

CWP-8117-1999

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HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8117-1999

Date of Decision: November 30, 2017

Jharmal Singh

.....Petitioner

Versus

District Development and Panchayat Officer, Nawanshahar and others

.....Respondents

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

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|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: None for the petitioner.

Mr.Rajesh Bhardwaj, Sr.DAG, Punjab.

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SURYA KANT, J.

This case was listed in the motion list on February 01, 2017 as the service of some of the respondents was incomplete for want of their correct addresses. Counsel for the petitioner undertook to furnish complete addresses within four weeks, hence it was directed that notice be issued for 20.07.2017. The needful, however, was not done. No-one appeared on behalf of the petitioner on 20.07.2017 also. As a last opportunity, the case was adjourned to 23.08.2017 and on that day also, the petitioner remained unrepresented. Obviously, the previous order was also not complied with. Resultant effect is that respondent No.3 has not been served so far. Today also, no-one appears on behalf of the petitioner. In these circumstances, we proceed to decide the writ petition on merits.

and District Nawanshahar and he was a member Panchayat at the time of filing of this writ petition. He is aggrieved by the orders dated 07.06.1996 and 30.04.1997 (Annexures P2 and P1, respectively), whereby the eviction petition filed by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for brevity, 'the 1961 Act') seeking ejectment of respondent No.3 from the land measuring 4K-15M comprising in Khasra No.24 was dismissed and the appeal against the said order also been turned down by the Appellate Authority.

[3] Brief facts of the case are like this:-

[4] The land in dispute measuring 04k-15M comprising in Khasra No.4/22 is situated in village Chakli Sujatpur Tehsil and District Nawanshahar. As per the Jamabandi for the year 1978-79 (Annexure P-4) the subject land was under the ownership of 'Panchayat Deh' and 'Government of Punjab' is recorded in its cultivating possession as '**Saunjidar**' through respondent No.3. It has come on record that possession of the land was given to fore-fathers of respondent No.3 as '**Saunjidar**', namely, to render services to the village community and since then they were in its cultivating physical possession.

[5] The question which fell for consideration of the Collector-cum-DDPO, Nawanshahar was whether the possession of respondent No.3 as a '**Saunjidar**' deserves to be protected or he could be evicted as an 'unauthorised occupant' on the Gram Panchayat land in purported exercise of power under Section 7 of 1961 Act? The Collector answered the question in favour of respondent No.3 after holding that the land which is in his possession as '**Saunjidar**' cannot vest in Gram Panchayat in view of Section

4(3)(i) of the 1961 Act. It would be profitable to reproduce the relevant part of Section 4 of the 1961 Act, which reads as follows:-

“4. Vesting of rights in Panchayat and non-proprietors.-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the land:-

(a) and (b) XXX XXX XXX

(2) Any land which is vested in a Panchayat under the *Shamilat law* shall be deemed to have been vested in the Panchayat under this Act.

(3) XXX XXX XXX

(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, Basikhuopahus, Saunjidars, Muqarrirdars*;

(ii) to (iii) XXX XXX XXX”

[6] It may be seen from the plain language of Section 4(i) of the 1961 Act that any land which is included in the *shamlat deh* vests in Gram Panchayat regardless of any contrary provision in any law. Sub-Section (3), however, constitutes an exception to Sub-Sections (1) and (2) and the land which falls within Clause (i) to (iii) thereof stands excluded from the ambit of Sub-Sections (1) and (2). It may further be seen that the existing rights, title or interests of persons, who, though not entered as 'occupancy tenants' in the revenue record, but are having a similar status by custom or otherwise such as '**Saunjidars**', are excluded from the purview of Sub-Section (1) and the land under their possession, thus, does not vest in Gram Panchayat. In this view of the matter, no exception can be taken to the view formed by the Collector while dismissing the ejectment petition filed under Section 7 of the 1961 Act. The Appellate Authority also rightly reiterated the same view.

aggrieved by the status of respondent No.3 as a '**Saunjidar**' or if it intends to establish that the subject land does not fall within any exception and is deemed to have vested in Gram Panchayat for all intents and purposes, it can seek such a declaration by way of a petition under Section 11 of the 1961 Act. Under that provision, a title dispute between the Gram Panchayat and the residents of the village can be resolved by the Collector, for the jurisdiction of the Civil Court has been expressly barred. Such a dispute, nonetheless, cannot be resolved by the Collector while deciding eviction proceedings under Section 7 of the 1961 Act, which are summary in nature.

[8] For the reasons aforestated, we do not find any error in the impugned orders which may warrant any interference by this Court in exercise of its writ jurisdiction. The writ petition is, accordingly, dismissed. However liberty is granted to the Gram Panchayat to file a petition under Section 1961 Act, if so advised, without prejudice to the defence plea which may be taken by respondent No.3 in such proceedings.

**(SURYA KANT)
JUDGE**

November 30, 2017
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**(SUDHIR MITTAL)
JUDGE**

1. Whether speaking/reasoned ?	Yes/No
2. Whether reportable ?	Yes/No