

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

Date of Decision: 18.11.2019

1. CR No.5703 of 2018(O&M)

Baldev RajPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

2. CR No.6410 of 2018(O&M)

Bhajan SinghPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

3. CR No.6426 of 2018(O&M)

Gurdev SinghPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

4. CR No.6440 of 2018(O&M)

Bahadur SinghPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

5. CR No.6431 of 2018(O&M)

Jasbir SinghPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

6. CR No.6459 of 2018(O&M)

HardialPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

7. CR No.6481of 2018(O&M)

Tirth RamPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

8. CR No.6483 of 2018(O&M)

Kuldeep KaurPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

9. CR No.6513 of 2018(O&M)

Jasbir SinghPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

10. CR No.14316 of 2018(O&M)

Des RajPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

11. CR No.14324 of 2018(O&M)

Lakhwinder SinghPetitioner
Versus
Municipal Committee Cheeka and othersRespondents

12. CR No.14339 of 2018(O&M)

Lal Singh	Petitioner
Versus	
Municipal Committee Cheeka	Respondent

13. CR No.14340 of 2018(O&M)

Bhagwan Dass	Petitioner
Versus	
Municipal Committee Cheeka and others	Respondents

14. CR No.14341 of 2018(O&M)

Bhajja Ram @ Bhajan	Petitioner
Versus	
Municipal Committee Cheeka and others	Respondents

15. CR No.14344 of 2018(O&M)

Lakhwinder Singh	Petitioner
Versus	
Municipal Committee Cheeka and others	Respondents

16. CR No.14350 of 2018(O&M)

Chander Bhan	Petitioner
Versus	
Municipal Committee Cheeka through its Secretary	Respondent

17. CR No.14352 of 2018(O&M)

Sukhbir Singh	Petitioner
Versus	
Municipal Committee Cheeka and others	Respondents

18. CR No.14377 of 2018(O&M)

Karam SinghPetitioner
Versus
Municipal Committee Cheeka and others
.....Respondents

19. COCP No.9946 of 2018(O&M)

Gurdev SinghPetitioner
Versus
Mohan Dass Secretary, Municipal Committee Cheeka and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Kanwaljit Singh, Sr. Advocate with
Mr. S.K. Librehan, Advocate and
Mr. G.S. Virk, Advocate
for the petitioner(s).

Mr. Sunil Dhanda, Advocate for
Mr. Deepak Manchanda, Advocate
for respondent No.1 in
CR Nos.5703, 14316, 14324, 14339, 14340, 14341,
14344. 14350, 14352, 14377 of 2018 and COCP
No.9946 of 2018.

Mr. Kuldeep Tiwari, Advocate
for respondent No.1 in
CR Nos.6410, 6426, 6431, 6440, 6459, 6481, 6483
and 6513 of 2018.

Mr. Rajender Goyal, Advocate
for respondents No.2 to 5
in COCP No.9946 of 2018.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, bunch of aforesaid 18 civil

revisions and contempt petition i.e. COCP No.9946 of 2018 are being disposed of. The factual details are being noticed from CR No.5703 of 2018.

[2]. Petitioner has preferred this revision petition against the order dated 17.05.2018 passed by Additional Civil Judge (Senior Division), Guhla and order dated 18.07.2018 passed by Additional District Judge, Kaithal, vide which application under Order 39 Rules 1 and 2 CPC was concurrently dismissed.

[3]. Plaintiff/petitioner filed a suit for declaration to the effect that the plaintiff is entitled to allotment of the suit land for 99 years on lease hold basis as per Government notification dated 06.09.2013 and 09.10.2013 or in the alternative for compensation. Permanent injunction was also sought to restrain the defendants from leasing out the suit property to any other person except the plaintiff and further restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit property and also from dispossessing him forcibly. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was also filed.

[4]. The suit along with the application was contested by defendants No.1 and 8 i.e. Municipal Committee, Cheeka on the premise that earlier some inhabitants had filed CWP No.7185 of 2009 before the High Court for mandamus, seeking direction to

give the land on lease in accordance with Rule 6-A of Punjab Village Common Land Rules, 1964. The said writ petition was disposed of by the High Court with a direction to consider the application filed by the petitioner(s) therein in terms of Rule 6-A of the *ibid* Rules vide order dated 12.05.2009. Thereafter, the Municipal Committee in its meeting dated 20.06.2009 found no force in the application and resolution No.3 was passed to that effect. The said resolution passed by the Municipal Committee has not been challenged by the plaintiff or any other person. Some other inhabitants of Cheeka also filed CWP No.9794 of 2008 which was disposed of by the High Court vide order dated 17.05.2010. Respondents claimed that in view of orders passed in CWP No.9794 of 2008 and CWP No.2082 of 2009, the plaintiff has no right to seek any relief on the basis of amendment, if any, made by the State of Punjab in Punjab Village Common Land Rules, 1964. Plaintiff has participated in open auction and had deposited the lease money for the lease period of the suit land. The land has already vested in Municipal Committee, Cheeka.

[5]. During course of arguments, learned Senior Counsel for the petitioner submitted that the petitioner is in established possession of the land in question on the basis of *jamabandi* for the year 1975 to 2015-16 as the name of Moma Ram father of

the petitioner was recorded in the column of cultivation. As per receipts issued by the Gram Panchayat, Cheeka from time to time from 05.07.1975 till 15.05.2019, chakota amount was regularly deposited by the petitioner son of Moma Ram for the land in dispute. Petitioner was never ejected from the land in question. The status of Moma Ram was recorded as *gair marusi*. After his demise, the petitioner inherited the tenancy rights and now he is in possession of the land in question as tenant.

[6]. During course of arguments, it has come to fore that at one point of time CWP No.10172 of 1997 was filed in which Municipal Committee, Cheeka was also impleaded. The said writ petition was disposed of on 15.09.1997 with the following directions:-

(1) That the petitioners would deposit the lease money at the rate of Rs.4300/- per acre per annum within a period of two weeks from today and the amount so deposited would be refunded to the auction purchasers who have been leased out the disputed land or a part thereof at the time of auction which has taken place on 16.07.1997.

(2) The learned counsel for the petitioners has undertaken before us that the possession of the

disputed land would be handed over to the Municipal Committee/respondent No.4 on or before 15.05.1999.

(3) If the amount so agreed is not deposited within the time aforesaid, the writ petition would be deemed to have been dismissed and in that situation, the respondent Municipal Committee would be entitled to take the possession of the disputed land forthwith and deliver the same to the auction purchasers. In addition thereto, the petitioner would bear the costs of this petition if the amount is not deposited within the aforesaid time and its costs would be of Rs.25,000/-

(4) If the petitioners have not paid the amount for the earlier period, the Gram Panchayat or the Municipal Committee would be entitled to maintain a separate petition before this Court.

(5) In future i.e. after 1999, the petitioners would be entitled to participate in the auction proceedings but the same would be only after handing over the possession of the disputed land to the Municipal Committee.

[7]. The aforesaid writ petition was filed by 43 persons including Gurdev Singh son of Amrik Singh at serial No.33. The issue was decided in the context of procedure for leasing out the land on annual basis. The lessees were required to hand

over the possession of the land to the Municipal Committee before fresh auction to be undertaken and the lessees were required to participate in that auction.

[8]. By referring to agreement between the lessees and the Municipal Committee, Cheeka and auction notices, it was informed to all the stake-holders/lessees that after termination of period of lease in the month of May, the land has to be vacated by the lessees and the possession has to be delivered to Municipal Committee. Thereafter, lessee has to participate in the auction proceedings.

[9]. Learned counsel for respondent No.1 vehemently submitted that the aforesaid exercise was uniformly applied in all the cases. The continuation of possession of the petitioner is also on the basis of aforesaid concept, as he had vacated the land on annual basis before participating in the auction proceedings. Having successful in the auction, he was granted lease on annual basis from time to time.

[10]. Both the parties have argued on the basis of assertions and denial in respect of factual details.

[11]. It is a settled principle of law that for the purpose of appreciating the interim prayer in terms of Order 39 Rules 1 and 2 CPC, three principles are to be seen i.e. *prima facie* case, balance of convenience and irreparable loss in the event of non-

grant of interim injunction.

[12]. According to the information supplied by learned Senior Counsel for the petitioner, it has come to fore that in 10 cases i.e. CR Nos.5703, 6513, 6481,6459, 6483, 14352, 6410, 6440, 14316 and 14341 of 2018, the lease amount was deposited upto 15.05.2019 and the petitioners therein are in possession of the suit property till date. In CR Nos.6426, 14340 and 14377 of 2018, the lease amount was deposited upto 02.05.2018. In CR Nos.14324 and 14344 of 2018, the lease amount was deposited upto 2016.

[13]. According to learned counsel for respondent No.1, the amount was deposited upto 15.05.2019 in seven cases only. In Gurdev Singh's case i.e. CR No.6426 of 2018, the lease money was paid only upto 2017 and in other cases, the lease money was deposited upto 2018.

[14]. As per conditions formulated by the Division Bench in CWP No.10172 of 1997, the Municipal Committee has already taken possession from the lessees who had not deposited the lease amount for the year 2017-18 and the land has been further auctioned to different lessees who are in possession at the spot. Both the parties are at variance on the fact of possession over the land in question.

[15]. Learned counsel for respondent No.1 has conceded to

the effect that the lessees who have deposited the lease amount for the year 2019, are still in possession of the land in question, but the lessees who did not deposit the lease money in the year 2017-18, are not in possession of the land in question and the land has already been subjected to auction in favour of different lessees who are in possession at the spot.

[16]. Since the suit is at the initial stage, therefore, both the parties have vehemently submitted their view points.

[17]. Learned Senior Counsel for the petitioner by making reference to **Suraj Bhan and others Vs. State of Haryana and another, 2017(2) PLR 605** contended that amendment in the Haryana Municipal Act has already been declared *ultra vires* and the suit property in question is not capable of vesting in Municipal Committee.

[18]. Since the issue is pending before the Civil Court, therefore, any observation made by this Court at this premature stage, may prejudice the case of any side during trial.

[19]. In view of facts and circumstances of the case, it can be appreciated that in the light of conditions formulated by Division Bench in CWP No.10172 of 1997, the land was subjected to auction on annual basis. Now the lessees are supposed to vacate the land after harvest and before starting of fresh lease period every year in the month of May. Admittedly,

the lessees who have already deposited the lease money upto May 2019, are in possession of the land. Both the parties are at variance in respect of factum of possession by those lessees who have not deposited the lease money for the year 2017-18.

[20]. Since the lease was granted by the Municipal Committee, therefore, the factum of vesting the land in Municipal Committee would be debatable before the trial Court at the relevant stage with reference to decision rendered in **Suraj Bhan and others case (supra)**. At this stage, it will be in consonance with the natural justice that the lessees in possession of the land as on date, who have deposited the lease amount for the year 2019 shall participate in the process of fresh lease as per directions contained in CWP No.10172 of 1997. Petitioners have staked their claim regarding possession even in those cases in which lease amount was not deposited for the year 2017-18. On the other hand, Municipal Committee has staked its claim on the ground that the possession had already been taken from those lessees who had not deposited the lease amount for the year 2017-18 and now, subsequent lessees are in possession at the spot. The case of Gurdev Singh falls in that category where the lease money was deposited in the year 2017 only and thereafter, possession was taken from him in the month of May 2017. Thereafter, in auction

proceedings, one Rakesh participated and being the highest bidder, he got the land in question on lease for 2017-18.

[21]. The *status quo* regarding possession granted by this Court on 05.09.2018, cannot be appreciated to cover the case of Gurdev Singh in any manner, therefore, COCP No.9946 of 2018 filed on the basis of alleged violation of *status quo* has no bearing on merits.

[22]. Learned counsel for respondent No.1 also referred to order dated 16.11.2018 passed by Deputy Commissioner, Kaithal vide which it was found that Gurdev Singh was not proved to be in possession of the land in question, rather the possession of the land was found to have been delivered to new lessee namely Rakesh son of Karnail Singh. Learned counsel for respondent No.1 stated that Municipal Committee is in possession of the entire record which shows that the possession was taken from the lessees who did not pay the lease amount in the year 2017-18 and the land was further subjected to auction and was leased out to new lessees in view of order dated 15.09.1997 passed by the Division Bench in CWP No.10172 of 1997. It is only in those cases, the lessees are still in possession who had deposited the lease amount for the year 2019 and by virtue of *status quo*, they are still in possession and Municipal Committee could not auction the

same because of order of *status quo*.

[23]. In the light of pleadings and material on record, I deem it appropriate to dispose of all the revision petitions with the observations that in view of directions issued by the Division Bench in CWP No.10172 of 1997 on 15.09.1997, the land shall be subjected to auction in which the petitioners would be at liberty to participate. If they are found to be highest bidder, they would be allotted the land as per terms and conditions of lease. Even the petitioners who have been allegedly dispossessed in the year 2017-18 for want of deposit of chakota amount, can participate in the process of lease. In case, they are also proved to be highest bidder, they would be allotted the land according to the terms and conditions. Order of *status quo* granted by this Court on 05.09.2018 is modified to the extent that the land would be subjected to auction as per directions contained in CWP No.10172 of 1997 and the petitioners, if so, advised may participate in the auction proceedings. In the event of finding them to be highest bidder, they shall be allotted the land in accordance with Rules. This arrangement shall continue during pendency of the suit. Other pleas which were raised by learned Senior Counsel for the petitioner(s) and denied by learned counsel for the respondents, would be adjudicated by the trial Court with reference to evidence to be led by the parties during

trial of the case.

[24]. For the reasons recorded hereinabove, these revision petitions are disposed of. Since Gurdev Singh was allegedly dispossessed in the year 2017 before passing of order dated 05.09.2018, therefore, in my considered opinion, the contempt petition i.e. COCP No.9946 of 2018 is found to be totally devoid of merits and is accordingly dismissed.

18.11.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No