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

**RSA-3229-2013 (O&M)
Date of decision : 01.02.2016**

Municipal Corporation Gurgaon

...Appellant

Versus

Khawan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Kumar Bura, Advocate
for the appellant.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Harsh Bungar, Advocate
for respondent No.2.

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

AMIT RAWAL, J. (ORAL)

The appellants are aggrieved of the concurrent finding of fact, whereby the suit filed by the respondents-plaintiffs has been decreed and they have been declared as owner in possession of a suit land bearing Khewat No.255, Khatoni No.350, Khasra No.597, measuring 1 bigha and 7 biswas, situated within the revenue estate of village Nathupur, Tehsil and District Gurgaon and the defendants have been held to be having

no right, title or interest over it and the entries in the revenue record in the name of Civil Panchayat deh have been held to be illegal and not binding upon the plaintiffs and with a further direction that the entries are liable to be corrected in their favour and injuncting the defendants from creating any obstruction in use and occupation over the suit property aforementioned.

Mr. Ashwani Kumar Bura, learned counsel appearing on behalf of the appellant-Municipal Corporation, Gurgaon, submits that as per the jamabandi Ex.P-11 onwards, the nature of the land is *banjar kadim*, and therefore, the respondents-plaintiffs could not establish their ownership right in view of the Erstwhile Act, namely Punjab Tenancy Act, 1868, much less, on the appointed day of the new Act, namely, the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (herein after called 'the Act No.8 of 1953'). They have not been shown to be tenants but as *maurausi* tenants i.e. without any rent and, therefore, the right in the property could not be converted into proprietorship/ownership. No proof of ownership/proprietorship has been placed on record, yet the Courts below decreed the suit. No evidence has come on record to show that the predecessor-in-interest of the plaintiff, namely, Khacheru was declared as owner in the year 1939, the nature of the land was *banjar kadim*, and *banjar kadim* would not clothe the tenants' right into ownership as per the provisions of the aforementioned Act and submits that the aforementioned facts have totally been misread and misdirected by both the Courts below and

thus, the substantial questions of law arises for the determination of this Court.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Harsh Bunker, learned counsel appearing on behalf of respondent No.2, submits that owing to the promulgation of the Act No.8 of 1953, the appointed date of the Act was 15.06.1952 and the same came into force on 15.04.1953. In support of his contentions, he has drawn the attention of this Court to the definitions 2 (i) to show that the on appointed day would mean any tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant of any land in the revenue records would be 15.06.1952. As per Section 2-f of the Act No.8 of 1953, occupancy tenant means, a tenant, who immediately before the commencement of this Act, in the revenue records, would be included as an occupancy tenant and obtained a right of occupancy in respect of the land held by him whether by an agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors-in-interest of an occupancy tenant. Section 3 of the Act No.8 of 1953, prescribes that the proprietary rights in occupancy tenant would deem to vest in the occupancy tenant free from all encumbrances. The stray entry reflected in the jamabandi for the year 1990-91 (Ex.P-11) at the back of the plaintiffs, would not clothe the character and nature of the property as *banjar kadim*, for, the revenue record, pre-settlement and post-settlement, shows the

nature of the property as *magda* and even in the jamabandi for the year 1899-1900 Ex.P15, the nature of the land is also shown as *magda* and Chetram, Bhulla and Moti sons of Ram Baks have been shown to be tenants without any rent. In this regard, he has drawn the attention of this Court to the various revenue record which has been noticed by both the Courts below and thus, submits that no substantial questions of law arises for the determination of this Court, much less, there is no illegality and perversity in the order. In support of his contentions he has relied upon the judgment rendered by the Full Bench of this Court in **"Shiv Charan V/s Financial Commissioner, Haryana and others" 2004 (4) RCR (Civil) 543** and submits that the trial Court would have a jurisdiction to adjudication of the nature of the *lis*, much less, the stray entry in the revenue record is not sufficient for ascertaining the character and nature of the land.

I have heard the learned counsel for the parties and appraised the paper book.

I am of the view the appeal deserves to be dismissed for the following reasons:

Section 2 (a)(i) and (f) of the Act No.8 of 1953 read thus:

"(i) in relation to any tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant of any land in the revenue records, on the 15th day of June, 1952.

(f) "occupancy tenant" means a tenant who, immediately

before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant."

On conjoint reading of the aforementioned provisions, it leave no manner of doubt, that on the appointed day, all the rights and interest in the property of the tenant including the share in the shamilat deh would deem to vest in the occupancy tenant free of any encumbrances. The revenue record Ex.P-15, the jamabandi for the year 1899-1900, show the entry in the column of possession, of Chetram, Bhulla and Moti sons of Ram Baks, who are the predecessors-in-interest of the plaintiff and nature of the land as *magda*. Similar position has been shown in the jamabandi for the year 1906-07 (Ex.P16), 1939-40 (Ex.P-2), 1946-47 (Ex.P-4), 1956-57 (Ex.P-6), 1965-66 (Ex.P-7), 1970-71 (Ex.P-8), 1980-81 (Ex.P-9). As per the jamabandi for the year 1899-1900 (Ex.P-15), Chetram, Bhulla and Moti sons of Ram Baks have been shown as occupancy tenants as per the provisions of the Punjab Tenancy Act, 1868 and the subsequent jamabandis, as referred to above, show their possession as *maurausi* and the nature of the land has also been shown to be *magda* and not *gair mumkin*. The aforementioned documentary evidence has been noticed by both the Courts below for arriving at the concurrent finding of the fact. I am

fortified by the judgment rendered by the Single Bench of this Court in **"State of Punjab and others V/s Gian Chand" 2010(3) RCR (Civil) 659,** to contend that history entry in the jamabandi would not take away the proprietary right of a tenant. The appellant-defendant has failed to lead the evidence as to how the subsequent entries in the revenue record were changed from *magda* to *banjar kadim*. No order in this regard has been placed on record, much less, to show that the order, if any, was passed after hearing respondents-plaintiffs.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, as these are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

01.02.2016
yogesh

(AMIT RAWAL)
JUDGE