

243/2**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****Decided on: 28.07.2017****1. CWP No. 4352 of 2001****Devi Lal and others****.....Petitioners****versus****The Financial Commissioner and others****.....Respondents****2. CWP No. 4764 of 2001****Lachhman and another****.....Petitioners****versus****The Financial Commissioner and others****.....Respondents****3. CWP No. 5033 of 2001****Ram Karan and others****.....Petitioners****versus****The Financial Commissioner and others****.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Sandeep Punchhi, Advocate
for the petitioners.Mr. Amarjit Markan, Advocate &
Mr. K.S.Boparai, Advocate
for the respondent No. 5.Mr. Mahavir Sandhu, Advocate
for the respondents.

Mr. Subhash Chander, DAG, Haryana.

**********Rajbir Sehrawat, J.(Oral)**

1. These cases are heard as a part of a bunch of cases, i.e. RSA No. 2186 of 2007, RSA No. 3133 of 2001, CWP No. 4764 of 2001, CWP No. 4352 of 2001 and CWP No. 5033 of 2001. These case have been heard together since one of the party i.e Shivala, claiming to be the owner of the land in question in all the

cases, is the same in all the above-said cases and the remaining parties are either, admittedly, the tenants under that party or the Municipal Committee who claims its ownership over a part of land; on the ground that it became owner subsequently because it is so recorded in the revenue record.

2. However, keeping in view the nature of the proceedings availed by the parties and in view of the fact that in the appeals, the decrees would be required to be passed; therefore the Regular Second Appeals are being taken up separately. The Writ Petitions involve the same points to be considered by this court, therefore, the Writ Petitions shall be taken up collectively.
3. Although cases are being decided separately, however, it is beneficial to mention some common facts in each of the judgments.
4. Undisputedly Shivala is a religious institution. This religious institution was given land measuring 100 *Bigha Pukhta* by the British Government of India vide order dated 08-03-1842; by way of grant in perpetuity. In the year 1954 this land was mutated in the name of Gram Panchayat Rania (Now in District Sirsa) in the column of ownership but in the column of cultivation Shivala was entered as occupant of land as “*Muafidar Bai-Tamam Puran Gir Chela Nand Gir*”. Since on the basis of this change of entry the status of the Shivala as owner was sought to be disputed. Therefore, The Shivala filed a civil suit against Gram Panchayat Rania for the declaration of its status as “Pattedar Doami” (Perpetual Lessee). The suit filed by Shivala was decreed on 29-10-1964 and this decree, attained finality. Vide this decree, the Shivala was declared as “Pattedar Dwami” (Perpetual Lessee) over the entire land (Measuring 97 Bighas Pukhta – as it measured on the date of filing the suit).
5. In the meantime, the Consolidation proceedings took place in the village.

During the Consolidation, the entire land measuring 97 Bigha Pukhta (291 *Bigha Kacha*) was converted into land measuring 471 Kanal 18 Marla. This fact

is not disputed by either party. Hence the present proceedings relate to, in total, the land measuring 471 Kanal 18 Marlas, although individual cases involve different parcels of land out of this total land.

6. In the meantime, The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 had come into being. Under this Act, the tenants who were having long possession and were not paying any rent beyond the land Revenue were declared to be owners of the land on which they were the tenants. Since the Shivala was declared to be perpetual lessee over the entire land and it was not required to pay even the land revenue being *Muafidar*, besides not paying any rent to anybody, therefore, on the basis of the above-said decree dated 29-10-1964 the Shivala moved an application before the revenue authorities for entering its name as owner of the land in question under Sections 3 to 5 of the above-said Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952. Accordingly, the revenue authorities entered Mutation No. 3614 sanctioned on 08-03-1967; entering the Shivala as the owner of the land and all the private parties in the present proceedings were recorded as tenants under the Shivala.

7. However, although the above-said decree dated 29-10-1964 was regarding the entire land measuring 471 Kanal 18 Marlas and the status of this entire land was also the same, however, while entering the aforesaid mutation of ownership; the Shivala was recorded as owner only qua the land measuring 376 Kanal 16 Marlas. Resultantly, the land measuring 95 Kanal 2 Marlas remained recorded under the ownership of the Gram Panchayat. No reason is discernible from the record as to why this land measuring 95 Kanal 2 Marlas was not mutated in the name of Shivala when the remaining entire land had been mutated in its name.

8. Feeling aggrieved by the incomplete mutation of ownership by revenue authorities, the Shivala filed another Civil Suit for further declaration that entry

regarding 95 Kanal 2 Marla in the name of Gram Panchayat was wrong and was liable to be corrected in favour of Shivala. The suit was decreed on 30-08-1968 and a direction was issued to correct the entries in Jamabandis by entering the name of Shivala in place of the Gram Panchayat in the column of ownership regarding this land measuring 95 Kanal 2 Marla as well. This decree attained finality as none of the parties challenged it in appeal. Mutation of this land was also entered in the name of the Shivala on 25-05-1970. However, this Mutation was also entered as 'Pattedar Doami' instead of absolute owner.

9. Despite above-said decree and mutation in favour of the Shivala, the revenue authorities, while preparing Jamabandi of the land in question in the year 1972-73 entered the name of Gram Panchayat Rania in the column of ownership and the Shivala was entered in the column of cultivation.

10. On the basis of these entries, the Gram Panchayat Rania filed an eviction application under Section 7 of the Punjab Village Common Lands Act 1961 against the Shivala. However that application was dismissed by the Assistant Collector I Grade vide order dated 15-12-1992.

11. Thereafter, the area of Gram Panchaya Rania was converted to Municipal Committee Rania. Hence Municipal Committee Rania again filed eviction petition against Shivala under Sections 4, 5 and 7 of the Haryana Public Premises Act 1972. Some of the private parties in the present bunch of cases had also filed such petitions against Shivala. These petition filed by Municipal Committee Rania and also others were dismissed by Collector Ellenabad vide order dated 12-05-1994. The appeal filed by Municipal Committee Rania was also dismissed by the Commissioner on 14-12-1994.

12. Therefore, feeling constrained by repeated harassing proceedings against it the Shivala filed Civil Suit No. 19-C dated 26-03-1996 challenging all the revenue

entries in favour of the Gram Panchayat since 1969-70 till-date; regarding the

abovesaid land measuring 95K-2M and claimed their Corrections. That suit was dismissed on the ground of limitation. The Shivala preferred appeal against this dismissal of its suit. That Civil Appeal No. 114 of 1999 was also dismissed by lower appellate court vide the judgment and decree date 04-05-2001. Hence the **RSA No. 3133 of 2001** has been filed by the Shivala.

13. Since the Shivala had also filed eviction petitions before revenue authorities against the tenants sitting on the other lands regarding which it had been entered as the owner, therefore, one **Ramjas** filed another Civil Suit No. 295 dated 31-05-1996 against the Shivala to the effect that he was in possession of land measuring 87K-7M (This is the land other than 95K-2M abovesaid) mentioned in the plaint for long time and the decree dated 29-10-1964 had declared the Shivala only as a Pattedar Doami and not the owner and that the mutation dated 08-03-1967 was wrongly entered showing it to be owner and that the Shivala had no right to get the plaintiff evicted by moving the authorities in Form K-1 under Punjab Security of Land Tenures Act. The Trial Court dismissed the suit on 29-7-2003 holding that the Shivala has been rightly entered as owner of the land in the impugned mutation since the Shivala had all the attributes of an owner. The plaintiff in that suit challenged the decision of the trial court in appeal before the Additional District Judge, Sirsa. The lower Appellate Court allowed the appeal on 16-05-2007 holding that the Shivala was held to be a Pattedar Doami and not an owner by the decree dated 29-10-1964. Therefore, the mutation dated 08-03-1967 and subsequent revenue entries showing the Shivala to be the owner are wrong. To challenge this judgment and decree of the ADJ Sirsa; the **Shivala** has filed the **RSA No. 2186 of 2007**.

14. Lachhman Singh etc. had also filed Civil Suit No. 561-C dated 24-10-1996 against Shivala for declaration that the Shivala was not the owner of the land

measuring 97K-2M (This is a different parcel of land than the above-mentioned two parcels) which was under their possession and that the mutation dated 08-03-1967 on the basis of the decree dated 29-10-1964 (the first decree obtained by the Shivala) and the subsequent entries showing the Shivala as owner in the revenue records are wrong and that Shivala had no right to seek any ejectment proceedings against them. This suit was dismissed on 30-09-2002. The said Lachhman Singh etc. filed Civil Appeal No. 90 dated 12-11-2002 before the District Judge. However, the same was also dismissed on 11-01-2005. Lachhman Singh etc. preferred **RSA No. 1023 of 2008**. However, even that RSA has been dismissed by this Court on 11-11-2009.

15. In the meantime, as stated above, the Shivala had filed application for eviction against abovesaid Ramjas, son of Purkha, on Form-K-1 (as provided under Section 9 of Punjab Security of Land Tenures Act). That application was allowed on 14-10-1997 and the eviction order was passed against Ramjas, by the Assistant Collector. These persons filed appeal challenging the order of Assistant Collector, but the same was also dismissed by the Collector on 10-11-1998. Further, the Revision of these persons was dismissed by Commissioner on 10-05-2000 and the ROR was dismissed by the Financial Commissioner on 13-01-2001. So the **CWP No. 4352 of 2001** had been filed by above-said **Ramjas** Challenging the order of the revenue authorities ordering their eviction from the land of Shivala. After his death, his legal representatives Devi Lal etc. are continuing that Civil Writ Petition.

16. In the meantime the Shivala had also filed application for ejectment against **Lachhman Singh etc.**, on Form-K-1 (as provided under Section 9 of Punjab Security of Land Tenures Act). That application was allowed on 14-10-1997 and the eviction order was passed against Lachhman Singh etc., by the Assistant

Collector. These persons filed appeal challenging the order of Assistant Collector but the same was also dismissed by the Collector on 10-11-1998. In these proceedings, the further Revision of these persons was dismissed by Commissioner on 10-05-2000 and the ROR was dismissed by the Financial Commissioner on 13-01-2001. So the **CWP No. 4764 of 2001** has been filed by **Lachhman Singh etc.** challenging the order of the revenue authorities ordering their eviction from the land of Shivala.

17. Similar ejectment proceedings were filed by the Shivala against **Ram Karan etc.** regarding another parcel of land measuring 95K-2M and these proceedings ended against Ram Karan etc. in the same manner as against other abovesaid tenants. So they have filed similar **CWP No. 5033 of 2001**. However Ram Karan etc. had never filed Civil Suit Challenging ownership of Shivala, unlike other persons.

18. One more fact needs to be noticed that in the meantime the writ petitioners had moved the revenue authorities claiming that the land with the Shivala was 'Surplus Land' being in excess of the 'Permissible Area' and it be declared as such. Since the Shivala was not a religious institution therefore it could not claim exemption from the Surplus Law. On these proceedings the Ld. Commissioner Hissar passed the final order dated 14-02-2005 holding the Shivala to be a religious institution and held that the land with 'Shivala' was not surplus land and that the 'Shivala'; as an owner; was entitled to hold the entire land.

19. While arguing the writ petitions, the counsel for the petitioners started the argument with the submission that although the petitioners are the tenants under the 'Shivala', however, the 'Shivala' was not the owner of the suit land, rather it was only a perpetual lessee of the suit land. However when confronted with the

legal proposition; as contained in Section 116 of the Evidence Act; that a tenant cannot deny the title of the person under whom he is tenant, the counsel restricted his argument only on the one point that the 'Shivala' was not a Small Land Owner and therefore, it could not have filed the eviction petition on Form K-1, under Section 9 (1) (i) Punjab Security of Land Tenures Act.

20. On the other hand, the counsel for the respondent 'Shivala' has argued that although earlier the 'Shivala' was a perpetual lessee but subsequently the 'Shivala' has become the owner by operation of the law. Still further, it was argued that since the competent authority has never held any area with the 'Shivala' to be in excess of the 'permissible area' and thus the 'surplus area', therefore, the 'Shivala' is a small land owner for the purpose of the Act and the Rules framed there-under for ejecting the tenants.

21. Having heard the counsels for the parties and perused the record with their able assistance, this court does not find any substance in the arguments of the counsel for the petitioners. So far as the question of title of 'Shivala' is concerned, the petitioner, being its tenants, cannot even question it. Otherwise also, as has already been held in RSA No. 3133 of 2001, RSA No. 2186 of 2007 and the RSA No. 1023 of 2008, the 'Shivala' has got full title to the land in question. Revenue authorities have rightly so held the title of the 'Shivala' in the impugned orders. Admittedly the appellant 'Shivala' is recorded as a 'Perpetual Tenant' in the revenue records without payment of any rent to anybody. It is not liable even to pay the land revenue; being 'Muafidar Bai Tamam' under the Grant of the land in its favour. Under section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act 1952 a 'Perpetual Tenant' becomes the owner of the land under his tenancy by operation of the statute, as has been held by the Division Bench of this Court in the case

reported as **1981 PLJ 447**, titled as **Baba Badri Dass Versus Sh. Dharma and**

others, which was further followed by a Single Bench of this Court in case of **2009(1) RCR (Civil) 208**, titled as **Jodh Singh and another versus Smt. Shanti Bai**. Under Rule 72A of the Punjab Land Revenue Rules, the Revenue authorities are under a duty to enter the name of such occupancy tenant in the revenue record as owner without requirement of any separate proceedings. Hence the respondent 'Shivala' is rightly recorded and held as the owner of the land involved in all these writ petitions.

22.The counsel for the respondent 'Shivala' has rightly argued that the 'Shivala' had rightly moved the application for ejectment of the petitioners in Form K-1. The land under the ownership of the 'Shivala' has not been found to be surplus. Even specific proceedings were initiated by the petitioners to get the land of the respondent 'Shivala' declared as surplus; claiming that it was the owner of the land beyond 'permissible limit', as required under the Act. However, those applications of the petitioners were dismissed by the statutory authorities by holding that the 'Shivala' was entitled to have its entire land holding and that it was exempted from the surplus proceedings being a religious institution. Hence for the purpose of the Act the 'Shivala' has rightly been held by the statutory authorities to be a Small Land Owner and its application has rightly been entertained as being maintainable.

23.Otherwise also, it was the petitioners who had claimed that the 'Shivala' was not a 'Small Land Owner' and thus was not entitled to eject the petitioners and that the petitioners were entitled to the benefit of settlement on the land in question. The respondent 'Shivala' has discharged its burden to show that it was a small land owner, by producing the record to the effect that the authorities has not found any land with the 'Shivala' to be surplus i.e beyond permissible limit.

24.Hence it was for the petitioners to prove on record, by leading evidence, that

the 'Shivala' was not a small land owner. It deserves mention here that, under the Punjab Security of Land Tenures Act, 1953 the question whether a person is having land more than permissible limits, is an intricate question to be determined by the statutory authorities during the surplus proceeding, based on several questions of facts like, total holding of the person, valuation of the land in question as per the area-wise valuation, values given in the statute, entitlement of such person to any enhancement or exemption from surplus proceedings, etc. Haryana Ceiling on Land Holding Act, 1972 had exempted the Religious Institutions from the surplus proceedings and had repealed the Punjab Security of Land Tenures to the extent of definition of permissible area and surplus area. To substantiate the claim of the petitioners that the 'Shivala' was not a small land owner, the petitioners were required to prove all these facts against the 'Shivala' by leading positive evidence on these points. The reliance of the Ld. Counsel for the respondent 'Shivala' on the judgment of this Court rendered in case of **1983 PLJ 490** titled as ***Buti Shah versus The Financial Commissioner***, is well placed. Although the Ld. Counsel for the petitioners has also tried to rely upon the same judgment to push the burden of proof upon the respondent 'Shivala', however, this judgment is of no help to the case of the petitioners because this judgment specifically holds that the burden to prove; that the land owner is not a small land owner; is upon the tenant who claims this fact. Moreover all the statutory authorities have categorically held that the petitioners are not entitled to settle on this land, under the provisions of the Act, because they themselves hold the land more than the prescribed limit of 5 Acres. Still further this court is of the considered view that this court is not to act as a court of appeal to entertain this question and to meticulously re-appreciate the same. Questions of facts have to be left; to be decided finally by

the statutory authorities prescribed for that purpose. No patent illegality has been pointed out by the counsel for the petitioners.

25. Moreover while dealing with the RSA No.1023 of 2008, filed by one of the petitioners only, this court, vide its order dated 11-11-2009 has ordered as under:-

“Thus, as per the said provisions, a tenant cannot deny the title of the landlord. The Assistant Collector Grade I vide order dated 14.10.1997 ordered the ejectment of the appellants from the suit land. The appeal filed by the plaintiffs against the said ejectment order was dismissed by the Collector vide order dated 10.11.1998. Exhibit D9 is the copy of the order dated 31.1.2001 wherein the plaintiffs had accepted the ownership of the defendant. The said order as reproduced in the judgment of the trial Court reads as under:-

- 1. "This is no stage for the petitioners to contend that Shivala Vakya Talab Rania is not owner of the disputed land once the revenue entries since jamabandi of 1920, Exhibit P11 hold the respondent institution as a full fledged owner and the petitioners have accepted the situation as such through their forefathers.*
- 2. The respondents Sahab Ram and Surjit Singh, have accepted themselves as tenants on the disputed land and Shivala Vakya Talab Rania as owner in a statement before ACIG and, therefore, the petitioners cannot go against their own admission. Resjudicata is applicable to them.*
- 3. Whether the surplus law is operative and not operative qua the land in dispute is an issue with Collector, surplus where the issue has been raised already and as per respondent, it has been already decided in their favour in the year 1999 (dated 28.7.1999 (Exhibit-A).*
- 4. The tenant has no locus standi to deny the landlord tenant relationship once he has been paying Batai himself and through his forefather and therefore the reference of the civil courts here and there as quoted by the petitioners cannot wipe out his admission of the tenancy as discussed above. Moreover the parties upto the level of the Hon'ble Punjab & Haryana High Court never challenged the fact of Shivala being a Dwami or half owner and what has not been challenged upto the level of Punjab & Haryana High Court, cannot be raised afresh now.*

Therefore, on the basis of above findings of this court, it is held that Mahant Dutt Gir as per mutation no.14141, decided on 19.3.1996, Exhibit P10 was fully competent to file application under Form K-1 and decisions

of the Ld. ACIG, Elenabad, Ld. Collector Sirsa and Ld. Commissioner, Hisar Division, Hisar are perfectly maintainable on law and facts. The petitioners already own land to the extent of 5 standard Acres and they deserve no settlement on the surplus land. In view of the fact that there has been plenty of violence and threats noticed on the land of respondent by different tenants, in the past, this court orders that Collector, Sirsa, S.P.Sirsa and ACIG. Ellenabad would ensure the implementation of the orders of the Revenue Court under Form K-1 by 30.4.2001 and if necessary with police help.”

In these circumstances, both the Courts have rightly dismissed the suit of the plaintiff.”

26.This order has already attained finality between the parties since it has gone unchallenged.

27.Hence this court finds that the impugned orders; passed by the statutory authorities have rightly been passed. No interference by this court is called for in these cases.

28.Resultantly, all the three writ petitions are dismissed being devoid of any merits.

28th July, 2017

shabha

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes