

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 22719 of 2012 (O&M)

Date of Decision: 28.04.2017

Harbans Singh and others

.....Petitioners

Versus

Director, Rural Development and Panchayat Punjab, and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Rajinder Goyal, Addl. Advocate General, Punjab.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Armaan Midha, Advocate
for respondent No. 3.

RAJESH BINDAL,J.

1. This order will dispose of two petitions bearing CWP Nos. 22719 and 23015 of 2012 as common question of law and facts are involved. However, the facts have been noticed from CWP No. 22719 of 2012.

2. Challenge in the present petition has been made to the orders dated 2.11.2012 and 17.5.2012, Annexures P-2 and P-1, respectively, whereby the Gram Panchayat has been held to be owner of the land in dispute in a suit filed by it under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act').

3. At the time of issuance of notice of motion, the following contentions of the petitioners were noticed:

"Counsel for the petitioners submits that as the Joint Director, Panchayat, Punjab, exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 has already recorded a finding that the petitioners are in possession since 1967-68, the petitioners are entitled to the benefit of Section 4(3)(ii) of the Act, in view of words "immediately preceding the commencement of this Act" introduced in Section 4(3)(ii) by way of Punjab Act No.19 of 1976. It is further contended that the words "immediately preceding the commencement of this Act" referred to Amending Act 19 of 1976 and not to the Parent Act.

Notice of motion for 15.1.2013.

Dispossession of the petitioners shall remain stayed till further orders."

4. Learned counsel for the parties do not dispute the fact that the legal issue raised in the petition has been decided by the Full Bench of this Court in the case in hand and it has been finally opined as under:

"10. In view of the above, it is therefore, apparent that the words "immediately before the commencement of this Act" used in clause (ii) of Section 4 (3) after amendment of 1976 means the Principal Act of 1961 and thus, a person, who is claiming the protection of his rights, should be in cultivating possession of shamlat deh, for more than 12 years immediately preceding the commencement of the Act of 1961 i.e. 4.5.1961 without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

Reference is answered accordingly.

The writ petitions to be listed before the Division Bench to be decided in view of the Reference answered hereinabove."

5. In the case in hand, it is not disputed that there is no material

produced on record by the petitioners that they were in possession of the land in question 12 years prior to the enactment of the Act. Hence, there is no error in the orders passed by the authorities below. The writ petitions are accordingly dismissed.

7. Before parting with the order, we deem it appropriate to direct the authorities to assess the damages for use and occupation of the land by the petitioners to which they had no rightful claim. The needfull shall be done after affording opportunity of hearing to the petitioners and whatever amount is determined, the same shall be recovered from them in due course of law.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

28.04.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No