

CWP No. 23218 of 2015. [O&M]
Date of Decision: 27th January, 2016.

Petitioners through
Ms. Rakhi Sharma, Advocate

Respondents through
Mr. Rajesh Bhardwaj, Addl.AG, Punjab
Mr. V.K.Sandhir, Advocate, for Gram
Panchayat, Kamaska.

**CORAM:HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B.BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

[2]. The petitioners who are residents of village Kamaska, Tehsil Ajnala, District Amritsar have been ordered to be evicted from the subject land, fully detailed in Para No. 4 of the writ petition, situated within the revenue estate of village Khizarpur, Tehsil Ajnala, District Amritsar. The eviction orders have been passed at the instance of the Gram Panchayat of their village in the petitions filed under Section 7 of the Punjab Village Common Lands [Regulation] Act, 1961. The appeal has also been turned down by the Commissioner-cum-Appellate Authority by way of common order whereby several appeals were decided and the facts of only one

case have been referred to.

[3]. When this case came up for hearing, their learned counsel made a reference to the old revenue record to manifest that the predecessor-in-interest of the petitioners – late Atma Singh was in individual cultivating possession of the subject land much before 26.01.1950. The Jamabandi for the year 1938-39 was relied upon to substantiate the plea. We, thus, directed the Tehsildar, Ajnala to remain present along with original revenue record and give us full description of the land which was owned by late Atma Singh.

[4]. The Tehsildar, Ajnala appeared along with record and on our asking, he has prepared a status report by way of his affidavit along with translated version of the revenue record from the year 1938-39 onwards. We appreciate the efforts made by Shri Arvind Parkash, Tehsildar, Ajnala, who has done a commendable job. His report is taken on record.

[5]. The efforts made by counsel for the petitioners are equally laudable. She has now pointed out that for effective determination of the controversy, the record even prior to 1938-39 needs to be scrutinised as the subject land was purchased by the then inhabitants of the village in the year 1865 and there are entries even prior thereto which are relevant, having a direct bearing on the *lis*.

[6]. If that is so, it is a clear case of contentious question of title dispute which ought to have been decided by the Collector in exercise of powers conferred under Section 11 instead of summary proceedings under Section 7 of the 1961 Act.

[7]. Learned counsel for the petitioners states that they are willing to avail the remedy under Section 11 and so as to seek declaration of the title in their favour.

[8]. Having heard learned counsel for the parties, we are satisfied that the petitioners can not be evicted through summary proceedings without first deciding the title dispute. These writ petitions are accordingly allowed in part with a direction that the impugned eviction orders shall be kept in abeyance and be not acted upon until the title dispute between the parties reaches to its logical conclusion. The aforesaid direction is further subject to the caveat that the petitioners shall file the petition[s] under Section 11 within three months from the date a certified copy of this order is received and the same shall then be decided in accordance with law and after taking into consideration the entries in the revenue record as they existed in the year 1855 onwards.

[9]. The Collector shall be obligated to formulate specific issues, consider the entries in the revenue record on year to year basis and then return his findings.

[10]. Needless to say that dispossession of the petitioners shall remain stayed, though they shall also not create third party rights.

[11]. Disposed of. Dasti.

(SURYA KANT)
JUDGE

January 27, 2016.
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(P.B.BAJANTHRI)
JUDGE