

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7099 of 2016(O&M)
Date of Decision-11.09.2018

Pardeep and others ... Petitioners.
Versus
Raghubir Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mani Ram Verma , Advocate
for the petitioners.

Mr. Sudhanshu Makkar, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioners against the order dated 29.08.2016 passed by the Additional Civil Judge (Senior Division), Bhiwani, allowing the application filed by the plaintiffs/respondents for adjourning the suit *sine die* till the decision of the case pending before the DRO-cum-Assistant Collector 1st Grade, Bhiwani for conferment of ownership right in favour of Dohlidars.

[2]. Perusal of the application dated 21.08.2016 would show that the application in question was filed without quoting of any provision of CPC. The application was filed for adjourning the suit *sine die* by mentioning that the plaintiffs have filed the suit for declaration that the plaintiffs are owners in possession of the suit land and dohli rights in favour of the defendants stand extinguished and the land has reverted to the owners i.e.

plaintiffs. Names of the defendants in the revenue record as Dohlidars are claimed to be wrong entries. Plaintiffs also prayed for permanent injunction, restraining the defendants from interfering in the peaceful possession of the plaintiffs. Para Nos.2 to 4 of the application are necessary to be quoted for the sake of facility herein.

“2. That one of the defendants namely Shish Ram son of Harnam resident of village Bamla has filed an application before the District Revenue Officer exercising the powers of Asstt. Collector I grade for the conferment of the proprietary rights in respect of the suit land on the basis of Haryana Dohlidar Bootimar Bhondedar and Muqrridar (Vesting of Proprietary Rights) Act 2010. And in the same way another application has been filed by Pardeep and Chandgi defendants before the DRO for the conferment of the proprietary rights on the basis of the same Act. And both the applications of the defendants are pending in the Court of District Revenue Officer, Bhiwani. Certified copies of the applications filed by the defendants are attached herewith.

3. That question of law and facts are the same as are involved in the applications pending before the District Revenue Officer, Bhiwani and the order to be passed by the District Revenue Officer will have a far reaching effect on the controversy involved in the present suit.

4. That in view of the facts mentioned above, it is in the interest of justice that the aforesaid case may kindly be adjourned sine die till the decision of both the applications mentioned above by the District Revenue Officer exercising the powers of Asstt. Collector I Grade, Bhiwani.”

[3]. The application was contested by the defendants. In preliminary objection No.5, the defendants contested the application on the ground that the prayer is covered under Section 10 CPC and is liable to be dismissed. Civil suit has to be decided by the Civil Court on the basis of evidence and proceedings pending before DRO-cum-Assistant Collector Ist Grade arising out of provisions of Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 have nothing to do with the suit. It is significant to note that the application for adjourning the suit *sine die* has been filed by the plaintiffs themselves, whereas proceedings under the aforesaid Act of 2010 have been initiated by the defendants before the DRO-cum-Assistant Collector Ist Grade, Bhiwani.

[4]. In the civil suit, the plaintiffs have claimed that the plaintiffs and the proforma defendants are owner in possession of the suit land and the contesting defendants are not the Dohlidars and have no concerned with the ownership and possession of the suit land. Revenue entries in the column of possession in the name of contesting defendants as Dohlidaran are claimed to be

wrong and are liable to be corrected. Permanent injunction is also sought for restraining the contesting defendants for taking forcible possession and from interfering in the peaceful possession of the plaintiffs. In nutshell, the status of the contesting defendants as Dohlidaran in the revenue record is sought to be challenged by way of declaration in the civil suit.

[5]. Before adverting to the applicability of Section 10 CPC in the instant case, it would be necessary to have a glance over the provisions of Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010. Sections 2, 3 and 4 of the aforesaid Act are necessary to be quoted herein.

Section 2:-

(a) “appointed day” means in relation to Dohlidar, Butimar, Bhondedar or Muqararidar, recorded as such in revenue record for more than twenty years the day on which this Act comes into force and in other cases where twenty years have not yet been completed and such person is recorded as Dohlidar, Butimar, Bhondedar or Muqararidar on or before the date of commencement of this Act, the day on which the person fulfils the condition of twenty years;

(b) “Collector” means the Collector of the district in which the land, in respect of which such rights are vested in a Dohlidar, Butimar, Bhondedar or Muqararidar under this Act, is situated and includes any officer not below the rank of an Assistant Collector of the First Grade specially empowered by the State Government to perform the duties of a Collector under this Act;

(c) “Commissioner” means the Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);

(d) “Dohlidar, Butimar, Bhondedar or Muqararidar” means a person who has been recorded as such in the revenue record and includes his predecessor and successor in interest;

(e) “Financial Commissioner” means the Financial Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);

(f) “Land” means land which is occupied by a Dohlidar, Butimar, Bhondedar or Muqararidar and given to him by landlord in lieu of services rendered and includes the sites of buildings and other structures on such land;

(g) “Landowner” means a person under whom a Dohlidar, Butimar, Bhondedar or Muqararidar holds land and includes his predecessors and successors;

(h) “State Government” means the Government of the State of Haryana the Administrative Department.

Section-3:- Notwithstanding anything to the contrary contained in any other law, custom, usage or deed for the time being in force, on and from the appointed day-

(a) all rights, title and interest including the contingent interest, if any, recognized by any law, custom, usage or deed for the time being in force with respect to the land and vested in the landowner shall be extinguished, and such rights, title and interest shall vest in the Dohlidar, Butimar, Bhondedar or Muqararidar or any other similar class or category of persons, which the State Government has notified

in the official Gazette under whose occupation the land is, free from all encumbrances, if any, created by the landowner;

(b) the landowner shall cease to have any right to collect or receive any rent or service in respect of such land.

Section-4

(1) Any landowner whose rights have been extinguished under Section 3 may, within twelve months from the appointed day, apply to the Collector, in such form, as may be prescribed, for the compensation payable to the landowner by the Dohlidar, Butimar, Bhondedar or Muqararidar.

Provided that the Collector may entertain the application after the expiry of the said period of twelve months if he is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

(2) On receipt of an application under Sub-section (1), the Collector shall issue notice to the parties concerned and after giving the parties an opportunity of being heard and after making such enquiry, as may be prescribed, shall make an award for compensation payable at the rate of Five hundred rupees per acre by the Dohlidar, Butimar, Bhondedar or Muqararidar to the landowner.

(3) Where there is any dispute as to the person or persons who are entitled to the compensation, the Collector shall decide such dispute and if the Collector finds that more than one person is entitled to compensation, he shall apportion the amount thereof amongst such persons.

(4) Where the compensation is payable to a minor or to a person having a limited interest, the Collector may make such arrangements

as may be equitable having regard to the interest of the minor or the person concerned.

(5) The Dohlidar, Butimar, Bhondedar or Muqararidar shall be liable to pay the compensation in lump sum.

(6) If the Dohlidar, Butimar, Bhondedar or Muqararidar fails to deposit the compensation within two months of the receipt of the award announced by the Collector, the land shall vest in the landowners.

(7) If the land is subject to a mortgage at the time of payment of compensation, the land shall pass to the Dohlidar, Butimar, Bhondedar or Muqararidar unencumbered by the mortgage or charge but the mortgage debt shall be a charge on the compensation payable.

(8) If there is no such charge as aforesaid, the Collector, shall subject to any directions which he may receive from any court, pay the compensation to the landowner.

(9) If there is such a charge, the Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the compensation as is required for the purpose and pay the balance, if any, to the landowner, or retain the compensation pending the decision of civil court as to the person or persons entitled thereto.

[6]. Reading of Sections 2 of the Act hereinabove would show that “appointed day” in relation to Bhondedary in question i.e. status of Bhondedar recorded in the revenue record for more than twenty years, would be the day on which the aforesaid Act came into being. All rights and interest including contingent interest of any landowner even if recognized by any law, custom

and usage shall be extinguished and shall vest in Bhondedar by virtue of Section 3(a) of the Act. The right of landowner so extinguished under the aforesaid section, would only entitle the landowner to apply to the Collector for award of compensation. Such compensation would be payable by the Bhondedar in whose favour right of ownership is being created by the dint of aforesaid provisions.

[7]. Bare perusal of the language used in the aforesaid Sections 2 to 4 of the Act would show that it is operational in terms of identifying retrospective status of Bhondedar on completion of 20 years of possession in such capacity and even in other cases, where 20 years have not yet been completed and such person is recorded as Bhondedar on or before the date of commencement of this Act i.e. the day on which the person fulfils the condition of 20 years.

[8]. At this stage, the aforesaid provisions cannot be exclusively commented upon by this Court as it would prejudice the case of either side in pending proceedings under the Act of 2010. Over-riding effect of the aforesaid Act in terms of Sections 2 and 3 can be appreciated that in case, ingredients of Sections 2 to 4 of the Act are satisfied, all rights and interest including the contingent interest of any landlord, even if recognized by any law, custom or usage shall be extinguished and the land shall vest in Bhondedar by virtue of aforesaid Act. The landowner would be

entitled only to claim compensation before the Collector which would be paid by Bhondedar in whose favour right of ownership is being credited by the dint of this Act. Section 10 of the aforesaid Act bars the jurisdiction of any Court. Every order made by the Collector, Commissioner or Financial Commissioner shall be final and no proceeding or order taken or made under this Act, shall be called in question by any Court or before any Officer or Authority. Under Section 11 of the Act, no prosecution, suit or other legal proceeding shall lie against the State Government or any Officer or Authority for anything which is in good faith done or intended to be done in pursuance of this Act or of any Rules made thereunder.

[9]. Evidently, the jurisdiction of DRO-cum-Assistant Collector Ist Grade has been invoked by the defendants/respondents herein. If the claim of the defendants/respondents is accepted by the DRO-cum-Assistant Collector Ist Grade, Bhiwani, the said order cannot be questioned in the Civil Court. Even all rights and interest including contingent interest of any landowner even if recognized by any law, custom or usage shall be extinguished and property shall vest in the Bhondedar by virtue of proceedings of 2010 Act. The only right available to the landowner would be to claim compensation before the Collector.

[10]. In view of above, one thing is clear that the contesting defendants ought not to have objected to the application made by the plaintiffs themselves for adjourning the suit proceedings *sine die*, rather in my considered opinion, such a prayer ought to have been from the side of the contesting defendants as in the event of decision of their case before DRO-cum-Assistant Collector Ist Grade goes in their favour, the same would bar the jurisdiction of the Civil Court and right of the landowner so extinguished under Section 3 of the aforesaid Act, would only be entitled to claim compensation before the Collector. The application filed by the plaintiffs was not under Section 10 CPC as no such nomenclature has been given in the application. It is only in para No.5 of the preliminary objections filed by the contesting defendants/respondents, reference of Section 10 CPC was given and it was ultimately taken notice of by the Additional Civil Judge (Senior Division), Bhiwani in concluding part of the order vide which the proceedings of suit were stayed to await the decision of the applications filed by the defendants before DRO-cum-Assistant Collector Ist Grade under 2010 Act. The case does not fall under Section 10 CPC. Section 10 CPC can only be resorted to where subject matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the

relief claimed. Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 is a special enactment and has come into force on 21.02.2011. Under the 2010 Act, the land means land which is occupied by Dohlidar and given to him by landlord in lieu of services rendered and includes the sites of buildings and other structures on such land. Similarly, landowner means a person under whom a Dohildar holds land and includes his predecessors and successors.

[11]. Even the prescribed authority under the aforesaid Act of 2010 does not fall under the definition of Court, but the subject matter of the litigation is the core issue which would definitely have bearing on the pending suit. The proceedings before DRO-cum-Assistant Collector Ist Grade have been initiated by the defendants themselves. It would be in their interest if the Civil Court does not grant any such declaration which would hamper their ultimate prospects of becoming Dohlidar, Butimar, Bhondedar and Muqararidar in the property by the dint of Act of 2010. Civil suit was filed on 17.03.2012. The proceedings under the Act of 2010 were initiated subsequently on 26.04.2012 by the contesting defendants/respondents. Strictly in terms of Section 10 CPC, the case is not covered. Even if, the proceedings under the Act of 2010 are considered to be proceedings before the Court, the subsequent proceedings are to be stayed, but since the Act of 2010 has over-riding effect in terms of Section 3 of the Act, therefore, I find that the application filed by the plaintiffs would be

in consonance with the requirement of both the sides. In the event of acceptance of proceedings before the DRO-cum-Assistant Collector 1st Grade, the same may have application over the civil suit. If the civil suit is decided prior to the decision of proceedings under the 2010 Act, the same may or may not nullify the effect of the pending proceedings before DRO-cum-Assistant Collector 1st Grade.

[12]. Consideration of the case in depth would show that the application filed by the plaintiffs, Section 10 CPC has not been quoted. The recital was given only by the defendants in the written statement and resultantly, the same was adopted by the Additional Civil Judge (Senior Division), Bhiwani in the concluding part of the order.

[13]. In the larger interest of the parties, I deem it appropriate to endorse the order passed by the Additional Civil Judge (Senior Division), Bhiwani as the same would enable the parties to get their entitlement decided more efficaciously in accordance with law. In any case, the impugned order passed by the trial Court at the instance of the plaintiffs themselves would not hamper the proceedings of the contesting defendants/respondents in pending proceedings before DRO-cum-Assistant Collector 1st Grade, Bhiwani.

[14]. For the reasons recorded hereinabove, I find that there is no ground to interfere in the present revision petition. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

11.09.2018

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Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No