

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-823-2016

Date of Decision: November 01, 2017

Gram Panchayat, Lamme, Tehsil Bhulath, District Kapurthala

.....Petitioner

Versus

The Joint Development Commissioner (IRD), and another

.....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: Mr.Ish Puneet Singh, Advocate for the petitioner.

Ms.Ambika Luthra,Sr.DAG, Punjab.

None for respondent No.2.

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SURYA KANT, J.

The case has been called twice. Counsel for respondent No.2 is not present. Under these circumstances, we proceed to decide the case on merits.

[2] The instant writ petition has been filed by Gram Panchayat of village Lamme, Tehsil Bhulath, District Kapurthala. It lays challenge to the order dated 18.11.2015 passed by Joint Development Commissioner (IRD), Punjab, in exercising of his powers as Appellate Authority under Section 9 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for brevity, 'the 1973 Act') whereby the appeal filed by respondent No.2 against the order of eviction dated 21.11.2013 was allowed and the

the 1973 Act has been dismissed.

[3] The facts may be noticed briefly:-

[4] Ajit Singh, father-in-law of respondent No.2, had taken land measuring 7K-12M comprised in Khewat/Khatauni No.438/548, Khasra No.15//7(7-12) situated within the revenue estate of village Lamme, Tehsil Bhulath, District Kapurthala on lease from the Gram Panchayat in the year 1991 for a period of three years. The lease amount was duly deposited vide Receipt Book No.6, dated 08.08.1991. After expiry of lease period, father-in-law of respondent No.2 did not vacate the land and refused to hand over its possession to the Gram Panchayat.

[5] The Gram Panchayat, thus, filed an eviction petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for brevity, 'the 1961 Act') against the father-in-law of respondent No.2 which was accepted vide order dated 29.04.1997. Ajit Singh challenged that order in an appeal which was allowed by the Appellate Authority holding that his eviction could not be sought under Section 7 of the 1961 Act.

[6] Meanwhile respondent No.2/ her predecessor filed a civil suit for injunction to restraint the Gram Panchayat from interfering in their peaceful possession over the land in dispute. Ad interim injunction was declined in the civil suit on 15.10.2011 but on an appeal by respondent No.2, the application was partly allowed and conditional injunction was granted whereby possession was protected subject to deposit of rent of the disputed land for its use and occupation.

[7] The petitioner-Gram Panchayat thereafter filed a fresh eviction petition, this time under Sections 4, 5 and 7 of the 1973 Act, for ejectment of

respondent No.2 from the suit land. The said eviction petition was allowed by the Collector, Kapurthala, vide order dated 21.11.2013, Annexure P1. The Collector held that as per jamabandi for the year 2008-09, the ownership of the land vests in *Musterka Malkan Hasab Rasad Khewat* and the Gram panchayat has the in 'management' and 'control' over it. Such land, even if not a '*shamlat deh*' within the meaning of 1961 Act, falls within the ambit of "public premises and land" under the 1973 Act. Consequently, eviction proceedings under the 1973 Act are maintainable. Since the father-in-law of respondent No.2 had taken the land on lease from Gram Panchayat, their possession after expiry of the lease period was held unauthorised.

[8] The second respondent filed appeal under Section 9 of the 1973 Act which has been allowed by the Appellate Authority vide impugned order dated 18.11.2015.

[9] We have heard learned counsel for the Gram Panchayat as well as learned State counsel and gone through the record. The only reason assigned by the Appellate Authority for accepting the appeal is that the father-in-law of the second respondent was recorded as '*Gair Marusi*' in the column of cultivating possession and that the disputed land remained in possession of the family of respondent No.2 for more than 30 years, hence he cannot be evicted.

[10] The reasons assigned by the Appellate Authority, in our considered view, are palpably erroneous and cannot sustain. The issue which was required to be determined was whether the subject land, the

Section 23A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, falls within the ambit of 'public premises and land' within the meaning of provisions of the 1973 Act. If it is found that the land is a 'public property' within the meaning of the said Act, needless to say that the eviction petition under Sections 4, 5 and 7 of the 1973 Act was maintainable. In that event, long or short possession of an unauthorised occupant can have no bearing on the maintainability of the proceedings as neither the plea of adverse possession can be taken nor such a defence was advanced by respondent No.2. In fact, such a defence, even if taken, has to be outrightly rejected for the reason that once the father-in-law of respondent No.2 entered the possession as a lessee, he cannot question the title of his landlord. All these legal issues have not been considered at all by the Appellate Authority.

[11] It is not out of context to mention that dismissal of earlier eviction petition filed by the Gram Panchayat under Section 7 of the 1961 Act, is also inconsequential. Under the 1961 Act, an eviction petition is maintainable only in respect of the land which is '*shamlat deh*' within the meaning of Section 2(g) of the 1961 Act and which vests in the Gram Panchayat. The land in question, as held by the Collector, is not '*shamlat deh*' under the 1961 Act, hence the earlier eviction petition was not maintainable. At the same time, if the land in question is a 'public property', the eviction petition under Sections 4, 5 and 7 of the 1973 Act would be maintainable. It is the said eviction petition which was allowed by the Collector whose order has been reversed by the Appellate Authority by way

[12] In the light of the above discussion, we are satisfied that the appellate order cannot sustain. The same is, accordingly, set aside. The appeal filed by respondent No.2 requires a fresh adjudication in the light of the observations and issues raised hereinabove. The parties are accordingly directed to appear before respondent No.1, the Appellate Authority, on 27.11.2017. The Appellate Authority shall make an endeavour to decide the appeal as early as possible but not later than four months from the date of receipt of a certified copy of this order.

(SURYA KANT)
JUDGE

November 01, 2017
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(SUDHIR MITTAL)
JUDGE

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