

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.2802 of 2019

Date of Decision:-31.05.2019

Ashok Kumar & Anr.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUM KUMAR TYAGI**

Present:- Mr. Sudhanshu Makkar, Advocate for the Petitioners.

JASWANT SINGH, J.

Two Petitioners, namely, Ashok Kumar and Kavita have preferred the instant writ petition seeking quashing of impugned orders of eviction dated 31.03.2011 (**P-2**) passed by Assistant Collector 1st Grade, Loharu; order dated 25.05.2017 (**P-3**) passed by Collector Bhiwani; and order dated 04.12.2018 (**P-4**) passed by Divisional Commissioner, Rohtak Division, Rohtak, whereby eviction preferred by respondent no.5-Gram Panchayat Naloi under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 1961 Act) has been allowed.

2. Learned Counsel for the petitioner has raised the following arguments:-

“ **First** argument of the learned Counsel for the petitioners is that on account of possession for more than 40 years, on

payment of nominal rent @ 12/- per annum, the descendants of Deba have acquired occupancy rights and, therefore, have become owners.

Second argument is that the petitioner is a tenant at sufferance of expiry of the period of annual lease, therefore, could only be evicted on the grounds available under the Punjab Security of Tenures Act, 1953, being a statutory tenant, thereby, the proceeding under the Punjab Village Common Lands (Regulation) Act, (for short the Lands Act) are without jurisdiction.

Last argument is that the learned Commissioner has misdirected itself in proceeding to record a finding that the petitioners have not been able to show that they have become owners by virtue of falling under the exclusion of the definition of Shamlat land as provided under Section 2(g) & 4(3) of the Lands Act, 1961.

3. After hearing learned Counsel for the petitioner and scrutinizing the paper book, we are of the opinion that instant writ petition is without any merit and, therefore, liable to be dismissed.

4. Before addressing the arguments raised by learned Counsel for petitioner, it is apposite to mention here that it is a conceded position that the land in dispute measuring 47 Kanals 12 Marlas was throughout recorded as Panchayat Deh under the ownership of the Panchayat and the grand father of the petitioners, namely, Deba, was inducted in the year 1969-70 vide annual lease deed. Consequently, we would now deal with the point wise arguments raised by learned Counsel for the petitioners.

5. As far as the first argument raised by learned Counsel for the petitioner is concerned, the same is without any merit. Adjudication of title as occupancy tenant cannot be done by this Court under the proceedings

initiated under the Act of 1961, as evidence is required to lead, which can

only be done before a civil Court of competent jurisdiction. Furthermore, admittedly no such proceedings have been initiated by the petitioners till date and therefore, this argument has been raised only to scuttle the eviction proceedings which were rightly initiated by the Gram Panchayat.

It may be true that under the provisions of Punjab Tenancy Act read with Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, the petitioners might be able to show that they have acquired ownership rights in respect of the land in question. However, in view of the fact that the dispute of petitioners is with the Gram Panchayat (who is owner of the property), the provisions of Punjab Village Common Lands (Regulation) Act would be relevant. Under Section 4(1) of this Act, it has been provided that notwithstanding anything to the contrary in any other law for the time being in force, etc., all rights, title or interest whatever in the land, which is included in the *Shamlat Deh* of any village and which was not vested in a Panchayat under the Shamlat Law, shall at the commencement of the said Act, vest in the Panchayat. Under Sub Section (3), it is provided that nothing contained in Sub Section (1) shall affect or shall be deemed ever to have affected the existing rights, title or interest of persons who are recorded as Dholdars etc. and that the rights of persons, we were in cultivating possession of the *Shamlat Deh* for more than 12 years immediately preceding the commencement of the said Act, without payment of rent etc.

Thus, it is clear that the rights of those persons, who are in cultivating possession of the *Shamlat Deh* for more than 12 years immediately preceding the commencement of the Punjab Village Common Lands (Regulation) At, without payment of rent etc., shall not be affected by

the provisions of Section 4(1) of the said Act, whereby all rights, title or interest in the land, which is included in *Shamlat Deh* of any village, shall vest in a Panchayat. This would mean that only those persons who are found to be in cultivating possession of the *Shamlat* land 12 years prior to the commencement of the aforesaid Act, would be entitled to claim, under the general law i.e. under the Punjab Tenancy Act read with Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, that they had become the owners of the property being the occupancy tenants. However, those persons, who are not in possession of the property 12 years preceding to the commencement of The Punjab Village Common Lands (Regulation) Act, 1961, shall not be entitled to claim that they were occupancy tenants and they had acquired occupancy rights. This is so because Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961, starts with the words “notwithstanding anything to the contrary in any other law for the time being in force”. Thus, the provisions of Section 4 of this Act would have precedence over the provisions of Punjab Tenancy Act, 1887 and Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.

6. As far as the second argument raised by learned Counsel for the petitioners is concerned, we are of the opinion that the same is also misconceived. In **Gram Panchayat Bhagal Vs. Bachna** 1987 P.L.J. 656 the Hon'ble Supreme Court reversed the decision of this Court in **Bachna Vs. State of Haryana & Ors.** 1982 P.L.J. 377 and held that respondent no.1, who was inducted as a tenant for a limited period of 05 years in 1963, had no authority to continue in occupation of the common land belonging to the Gram Panchayat and after the expiry of the term of lease, he had become an unauthorised occupant against whom proceedings of eviction could be

taken under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act') read with Rule 19 of The Punjab Village Common Lands (Regulation) Rules 1964. After placing reliance upon a judgment of Hon'ble Supreme Court in “**Gram Panchayat Village Bhagal Vs. Bachna & Ors., 1987 PLJ 656**, the Full Bench of this Court in **Gram Panchayat Village Haripura Vs. The Commissioner, Ferozepur Division & Ors. 1989 PLJ 220**, has held that where a tenancy is from year to year, the lease stands determined by efflux of time. It was also held that as Rule 6 of 1964 Rules provides that a lease can only be created by an auction, a lease created in contravention of provisions of Rule 6 of 1964 Rules cannot prohibit the Gram Panchayat from seeking eviction of such a person.

Thus, in view of the authoritative decisions reproduced above, it is clear that petitioners had become un-authorized occupants and, therefore, the land in question, which admittedly belongs to Gram Panchayat, can be got evicted by respondents-Gram Panchayat from petitioners, being un-authorized occupants by seeking their eviction under Section 7 of the Act, 1961 as well.

The judgment of Hon'ble Supreme Court passed in **Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass 2016(7) SCC 572**, relied upon by the petitioner is not applicable because dispute was amongst private parties, whereas the law *inter-se* Panchayat and individual, is on a completely different footing as the land owned/managed by Panchayat is public property.

7. The third and the last arguments raised by learned Counsel for the petitioners is also without any substance and infact, mutually destructive

to the previous two arguments raised by counsel for the petitioner. A perusal of the impugned order dated 04.12.2018 (P-4) passed by Commissioner would show that in para no.9, Commissioner has discussed the reasons as to why petitioners cannot be declared as the owners of property in question by correctly relying upon the judgment passed by this Court in CWP No.5421 of 1987 decided on 18.03.1997 titled as “Krishna Vs. Commissioner, Ambala”. Further, the petitioners are estopped from raising this plea, as their predecessor in interest admittedly took the land in question on lease from Gram Panchayat nearly 40 years back and, therefore, in view of Section 116 of the Evidence Act, no tenant of immovable property, or person claiming through such tenant, can, during the continuance of the tenancy or otherwise, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.

In view of the above, finding no merit in the instant writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

May 31st, 2019
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>