

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.10591 of 2016

Date of Decision: November 13, 2017

Nathi Ram and others

.....Petitioners

versus

The Financial Commissioner, Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: Mr.Kanwardeep Singh, Advocate, for the petitioner.

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Surya Kant, J. (Oral)

The petitioners claiming themselves to be owners of the land in dispute and claiming the predecessors-in-interest of respondent Nos.5 to 7, namely, Punna Ram as their tenant over the said land, filed an eviction petition against Punna Ram under Section 14-A of the Punjab Security of Land Tenures Act, 1953 seeking eviction of Punna Ram on the ground that he has failed to pay *batai* since Rabi, 1997 without any sufficient reason. The land in dispute is 11 kanal 5 marla comprising Rectangle No.31, Khasra No.22 and Rectangle No.36, Khasra No.2/2, situated within the revenue estate of village Dhakwala, District Karnal. The Assistant Collector, 1st Grade, exercising the powers of Collector, Karnal, dismissed the eviction petition vide order dated 12.01.2010 holding as follows:-

“.... After hearing the arguments put forth by both the counsels and perusal of record, it is obvious that land in question is mortgaged property and also shamlat deh in column of ownership (Jamabandi of year 1964-65/1885-86). The respondents are the tenants through mortgagees as per jamabandi 1996-97. The entries on the same lines

are continuing the record. Moreover, there is nothing on record to show that the land in question has been redeemed. Under such circumstances, it is established that the respondents are tenants but of the mortgagees not of the plaintiff. So the relationship of land lord and tenant is not proved. In view of the discussion above, the plaint filed by the plaintiff is hereby dismissed being non-maintainable.....”

[2] The petitioners unsuccessfully challenged the above-stated order firstly before the Commissioner, Rohtak Division, namely, the Appellate Authority and then before the Financial Commissioner, Haryana, i.e., the Revisional Authority. Both these Authorities also dismissed the appeal and revision petition. The Revisional Authority has held as follows:-

“.....I have heard the arguments of the counsel of the both the parties and perused the record available on the file. I have also perused the jamabandi 1964-65, 1996-97 and 2000-01. It is evident from the jamabandi 1964-65 that the said land was recorded as shamlat deh & Smt.Shibi was shown as mortgagor in the column of ownership and Sh.Hari Ram son of Sh.Asha Ram was recorded as mortgagee and the land was described as Banjar Kadeem. As per jamabandi 1996-97 the respondents were shown as the tenants through mortgagee and the entries on the same line are continuing. Moreover, there is nothing on record to show that the land in question has been redeemed as per law and the claim of the petitioner in this regard is devoid of any documentary evidence. Under such circumstances, it is established that the respondents are tenants of the mortgage and not of the petitioner....”

[3] Regardless of the delay of more than one year in filing the writ petition, we have heard learned counsel for the petitioners on merits at a

considerable length and gone through the records.

[4] It emerges out of the concurrent findings of fact that the land in dispute has been continuously recorded as '*shamlat deh*' within the meaning of Section 2 (g) of the Punjab Village Common Lands Regulation Act, 1991, as applicable to the State of Haryana (for short, 'the 1961 Act'). *Shamlat deh* land concededly vests in Gram Panchayat in view of Section 4 (1 & 2) of the 1961 Act, the relevant extract of 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 interests whatever in the land;-

(a) which is included in the shamilat deh of any village and which has not vested in a Panchayat under the shamilat law shall, at the commencement of this Act, vest in Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall, on the commencement of shamilat law, be deemed to have been vested in such non-proprietor.

(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.....”

[5] The case of the petitioners, on the other hand, is that the land in dispute is subject to river action and as such it cannot be *shamlat deh* and therefore, it does not vest in the Gram Panchayat. It is claimed that the land

the petitioners' claim is that the land in dispute is owned by the proprietors and not by the Gram Panchayat.

[6] Having heard learned counsel for the petitioners, we are of the considered view that no interference in the impugned order is called for. The limited question which fell for consideration of the Authorities below while deciding the ejectment petition under the Punjab Security of Land Tenures Act, 1953 was, whether or not there existed relationship of landlord and tenant between the petitioners and Punna Ram (since deceased), now represented by legal heirs? While deciding that question, the Collector as well as the superior Authorities were obligated to determine as to whether or not the petitioners are owners of the land, moreso, when their title was expressly disputed by Punna Ram. It is in that context that the Authorities were compelled to return a finding regarding entries of the land in the revenue record as *shamlat deh*. It has been further found that as per the jamabandi for the year 1964-65, the land was recorded as *shamlat deh* and under the column of ownership, Smt.Shibi was recorded as mortgagor and Hari Ram son of Asha Ram was recorded as mortgagee. Punna Ram was shown to be a tenant under the mortgagee. The petitioners thus nowhere figured either as owners or mortgagors or mortgagee.

[7] The title dispute between a Gram Panchayat (in whom *shamlat deh* vests under the statute) or a proprietor can be resolved only by the Court of Collector by way of a declaratory petition to be filed under Section 13-A of the 1961 Act. The jurisdiction of Civil Court is expressly barred in this regard. The petitioners, if so advised, may establish their claim against the Gram Panchayat by way of appropriate proceedings, if so maintainable.

[8] With liberty aforementioned, we do not find any ground to

interfere with the impugned order.

[9] Dismissed.

[SURYA KANT]
JUDGE

November 13, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM No.7284 of 2016 in
CWP No.10591 of 2016

Nathi and others versus The Financial Commissioner, Haryana & Ors.

Present: Mr.Kanwardeep Singh, Advocate,
for the applicant-petitioners.

For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and 723 days' delay in filing the
writ petition is allowed.

CM stands disposed of.

[SURYA KANT]
JUDGE

November 13, 2017
mohinder

[SUDHIR MITTAL]
JUDGE