitioners could not dispute any of the facts and rightly so, it being a matter of record. During the course of hearing, when he was confronted as to what was the basis for ejectment, particularly when *Batai Tehai* had never been recorded in the column of rent in any of the revenue documents, he had no answer and rightly so, it again being a matter of

record. This material fact itself would go a long way to show that the very ejectment petition was factually incorrect and misconceived. The very basis of ejectment was contrary to the revenue record.

The tenants-respondents were recorded in the revenue record as tenants at will. Other co-sharers were also not impleaded and in such a situation the ejectment petition was not even maintainable. Since Assistant Collector 1st Grade, Collector as well as Commissioner exceeded their jurisdiction, while passing the ejectment orders, which was running contrary to the revenue record, Financial Commissioner committed no error of law, while setting aside the said ejectment orders. The impugned order passed by him is strictly in accordance with law and the same has not been found to be suffering from any patent illegality or perversity, which deserves to be upheld.

The cogent findings recorded and relevant observations made by the Financial Commissioner Revenue, in the impugned order dated 25.8.2014, deserve to be noticed here and the same read as under:-

“Ishwar Singh and others have filed this revision petition in the Court of Financial Commissioner Haryana. They have submitted that respondents have purchased 1/3rd share of total land of 16 Bigha, 4 Biswa. That in the Naksha Jhar Paridawar the amount since 1993 to 1996 was assessed at Rs.55,490/- for the land 16 Bigha, 4 Biswa and calculated 1/3rd Batai Rs.18,496.70. That Courts below have not considered that the respondents are owner of 5 Bigha, 4 Biswa of land. The respondent could have got prepared the Naksha Jhar Paidawar of 5 Bigha, 4 Biswa. Courts below have not considered this fact. Petitioners have been ordered to deposit the 1/3rd Batai of 16 Bigha, 4 Biswa. Thus the findings of Lower Courts are erroneous. That Sahi Ram father of petitioners was recorded as Gair Marusi Thinnet and 0.75

paisa per Bigha Pukhta as rent has been shown. For the year 1953-54 and in subsequent Jamabandis father of petitioners has been shown Lagan Parta Sarkari i.e. only land revenue. The tenancy was inherited by the petitioners but the Court below have totally ignored the revenue record and passed the ejectment order. There was no rent of Batai recorded in the revenue record in the name of previous owner. That there are 8 co-sharers in the impugned land and only the respondents who are having 1/3rd share which was purchased in 1990 have filed the ejectment petition which is not maintainable without joining the other co-sharers. Respondents cannot claim the specific khasra numbers of land without partition of land.

Arguments of both the counsels were heard. The counsel for petitioner argument that respondents have 1/3rd share of total land of 16 Bigha, 4 Biswa. That they are tenant since 1954 and have acquired occupancy rights. The counsel for the respondents argued that petitioners have not paid Batai Tihai hence the ejectment order has been passed by the Lower Court. He further argued that petitioners' appeal/revision has been dismissed by Collector Bhiwani and Commissioner Hisar Division.

I have heard the arguments of both the Counsels and perused the record of this case. The Khasra Girdwari for the year 1958-62 shows Kirori Mal and others as owner and Sahi Ram as cultivator. The Khasra Girdwari for the year 1962-66 shown Sahi Ram as Gair Marusi 75 naya paisa per Bigha Pukhata Sal Tamam. Khasra Girdwari for the year 1968-73, 1973-78, 1978-83, 1983-88, 1988 to 1993 shows the petitioners as Gair Marusi. No mention is made of any Batai Tihai in the Khasra Girdwari from 1968 to 1993. The respondents have purchased 1/3rd share of 16 Bigha and 4 Biswa of land. The land has not been partitioned among co-shares.

From above it is clear that petitioners have not paid any rent since year 1968. Therefore, they are not liable to pay any

rent to the respondents. In view of this revision petition is accepted. The orders dated 11.08.2003 passed by Assistant Collector 1st Grade, order dated 26.05.2005 passed by Collector Bhiwani and order 07.08.2009 passed by Commissioner Hisar Division are set-aside.”

Despite making his best efforts, learned counsel for the petitioners could not point out any illegality in the impugned order passed by the Financial Commissioner, with a view to make out a case for interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. No prejudice has been shown to have been caused to the petitioners. Neither Financial Commissioner has exceeded his jurisdiction nor he has committed any illegality, while passing the impugned order and the same deserves to be upheld for this reason as well.

It is neither pleaded nor argued case on behalf of the petitioners that the respondents-tenants had not been paying *Lagan Parta Sarkari*. In fact, land revenue has been abolished in the State of Haryana even before the petitioners purchased the land. In this view of the matter, there was no scope at the hands of the petitioners to allege against the tenants-respondents that they were not paying the rent. This was the material entry in the revenue record, i.e. Jamabandi, recorded right from 1953-54, wherein father of the respondents-tenants was recorded as *Gair Marusi* and in the column of rent, it was recorded as *Lagan Parta Sarkari* (only land revenue).

In view of what has been discussed hereinabove, this Court feels no hesitation to conclude that the tenants-respondents never made themselves liable for ejectment. The impugned order passed by the Financial Commissioner Revenue is based on true facts as well as in

accordance with the settled principles of law and the same deserves to be upheld for this reason also.

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 the impugned order dated 25.8.2014 passed by the Financial Commissioner Revenue, Haryana (Annexure P-5) deserves to be upheld. The instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

13.7.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE