

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

C.W.P. No.14001 of 1993 (O&M)

Date of Decision:- 01.08.2017

Ram Piari and others

... Petitioners

VS.

State of Haryana and others

.... Respondents

**CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. L.N. Verma, Advocate for the petitioners.

Mr. Vivek Saini, DAG, Haryana.

Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate for respondent No.4.

SUDHIR MITTAL, J.

The petitioners have filed the present writ petition challenging orders dated 29.9.1992 (Annexure P-2) and 30.8.1993 (Annexure P-3) passed by the Assistant Collector Ist Grade, Gurgaon and the Collector, Gurgaon, respectively.

The petitioners are sons of Ram Dayal son of Nanwa. They had sought declaration of their title to the property in dispute under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 as applicable to Haryana (hereinafter referred to as 'the 1952 Act') vide Civil Suit No.558 of 1990. The said suit was decided *ex parte* vide judgment and decree dated 11.6.1990 and it was declared that the petitioners have acquired proprietary rights on the land in dispute by virtue of the 1952 Act.

Thereafter, respondent No.5 preferred an application under Section 7 of the

Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act') for eviction of the petitioners on the ground of being in unauthorized occupation of the land in dispute. The application filed by respondent No.5 was allowed vide order dated 29.9.1992 (Annexure P-2) by the Assistant Collector Ist Grade, Gurgaon, holding that the petitioners were in unauthorized occupation of *Shamlat Deh* and, thus, their eviction was ordered. The petitioners filed an appeal challenging above-said order of eviction, which was dismissed by the District Collector, Gurgaon, vide order dated 30.8.1993. Meanwhile, respondent No.4 i.e. Gram Panchayat had filed Civil Suit No.85 on 15.2.1991 challenging the Civil Court decree dated 11.6.1990 passed in favour of the petitioners. This suit was decreed vide judgment and decree dated 3.12.1996 and the judgment and decree dated 11.6.1990 was declared to be illegal, null and void.

Learned counsel for the petitioners has argued that the predecessor-in-interest of the petitioners, namely, Ram Dayal s/o Nanwa was in possession of the land in dispute for more than 12 years immediately preceding the commencement of the 1961 Act without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon. He places reliance upon the jamabandi for the years 1941-42, 1945-46, 1954-55 and 1958-59 in support of his arguments. He further states that the revenue Courts below have committed a gross error of jurisdiction by not making a reference to this revenue record while deciding the instant case.

The said argument has been rebutted by learned counsel for the Gram Panchayat by stating that no such argument was raised before the

revenue Courts at the time of deciding the petition under Section 7 of the 1961 Act.

We have heard the learned counsel for the parties and carefully perused the record. Section 4 (3) of 1961 the Act is reproduced below for ready reference:-

(3) Nothing contained in clause (a) of sub-section (1) and in sub section (2) shall affect or shall be deemed ever to have affected the :-

(i) existing rights, title or interests of persons who, though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or

otherwise, such as Dholidars, Bhondedars, Butimars, Basikhopohus, Saunjidars, Muqarrirdars;

(ii) rights of persons in cultivating possession of Shamilat deh, on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

It is evident from the above provision that even a person who has been in cultivating possession of 'Shamlat Deh' land for more than 12 years on the date of commencement of the Punjab Village Common Lands (Regulation) Act, 1953 cannot be evicted therefrom. In respect of such a person, a petition under Section 7 of the 1961 Act would not be

maintainable at all. Jamabandies for the years 1941-42, 1945-46, 1954-55 and 1958-59 clearly show the possession of Ram Dayal s/o Nanwa (predecessor-in-interest of the petitioners) on the land in dispute at least since 1941-42. This crucial evidence has not been dealt with by either of the Courts below. Further, in the light of this evidence, whether a petition under Section 7 of the 1961 Act would be maintainable has also not been gone into.

In view of the above factual and legal position, we are of the view that orders impugned in the present writ petition dated 29.9.1992 and 30.8.1993 (Annexures P-2 and P-3) are not sustainable and are accordingly set aside. The matter is remanded to the Court of S.D.M.-cum-Assistant Collector 1st Grade, Ferozepur Jirka, District Gurgaon, for deciding the case afresh after affording adequate opportunity of hearing to the parties.

The parties, if so advised, may also produce additional evidence in support of their respective cases.

This exercise is directed to be completed expeditiously and preferably within a period of six months from the date of receipt of a certified copy of this order.

The writ petition is allowed in the above terms.

(SUDHIR MITTAL)
JUDGE

(SURYA KANT)
JUDGE

August 01, 2017
poonam

Whether speaking/Reasoned

Yes

Whether Reportable

Yes

**C.M. Nos.871 and 4064 of 1998 and 12639 of 1997 in
C.W.P. No.14001 of 1993 (O&M)**

Ram Piari and others vs. State of Haryana and others

Present:- Mr. L.N. Verma, Advocate for the petitioners.

Mr. Vivek Saini, DAG, Haryana.

Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate for respondent No.4.

C.M.No.871 of 1998

Application is allowed. Documents are taken on record.

C.M.No.4064 of 1998

Application stands disposed of in view of separate detailed order of even date passed in the main writ petition.

C.M.No.12639 of 1997

In view of separate detailed order of even date passed in the main writ petition, the application has been rendered infructuous.

Ordered accordingly.

**(SUDHIR MITTAL)
JUDGE**

**(SURYA KANT)
JUDGE**

**August 01, 2017
poonam**