

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.8476 of 2017.

Date of Decision: October 31, 2017

Budh Ram and another

.....Petitioners

versus

Gram Panchayat Pirimandori and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: Mr.Ashok Arora, Advocate, for the petitioners.

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Surya Kant, J. (Oral)

The petitioners seek quashing of the orders dated 28.08.2012 and 15.07.2014 passed by the Collector, Fatehabad and Commissioner, Hisar Division, Hisar, respectively, whereby the suit for declaration filed by them and proforma-respondents, under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the 1961 Act') as applicable to the State of Haryana, was dismissed and appeal against the said order also stands rejected.

[2] The petitioners are residents of village Pirimandori, Tehsil and District Fatehabad. They filed a suit seeking declaration of ownership qua the land measuring 43 kanal 6 marlas fully detailed in the head-note of the writ petition, claiming that they are in its possession for the last 40 years, hence, they are entitled to acquire ownership rights qua the same. It was also their case that the Gram Panchayat has no concern whatsoever with the subject-land in view of the Full Bench decision of this Court in **Jai Singh and others versus State of Haryana, (2003) 2 RCR (Civil) 578.**

[3] The Appellate Authority rejected the claim of the petitioners observing as follows:-

.....6. After hearing both sides and perusing the record, it is

undisputed that *jamabandi* shows gram panchayat as the owner of the suit land while appellants are *gair maurusi* tenants. Although appellants claimed that their tenancy is similar to occupancy tenants. But, for occupancy tenancy, the revenue term is *maurusi* and *gair maurusi* simply means those tenants who are not occupancy right tenants. The conversion from normal tenants to tenants having occupancy rights is not provided under the Punjab Village Common Lands (Regulation) Act, 1961. So, any equality or parallel between occupancy tenants and petitioner is simply too farfetched from relating or law and is ruled out.

7. Further, *jamabandi* entries are against the appellants. The onus of proving their title was on the appellants itself but they could not produce any evidence to prove that the suit land is *bachat land* and it is not reserved for common purposes.

8. Further, I have taken judicial notice of the fact that appellants have taken two conflicting stands before the Collector's Court and this Court also. On the one hand, they are saying that they are tenants. But, they are also disputing the title of land owner which is gram panchayat. But, it is well settled principle of law that any tenant cannot dispute the title of land owner. Section 116 of the Indian Evidence Act clearly shows that no tenant of immovable property, xxxxxxxxxxxx shall during the continuation of tenancy be permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such immovable property.....”

[4] We have heard learned counsel for the petitioners at a considerable length and gone through the records.

[5] Firstly, in our considered view, the writ petition is liable to be dismissed on the ground of delay and laches. The impugned order was

chosen to challenge it after almost three years. A writ of certiorari can ordinarily be sought within six months but in any case not beyond one year, save where the petitioners explain the delay to the entire satisfaction of the Court. In this case there is not even a whisper as to what prevented the petitioners to approach this Court within a reasonable time.

[6] Regardless thereto, we have heard learned counsel for the petitioners on merits as well.

[7] A perusal of the revenue record comprising jamabandies for the years 1960-61 onwards reveals that the subject land was under the ownership of *mustarka malkan* and was under the cultivating possession of *makbuja malkan*, namely, the entire proprietary body of the village. It simply suggests that the land in question was taken out by imposing a cut on *pro-rata* basis on the proprietors' land-holdings at the time of consolidation and it was to be kept in a common pool for the common purposes of the village. The petitioners are recorded as *gair maurusi* tenants qua some of the khasra numbers which clearly suggests that they were tenants on Will on payment of a part of *batai* and in possession as co-sharers of proprietors of the village. The ownership of the land in question was mutated in favour of the Gram Panchayat in the year 1992.

[8] A Full Bench of this Court in *Jai Singh and others' case* (*supra*) has unequivocally held that the 'management' and 'control' of the land taken out from the proprietors of the village on *pro-rata* basis shall vest in the Gram Panchayat if such land has been reserved or earmarked for common purposes irrespective of the fact whether it is used for common purposes or not. It is a matter of common knowledge that the entire land ear-marked or reserved for common purposes cannot be utilized in one go.

A part of the land is also kept for future requirements like, school, hospital, cremation ground, play-ground, streets, gau charand etc. etc. Till such time, the land is actually put to use for a common purpose, even if it is cultivated by a tenant on Will, such tenant cannot and does not acquire ownership rights.

[9] Still further, the petitioners having accepted their tenancy under the Gram Panchayat since the year 1992 onwards, cannot turn around and question that title of the Gram Panchayat.

[10] That apart, in a petition under Section 13-A of the 1961 Act, whereunder declaration of title can be sought in a dispute between the proprietors of the village and the Gram Panchayat, onus was on the petitioners to establish their ownership qua the land in question. They cannot claim ownership merely by contending that land being *mustarka malkan* does not vest in the Gram Panchayat. Suffice it to refer to Section 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 whereunder 'management' and 'control' of such lands statutorily vests in the Gram Panchayat. The petitioners thus have miserably failed to make out a case of ownership qua the subject land.

No case to interfere with the orders under challenge is made out.

Dismissed.

[SURYA KANT]
JUDGE

October 31, 2017

mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

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Yes/No