

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.1416 of 2015
Date of Decision: 16.10.2018

Smt. Bado Devi and others

..... Petitioners

Versus

Gram Panchayat Bighar and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

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

Mr. Radhey Shyam Sharma, Advocate
for respondent No.1.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Manoj Dhankhar, AAG, Haryana.

MAHABIR SINGH SINDHU J.

Present writ petition has been filed for quashing of the impugned order dated 29.01.2014 (P-18) passed by Commissioner, Hisar Division, Hisar-respondent No.3 whereby their appeal filed under Section 13-AA of the Punjab Village Common Lands (Regulation) Act, 1961; as applicable to State of Haryana (for short 'the Act') has been rejected and order dated 22.03.2011 (P-12) passed by Collector-respondent No.4 while dismissing their suit under Section 13-A of the Act has been affirmed.

Brief facts of the case are that petitioners filed a suit under

Section 13-A of the Act before Collector, Fatehabad on 25.11.2008 to the effect that petitioner No.4 and predecessors-in-interest of petitioner Nos.1 to 3, namely, Chuni, S/o Bega Ram are in continuing possession of the land comprised in Khasra/Khewat No.93//1(3-1), 2(8-0), 3(8-0), 4(8-0), 15(7-8), 16/1/2 (1-5) measuring 35 Kanals 14 Marlas situated at village Bighar, Tehsil and District Fatehabad (hereinafter referred as 'land in dispute') since 1942-43 and which is the ownership of 'Mushtarka Malkan Hasab Rasad Raqba Khewat' and as such respondent No.1-Gram Panchayat has no concern with the same. Consequently prayed that they have become the owner in possession of the land in dispute and their names be entered as owners thereof in the revenue record instead of Gram Panchayat and in the column of ownership, entry of Gram Panchayat be deleted.

Suit was opposed by Gram Panchayat while raising preliminary submissions that petition under Section 7 of the Act filed against the petitioners was initially allowed *ex parte* by Assistant Collector, Ist Grade (for short 'the AC, Ist Grade') vide order dated 30.07.2001 and thereafter petitioners moved application for setting aside the same which was dismissed on 24.02.2004. An appeal against the above order was preferred and which was also dismissed by Collector vide order dated 05.12.2007 and as such the present suit under Section 13-A of the Act is not maintainable.

On merits, submitted that earlier 'Mushtarka Malkan' was the owner of the land in dispute, but after consolidation, the

management and control thereof has been vested with the Gram Panchayat and in the year 1992, ownership was also vested with the Gram Panchayat by operation of law in view of the amendment of Act. Further submitted that Mutation No.46 dated 17.09.1992 has already been sanctioned in favour of the Gram Panchayat and thus, the petitioners are in illegal possession of the same. Also submitted that there is no evidence on record to substantiate that petitioners are continuing in possession of the land in dispute since 1942-43.

After hearing both the sides, Collector dismissed the Suit of petitioners vide order dated 20.03.2011 and an appeal there against was also dismissed by Commissioner on 18.07.2011. The matter was carried to this court by the petitioners in CWP No.7823 of 2012 and which was disposed of vide order dated 29.11.2012 thereby remanding the matter to the Commissioner for deciding it afresh. Resultantly, the appeal of the petitioners (although wrongly mentioned as revision) has been dismissed by Commissioner on 29.01.2014 while passing the impugned order and that is the subject matter of challenge in the present writ petition.

It is argued by learned counsel for the petitioners that Commissioner has dismissed their appeal without due application of mind inasmuch as the proceedings under Section 7 of the Act have been inter-mingled while passing the impugned order and instead of deciding the appeal, the Commissioner converted the same into a revision and rejected the same. Further argued that land in dispute is the Bachat

Land and as such the Gram Panchayat has no concern to oppose the prayer of the petitioners in view of the judgment of the Full Bench of this Court passed in CWP No.5877 of 1992 titled as 'Jai Singh vs. State of Haryana', decided on 13.03.2003 (P-8).

On the other hand, learned counsel for respondent No.1-Gram Panchayat has submitted that land in dispute has been vested in the Gram Panchayat since 1992 and Mutation No.46 of 17.09.1992 was rightly sanctioned in their favour and the same has not been challenged either by the proprietors or share holders of the village till date. Further argued that petitioners are neither the proprietors of the village; nor they had contributed any land during the consolidation proceedings on pro-rata basis for the common pool. Also argued that petitioners have already been dispossessed in due course of law and the land is being leased out by the Gram Panchayat to the inhabitants of the village right from their ejection on yearly basis.

Heard learned counsel for the parties and perused the paper book.

Admittedly, proceedings under Section 7 of the Act were instituted against the petitioners before the AC, Ist Grade, and initially, despite notice, they did not pursue the matter, consequently, an *ex parte* ejection order were passed on 30.07.2001. Subsequently, an application was moved on 10.05.2002 for setting aside the *ex parte* order, but the same was rejected by AC Ist Grade vide order dated 24.02.2004. Against the above order, the petitioners preferred revision

petition before Commissioner and which was also dismissed on 05.12.2007. Still dissatisfied, they challenged the orders passed by the authorities in CWP No.5998 of 2008 before this Court and the matter was remanded back to the AC Ist Grade vide order dated 19.02.2010 to decide it afresh. Consequently, the case was again heard by AC Ist Grade and petitioners were ordered to be ejected from the land in dispute vide order dated 21.09.2010 with the direction to hand over the possession of the same to the Gram Panchayat within 30 days. Thereafter, petitioners preferred an appeal against the ejectment order dated 21.09.2010 and which was also dismissed by Collector on 16.12.2010. Again a revision was filed against the order of Collector, but the same was also dismissed by Commissioner vide order dated 26.04.2011. Again aggrieved, the petitioners challenged the abovesaid orders of authorities in CWP No.917 of 2012, and which was rendered infructuous vide order dated 29.11.2012 in view of the fact that possession of the land in dispute had already been retrieved by the Gram Panchayat vide Rapat No.222 dated **06.04.2012**.

Although the petitioners have briefly mentioned about the proceedings under Section 7 of the Act, but none of the orders passed by the Authorities below have been attached with the writ petition, for the reasons best known to them and this Court has been deprived to go through the contents of these orders. Withholding of the relevant documents from the writ court is not an healthy trend and the same should be discouraged as these proceedings are not like a civil suit,

where evidence is led by the parties during trial. Therefore, we express our displeasure against the course adopted by the petitioners while not attaching the ejectment order passed under Section 7 of the Act, dismissal of their appeal as well as revision dated 21.09.2010, 16.12.2010 and 26.04.2011, respectively.

Before proceedings with the matter, it is necessary to extract the relevant provisions of Sections 2(g)(6), 5(1) and 7 of the Act being material to decide the matter in controversy and which are as under:-

“2(g) 'Shamilat deh' includes:-

x x x x x

(6) *lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.*

Explanation.---Lands entered in the column of ownership of record of rights as Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad, 'Jumla Malkan' or 'Mushtarka Malkan' shall be shamilat deh within the meaning of this section.]

Section 5

5(1) All lands vested or deemed to have been vested in a panchayat under this Act, shall be utilized or disposed of by the panchayat, for the benefit of the inhabitants of the village concerned in the manner prescribed.

x

x

x

x

x

Section 7

7.(1) *An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by panchayat or an inhabitant of the village or the Block Development and Panchayat Officer of Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and Put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887 :*

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) *The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or*

unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the

date of the order, the same shall be recoverable as arrears of land revenue.

- (3) The procedure for deciding the question of title under provision to sub-section (1), shall be the same as laid down in the Code of Civil Procedure, 1908.*
- (4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.*
- (5) Any person who is found in wrongful possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.*

Paper book reveals that in the year 1992, the Act was amended and by virtue of provisions contained under Sections 2(g)(6) read with Section 4(1)(a), the land in dispute was vested with the Gram Panchayat and consequently, Mutation No.46 dated 17.09.1992 (P-19) was sanctioned in its favour and the same has not been challenged by any of the proprietors of the village till date. No doubt, prior to the

amendment, the land in dispute was recorded as 'Mushtarka Malkan Hasab Rasad Raqba Khewat' and in the column of cultivation, it is shown as Khudkasht (Self Cultivation). It transpires that from the *jamabandi* for the year 1967-68 (Annexure P-2), that first time in the column of cultivation, names of Chuni son of Bega Ram and Om Parkash son of Raja Ram have been reflected and there is no revenue record available with the paper book to show that earlier to that, petitioners; or their predecessor-in-interest had ever remained in possession of the land in dispute. There is no dispute that during the consolidation proceedings in the year 1963, a pro-rata cut was imposed upon the lands of the proprietors of village Bighar and the land in dispute was came into existence as a common pool in the ownership of Mushtarka Malkan Hasab Rasad Raqba Khewat; but there is no document on record to substantiate that petitioners made any contribution for the common pool on pro-rata basis. The earliest revenue record attached with the paper book is *Jamabandi* for the year 1963-64 which shows that land in dispute was recorded in the ownership of the Mushtarka Malkan, but there is neither complete consolidation scheme; nor other related revenue record i.e. Khatauni Pamaish (measurement of total land on the basis of its valuation), Khatauni Istemal (first jamabandi after consolidation which mentions the old khasra numbers and the new khasra numbers), Missal Haqiyat (document of ownership) and Naksha Haqdarar (document of share of the proprietors), attached by the petitioners to prove that they had made any

contribution during the consolidation or they were in possession of the same at that time. Although the petitioners are claiming that their predecessor-in-interest were continuing in possession of the land in dispute since 1942-43 but, there is nothing on record to substantiate the same except the earliest *jamabandi* for the year 1967-68 as Gair Maurusi (non-occupancy tenant) and as such their plea of possession since 1942-43 is without any basis and the same is liable to be rejected.

It is evident that petitioners are neither the proprietors of the village Bighar; nor they had contributed any land on pro-rata basis for creating the common pool at the time of consolidation; rather they belong to a different village i.e. Bangaon and as such no declaration can be prayed by them in terms of Section 13-A of the Act. Moreover, once the land in dispute has already been vested with the Gram Panchayat and there is no challenge to the same by any proprietors or share holders of the village, then petitioners have no *locus standi* to seek a relief of title that they be declared as owner of the same.

Even from the judgment rendered by Full Bench of this Court in ***Jai Singh's case (supra)*** also, learned counsel for the petitioners is not able to show or point out that person(s) like petitioners have any right to seek the relief of ownership in terms of Section 13-A of the Act, who admittedly are not the proprietors of the village.

In view of the facts and circumstances discussed hereinabove, the irresistible conclusion is as under:-

1. Proceedings under Section 7 of the Act were initiated against the petitioners on account of their illegal possession of the land in dispute which was ultimately allowed and attained finality up to this court.
2. Possession of the land in dispute has already been retrieved from the petitioners by the Gram Panchayat vide Rapat No.222 dated **06.04.2012** and the same is being leased out to the inhabitants of the village on annual basis in terms of Section 5(1) of the Act.
3. The petitioners are neither the proprietors; nor contributed any land on pro-rata basis during consolidation towards the common pool, rather they are inhabitants of a different village i.e. Bangaon and the land in dispute is situated in revenue estate of village Bighar and as such they have no right to take recourse to the remedy of Section 13-A of the Act.
4. There is no challenge to the vesting of the land in dispute in favour of the Gram Panchayat by any of the proprietors or share holders of village Bighar till date and the same is in management and control of the Gram Panchayat.
5. The petitioners were in illegal and unauthorized possession of the land in dispute and thus they have rightly been ejected by the authorities in accordance with the provisions of Section 7 of the Act and they have no right, title or interest with the same and their suit as well as appeal have rightly been dismissed by the authorities below while passing the impugned orders .

In view of the above, this Court is left with no option, but to dismiss the writ petition being without any merit.

Ordered accordingly.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

16.10.2018

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No