

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

**CWP No.18411 of 1994 (O&M)
Date of Decision: 31.07.2018**

Mange Ram

....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. M.S.Rana, Advocate for
Mr. Ashish Kapoor, Advocate for the petitioner.

Ms. Kirti Singh, Deputy Advocate General, Haryana.

Mr. Jagdish Manchanda, Advocate
for respondent No.4-Gram Panchayat.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed by the petitioner under Article 226/227 of the Constitution for issuance of a writ in the nature of certiorari for quashing of impugned order dated 29.09.1994 (**P-4**), passed by respondent No.2-Collector, Faridabad (for short 'Collector'), vide which, his appeal against the order of ejectment dated 09.06.1994 (**P-3**), passed by respondent No.3-Assistant Collector 1st Grade, Faridabad (for short 'A.C. 1st Grade') has been dismissed.

(2) Brief facts of the case are that respondent No.4-Gram Panchayat Bahin, Tehsil Hathin, District Faridabad (for short 'Gram Panchayat') filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'Act') for ejectment of the

petitioner from *Shamlat Deh*, measuring 32 Kanals, comprised in Khewat No.1786, Khatoni No.1926, Khasra No.106, 2 (8-0), 9 (8-0), 12 (8-0) and 19 (8-0), situated at Mauza Bahin being in unauthorized possession.

Upon notice, the petitioner filed his reply to the petition under Section 7 of the Act and denied the allegations of unauthorized possession and claimed to be a *Bhondedar*. It was next submitted that his predecessors were the *Bhondedars* over the land in dispute in lieu of services rendered by them for maintenance of *Bara Bangla* and now, he is occupying the land in dispute in the same capacity.

The parties produced oral as well as documentary evidence in support of their respective claims.

After hearing both sides, A.C. 1st Grade vide order dated 09.06.1994 (P-3) came to the conclusion that the petitioner is in unauthorized possession of the land in dispute and directed for his ejectment as well as to pay the penalty to the Gram Panchayat at the rate of ₹ 4,000/- per acre, per annum.

Feeling aggrieved against the above order, the petitioner preferred an appeal, but the same was dismissed by the Collector, vide order dated 29.09.1994 (P-4).

(3) Now both the aforesaid orders, passed by the Authorities, are under challenge in the present writ petition.

It is contended on behalf of the petitioner that he is occupying the land in dispute as a *Bhondedar* and prior thereto, his predecessors were continuing as such in lieu of the services rendered by them for maintenance of *Bara Bangla*. Thus, in view of the exception contained under sub-section 3 of

Section 4 of the Act, the land in dispute has not been vested in the Gram Panchayat and consequently, the impugned orders of ejectment, passed by both the Authorities below, are not legally sustainable. It is further argued that as per revenue record i.e. *Jamabandi* for the year 1976-1977 (**P-1**), in the column of cultivator, the name of his father-Kanhiya s/o Ramji Lal has been recorded as *Gair Marusi* and as such, his possession cannot be termed as unauthorized; rather the same can be construed as a tenant-at-will and as such, the ejectment is not warranted under Section 7 of the Act.

On the other hand, it is contended on behalf of the respondents that there is no material available on record to substantiate that either the petitioner; or his predecessors were the *Bhondedars* of the land in dispute. It is next contended that the petitioner has never claimed to be a tenant-at-will before the Authorities below and it is only the first time before this Court that such a plea has been raised and thus, the same is liable to be rejected. It is also submitted that both the Authorities below have recorded concurrent findings of fact regarding the unauthorized possession of the petitioner and thus, the present writ petition deserves to be dismissed.

(4) Heard both sides and perused the paper-book.

Before proceeding with the matter, it is necessary to extract Section 4 of the Act (applicable to State of Haryana) and which reads as under:-

“ 4. Vesting of rights in Panchayats and non-proprietors. -
(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests wherever in the land,-
(a) which is included in the shamilat deh of any village and which

has not vested in a panchayat under the shamilat law shall, at the commencement of this Act, vest in Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the -

- (i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedars, Butimars, Bassikhuopahus, Saunjidars, Muqararidars;*
- (ii) rights of persons who were in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953, or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;*
- (iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950. ”*

Perusal of sub-section 3 of Section 4 of the Act, extracted hereinabove, clearly reveals that right(s), title or interest of the person(s) in *Shamilat Deh*, who have been accorded the status of *Bhondedars*, have been exempted from vesting in favour of the Gram Panchayat. However, in the present case, there is no material available on record to prove that either the petitioner or his predecessor(s) had at any time were accorded the status of *Bhondedar(s)* regarding the land in dispute. Thus, the case of the petitioner is

not falling within the purview of non-*obstante* clause of sub-section 3 and resultantly, there is no occasion to invoke this provision in favour of the petitioner and consequently, his first argument is rejected.

(5) It is necessary to mention here that the word '*Bhondedar*' has not been defined under the Act and rather this was a custom prevalent in the area and reference in this regard can be made to Page 177 of the Punjab District Gazetteer, Volume IV A, Gurgaon District, 1910 as at that time, this area (Faridabad) was the part of District Gurgaon and which reads as under:-

*“ It is very common for an individual proprietor, and still more so for a whole village community to set apart a small piece of land, usually two or three bighas, to be held rent-free for the benefit of some temple, mosque or shrine ; or to give a piece of land, on similar favourable terms to a pandit or other person of a religious order. Such a grant is called a **dohli**, and the holder a **dholidar**. So long as the purposes for which the grant was made are carried out, it cannot be resumed ; but should the holder grossly fail to carry out the duties of his office, the proprietors can eject him and put in some one else under a like tenure.*

*The **bhonda** is like the **dohli**, a grant of a few bighas of land rent-free. The principal difference is that, while the service for which the **dohli** is granted is something directly connected with **religion**, the **bhonda** is given for some **secular service**, such as the duties of the village watchman (*chaukidar*) or messenger (*bulahar*). The **bhondedar** may be ejected on failure to fulfil the conditions of his tenure and perhaps in some cases at the will of the proprietors. It is simply an old-fashioned mode of paying for services. ”*

From the reading of extracted portion of the Gazetteer, it is apparently clear that *Bhondedari* was a grant of some rent-free land in lieu of rendering “secular services” to the proprietors and the *Bhondedar* can be ejected on failure to fulfill the condition(s) of his tenure; or even at the will of the proprietors. Thus, the *Bhondedar* was/is occupying the land as a mode of

payment for rendering “secular services” and nothing beyond that.

(6) The Collector, while passing the impugned order dated 29.09.1994, has recorded the categoric findings to the following effects:-

“ A perusal of Jamabandi for the year 1960-61 shows that in the column of cultivation, entry is Maqbuza Bara Bagla through owner through Laxmi Narain. The appellant has failed to prove his connection with Laxmi Narain. The name of Kanhiya, father of the appellant came to be recorded for the first time in Jamabandi for the year 1976-77 in which in column of cultivation, it is entered Maqbuza Bara Bangla through Kanhiya, i.e. **Sh. Kanhiya deceased is not shown as Bhoneddar or Dhaulidar**. In the column of rent, entry is Bila Lagan at Bara Bangla. On file, it has been established that the appellant is working as typist in Tehsil premises. He is not performing service at Bara Bangla and according to the conditions of Bhoneddar, his Bhoneddari rights have come to an end on non-performance of service and therefore, in accordance with the rulings cited by counsel for the respondent, land should go back to Gram Panchayat who is its owner.”

Even in reply to the present writ petition also, a preliminary objection has been raised by the Gram Panchayat to the effect that father of the petitioner was not a *Bhoneddar* of the land in dispute and which reads as under:-

“ (i) A perusal of Jamabandi Annexure P-2 for the year 1961-62 would demonstrate that land in question was given to Luxmi Narain son of Kishan Lal, as a BHONDEDAR on account of secular service rendered to Bara Bangla i.e. Chaupal of five villages namely, (a) Bahin, (b) Nangal Jat, (c) Manpur, (d) Pahari and (e) Andoh.

It is for the first time, vide Jamabandi for the year 1976-77 (Ex.R-2 on the record before Collector) that name of Kanhiya Lal son of Ramji Lal, father of petitioner Mange Ram, came to be entered. This entry and the subsequent entries do not fall within the definition of 'BHONDEDAR'.

Petitioner has not explained as to the circumstances in which, his father Kanhiya Lal son of Ramji Lal, came in possession of the

land as a Bhoneddar in place of Luxmi Narain son of Kishan Lal. Even no relationship of petitioner or his father Kanhiya Lal with the original BHONDEDAR i.e. Luxmi Narain son of Kishan Lal, has been either alleged or proved. ”

The contents of the preliminary objection, reproduced hereinabove, have not been controverted by the petitioner in any manner and thus, in the absence thereof, the same are deemed to have been admitted.

(7) There is absolutely no material or document brought to the notice of this Court to take a different view as arrived at by the Authorities below. Therefore, this Court is fully in agreement with the findings recorded by the A.C. 1st Grade as well as Collector that the petitioner is not recorded as a *Bhoneddar* over the land in dispute and he is not rendering any services to the *Bara Bangla*.

(8) Although, learned Counsel for the petitioner has tried to make a feeble attempt by raising the plea of “tenant-at-will” and also relied upon a judgment of the Full Bench of this Court, titled as '**Sarwan and Rati Ram Versus Joint Director, Panchayats, Punjab**', reported as **1985 (2) PLR 184**, but this argument is also liable to be rejected for the simple reason that from the very beginning, his claim is that of a *Bhoneddar* and not as a tenant. The judgment of **Sarwan and Rati Ram's case (supra)** is also not helpful to the petitioner as in that case, the father of the petitioners was recorded as a “tenant-at-will” on the basis of a perpetual lease, executed by the Gram Panchayat over the land (*Banjar Qadim Jungal*), measuring 151 Kanals, 19 Marlas and he made the same cultivable and there was an understanding between the tenant and the Gram Panchayat that he would not be ejected from the land in dispute. But despite that, the proceedings were initiated under

Section 7 of the Act and which were dismissed by the A.C. 1st Grade twice. Again, on third time, petition under Section 7 of the Act was filed, which was allowed and ultimately, matter travelled to this Court.

A Division Bench of this Court referred the matter to the Full Bench and the precise issue, involved in that case, was as under:-

“ Since we find ourselves unable to concur in the view of the Division Bench as taken in judgment rendered in C.W.P. No.1479 of 1979 decided on 6.9.1979 that the tenancy-at-will cannot be unilaterally terminated, so this petition is admitted to Full Bench. ”

The Full Bench allowed the said petition and quashed the impugned order of ejectment, passed under Section 7 of the Act as well as the order of the Appellate Authority and paragraph 5 of the judgment reads as under:-

“ The only contention raised before us by the learned counsel for the petitioners, is that the impugned orders are wholly perverse and have completely ignored the finding of the Civil Court rendered in the litigation between the parties, wherein it has been held that the plaintiff (Petitioners' father) was in continuous possession of the suit land as tenant-at-will under the defendant (respondent Gram Panchayat) and, as such, he could not be dispossessed forcibly without having recourse to law. As the petitioners have been held to be the tenants by the Civil Court, we fail to understand as to how did a petition under Section 7 of the Act lie inasmuch as they are not in unauthorised occupation of the land in dispute. The Appellate Authority has misread the order of S. Dayal Singh, PCS, Assistant Collector, 1st Grade, Patiala, dated September 24, 1971. In that judgment, it is nowhere stated that the Sarpanch had deposed that the land in dispute was given on lease for the period of eight years. The respondent Gram Panchayat has not been able to establish in the present case that the land was given for a fixed period on lease to the petitioners and that after the expiry of that period, the petitioners' possession was unauthorised. As earlier observed, the Civil Court has held the petitioners to be tenants-at-will and there is no allegation nor

any evidence to prove that their tenancy at any time was terminated by the respondent-Gram Panchayat. In this view of the matter, we find that the petitioners are in occupation of the land in dispute as tenants and that their possession is not unauthorised and no order of ejectment against them could legally be passed in the petition filed under Section 7 of the Act. ”

Perusal of para 5 of the judgment, reproduced hereinabove, makes it apparently clear that the same is clearly distinguishable on facts and is not helpful to the petitioner.

(9) In view of the facts and circumstances, discussed hereinabove, this Court does not find any merit to interfere with the impugned orders, passed by both the Authorities below, while exercising under Article 226/227 of the Constitution.

(10) Consequently, the present writ petition is hereby dismissed.

(MAHESH GROVER)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

July 31, 2018
Gagan

Whether speaking/reasoned	Yes
Whether Reportable	Yes