

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

**CWP No.6621 of 1996 (O&M)
Date of Decision: 31.07.2018**

Lal Dass Chela Lachhman Dass, Priest, Mandir Bahchand,
Village Bahin, Tehsil Hathin, District Faridabad

....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. Naveen Bhardwaj, Advocate for respondent Nos.4 and 5.

Mr. Jagdish Manchanda, Advocate for respondent No.6-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 23.11.1995 (**P-3**), passed by respondent No.2-Collector, Faridabad (for short 'Collector'), vide which, his appeal against the order of ejectment dated 29.03.1995 (**P-2**), 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 Nos.4 and 5 filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'Act') for ejectment of the petitioner from *Shamilat Deh*, comprised in Khasra/Khatoni No.1686/1942, total measuring 222 Kanals 10 Marlas, situated in Siwana Village Bahin, Tehsil Hathin, 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 earlier, Mahant Lachhman Dass was the *Bhondedar* over the land in dispute and now, the petitioner being the *Chela* of said Mahant is rendering services and performing *Puja* (worship) in the temple Behchand.

Respondent No.6-Gram Panchayat filed separate reply and submitted that earlier Mahant Lachhman Dass *Chela* Hardev Dass was in possession of the land in dispute as a *Gair Marusi Billa Lagaan Bawaja Khidmat Mandir* and the petitioner is claiming to be the *Chela* (disciple) of Lachhman Dass. Further submitted that in a **Civil Suit No.234 of 1973** titled as '**Lachhman Dass Versus Lal Dass**', a declaration was granted by the then Sub Judge 1st Class, Palwal to the effect that petitioner-Lal Dass is not the *Chela* of Mahant Lachhman Dass and thus, he is in unauthorized possession of the land in dispute and moreover, he is not rendering any services to the temple, rather the entire management of temple is being looked after by the Committee of Village Bahin.

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

After hearing both sides, A.C. 1st Grade, vide order dated 29.03.1995 (**P-2**), came to the conclusion that petitioner-Lal Dass is not proved to be a *Bhondedar* of the land in dispute and he is in unauthorized possession of the same and consequently, directed for his ejectment as well as to pay a sum of ₹ 25,000/- to the Gram Panchayat in lieu of the benefits derived from the land in dispute.

Feeling aggrieved against the above order, the petitioner preferred an appeal, but the same was dismissed by the Collector, vide order dated 23.11.1995 (P-3).

(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 *Bhoneddar* being *Chela* of Mahant Lachhman Dass and rendering services to the temple Behchhand and doing *Puja* (worship). 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.

On the other hand, it is contended on behalf of the respondents that there is no material available on record to substantiate that the petitioner is the *Chela* of Mahanat Lachhman Dass in view of the Civil Court's decree and thus, he cannot claim to be a *Bhoneddar* of the land in dispute. 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 Dholidars, 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 the

petitioner was the *Chela* of Mahant Lachhman Dass and he had been accorded the status of a *Bhondedar* regarding the land in dispute; rather the decision of Sub Divisional Magistrate, Nuh as well as judgment rendered by the Civil Court in the year 1973 (**Ex.P-7 and Ex.P-8** respectively), produced before the A.C. 1st Grade, clearly prove that the petitioner was not the *Chela* of Mahant Lachhman Dass. 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, the argument is rejected.

(5) It is necessary to mention here that the word '*Bhondedar*' has not been defined under the Act and 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 not the “religious services”. It is also clear that 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 not the “religious services”.

(6) The Collector, while passing the impugned order dated 23.11.1995, has recorded the categoric findings to the following effects:-

“ I have carefully perused the evidence produced on the record and heard the learned counsel for the parties at length. A perusal of the evidence show that the appellant has not produced any evidence on the record to show that he was appointed as Chela of Mahant Lachhman Dass of Mandir Bhe Chand. Civil Court judgment Ex.P-8 clearly shows that the appellant is not Chela of Mahant Lachhman Dass. A perusal of the judgment P-7 in case State Vs. Lal Dass passed by Sub Divisional Magistrate, Nuh, it is clear that Lal Dass was not a chela of Mahant Lachhman Dass. According to that judgment, it was decided by compromise that Lal Dass will not be a chela of Mahant Lachhman Dass and Mahant Lachhman Dass was held to be a Bhondedar. ”

(7) No material or document has been brought to the notice of this Court to enable us to 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 neither the *Chela* of Mahant Lachhman Dass; nor *Bhondedar* over the land in dispute. Moreover, the alleged “religious services” cannot be a basis for claiming the *Bhondedari* by the petitioner in view of the custom, recorded in the Gazetteer of 1910, referred above in paragraph 5.

- (8) 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.
- (9) 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