

CWP No.935 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.935 of 2015  
Date of decision:02.08.2017**

Tarlok Chand and others ...Petitioners  
Versus  
State of Haryana and others ...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. R.S.Sihota, Senior Advocate, with  
Mr. B.R.Rana, Advocate, for the petitioners.

Mr. S.S.Mann, Sr. DAG, Haryana.

Ms. Amrita Nagpal, Advocate, for  
Mr. Lokesh Sinhal, Advocate, for respondent no.5.

Mr. Gaurav Jindal, Advocate,  
for respondent no.6.

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**Rakesh Kumar Jain, J.**

Chiranji Lal, predecessors-in-interest of the petitioners, filed a suit much-less a petition before the Assistant Collector 1<sup>st</sup> Grade, Palwal, for seeking eviction of respondents no.5 and 6 from the agricultural land measuring 09 Kanal 08 Marlas, situated in village Maksudpur, Tehsil Palwal, District Faridabad, alleging that they are the Gair Marausi Awal (first) under the Panchayat Deh and father of respondent no.5, namely, Gobinda was cultivating the land as Gair Marausi Doam (second) under them @ 0.60 paise per kanal per year. Gobinda expired on 20.10.1960 but his name is continuing in the jamabandis and respondent no.5 got his name entered in the jamabandi as Gair Marausi Doam (second) vide Roznamcha Wakiati for the year 2000-01,

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Rapat No.128 dated 28.11.2000. It is alleged in the said petition that respondent no.5 had filed a Suit No.654 of 1996 in the Civil Court at Palwal titled as "Harlal vs. Chiranji Lal", which was decreed in his favour on 11.03.1999, in which respondent no.5 was declared as a tenant under the petitioners and it was ordered that he would not be ejected, otherwise, in due course of law. The petitioners sought eviction of respondents no.5 and 6 on the ground that respondent no.5 has not paid the rent regularly, without any reason, from the last 40 years and has sold the tenancy rights as Gair Marausi Doam to respondent no.6 by way of sale deed for an amount of ₹2,40,000/-, without oral/written consent of the petitioners and Rapat Roznamcha Wakiati dated 26.11.2001 has been entered in the Roznamcha of the Patwari at Sr. No.255 in this regard. It is further averred that the petitioners asked respondents no.5 and 6 to vacate the disputed land for non-payment of rent and transfer of tenancy rights to respondent no.6, without permission, but he refused and hence, the petition/suit was filed.

The Assistant Collector 1<sup>st</sup> Grade, Palwal, dismissed the petition on the ground that the ownership of the land in dispute is of the Gram Panchayat and, therefore, the relationship of landlord and tenant is not proved between the petitioners and respondent no.5. In appeal, the order passed by the Assistant Collector 1<sup>st</sup> Grade dated 29.09.2003 was set aside by the Collector, holding that the relationship of landlord and tenant has already been established before the Civil Court in the judgment dated 11.03.1999 and respondent no.5 had no right to transfer the tenancy rights to respondent no.6, without written permission of the petitioners. Thus, the appeal was allowed on 21.09.2006 and ejectment order was passed. The order of the Collector was

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upheld in revision by the Divisional Commissioner vide his order dated 20.05.2008 but the Financial Commissioner reversed the order of the Divisional Commissioner and the Collector vide his order dated 25.08.2014 on the ground that the land is shown to be owned by the Gram Panchayat Maksoodpur and, therefore, the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 would apply and the provisions of the Punjab Security of Land Tenures Act, 1953 would not be applicable. Aggrieved against the order of the Financial Commissioner, the present petition has been filed.

Counsel for the petitioners has argued that no doubt that the Panchayat Deh is the owner of the property in question but the relationship of landlord and tenant is there between the petitioners and respondent no.5. Since this relationship has also been established in the Civil Court by judgment and decree dated 11.03.1999, therefore, the only remedy left with the petitioners is to seek eviction of respondent no.5, who has neither paid the rent for the last 40 years and has transferred the tenancy rights to respondent no.6, without written consent of the petitioners and created a new tenancy.

On the other hand, counsel for respondents no.5 and 6 has argued that since the land in question is owned by the Gram Panchayat, therefore, the Gram Panchayat is the landlord and the petitioners have no right to claim eviction of respondents no.5 and 6 on the ground of non-payment of rent.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the order of the Financial Commissioner is patently illegal and liable to be set aside. There is a difference between the owner and the landlord. The landlord is one to whom

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the rent is paid and the tenant is one who pays the rent. In this case, the tenancy has been created in favour of respondent no.5 by the petitioners, who are Gair Marausi Awal and respondent no.5 was obliged to pay the rent to the petitioners. Not only that respondent no.5 did not pay the rent but also he sold the tenancy rights to respondent no.6 by sale deed, without permission of the landlord/petitioners. Moreover, the relationship of landlord and tenant has already been adjudged by the Civil Court on 11.03.1999, therefore, the order of the Financial Commissioner is patently erroneous, holding that the dispute can be resolved only under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and the petitioners cannot file the petition/suit to seek eviction of respondents no.5 and 6 on the ground of non-payment of rent, on which the tenant can be evicted from the land in question.

With these observations, the present writ petition is allowed and the impugned order passed by the Financial Commissioner is set aside and the orders passed by the Collector and the Divisional Commissioner are restored.

**August 02, 2017**  
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**(Rakesh Kumar Jain)**  
**Judge**

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| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |