

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

CWP No.4269 of 2019

Date of Decision:-05.03.2019

Harkishan.

.....Petitioner.

Versus

Commissioner Rohtak Division, Rohtak & Ors.

.....Respondents.

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

Present:- Mr. Som Nath Saini, Advocate for the Petitioner.

JASWANT SINGH, J.

Petitioner-Harkishan has preferred the instant writ petition, being aggrieved against the orders dated 10.05.2018 (P-4) passed by Divisional Commissioner, Rohtak; order dated 09.04.2015 (P-2) passed by Collector, Sonapat; and order dated 06.09.2010 (P-1) passed by Assistant Collector, 1st Grade, Sonapat, whereby they have concurrently ordered ejectment of petitioner under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act, 1961), by allowing the application filed by one Sunil Kumar-respondent no.4.

Learned Counsel for the petitioner has vehemently argued that the authorities below have wrongly ordered eviction of petitioner by mis-appreciating the revenue record placed on record before them. It is submitted that the authorities have only considered the jamabandi for the

year 1999-2000 and have completely ignored the previous Jamabandis starting from the year 1950 onwards, whereby the predecessor in interest of petitioner has been recorded as a tenant paying rent and, therefore, the word “*Gair Marusi*” has been wrongly interpreted as un-authorized occupant instead of 'Tenant at Will'. As per him, a person cannot be evicted by invoking the provisions of Section 7 of The Act, 1961 as he is a tenant at will and, therefore, not an unauthorized occupant. Thus, prayer has been made for setting aside the impugned orders of eviction as same are without jurisdiction.

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

Before proceeding further, it would be appropriate to reproduce the factual position which is emanating from the record. As per the jamabandis placed on record by the petitioner, it is clear that in the year 1950-51 (P-5), one Sohan son of Rupa had taken the land on lease from Panchayat at the rate of Rs.30/- per year. This entry continued in the year 1960-61 (P-6) as well. As per jamabandi for the year 1969-70 (P-7), Sohan is shown to be the tenant at will (*Gair Marusi*) and rate of rent is shown to have increased from Rs.30/- to Rs.75/- per annum. This entry has continued in the jamabandi for the year 1975-75 (P-8) as well. However, in the jamabandi for the year 1999-2000 (P-9), petitioner namely Harkishan along with others are shown to be in possession of the property as “*Gair Marusi*” but there is no entry regarding rent. Same is the position in the *Jamabandis* for the year 2004-05 (P-10) and 2009-10 (P-11). On previous dates of hearing, we had asked the Counsel to clarify the circumstances

under which name of the petitioner and others stood reflected instead of Sohan in the subsequent *jamabandis*. Consequently, he had placed on record a Registered Will dated 26.08.1977 (P-13) and mutation dated 16.12.1978 (P-14), whereby Sohan Lal had transferred his rights in favour of Harkishan-petitioner and others.

From the aforementioned record, it becomes clear that Sohan Lal was tenant under the Nagar Panchayat (now Gram Panchayat) and had been regularly paying rent with appropriate increase and, therefore, was recorded as “Gair Marusi” with an entry of rent. Consequently, this entry would mean that Sohan was a tenant at Will, as there was no apparent extension of contract with the Panchayat, but continued to be a tenant on annual basis of Panchayat and was paying rent annually.

However, the position seems to have changed after death of Sohan, as Harkishan etc. had stopped paying rent to Gram Panchayat and, therefore, nothing stands reflected in the column of rent in the subsequent *jamabandis* and their status was shown to be “Gair Marusi”. To our mind, this entry of Gair Marusi has to be read as an unauthorized occupant and not as a tenant at Will. The reason for same is that in case petitioner and others had been paying rent to the Panchayat even after lapse of tenancy, then they would have been tenant at Will as was the case with Sohan. However, by not paying the rent to the Panchayat and still occupying the property, their status changed from tenant/tenant at Will to tenant at sufferance, which in effect would be an unauthorized occupant and thus, entitle the Gram Panchayat/person interested to invoke the provisions of Section 7 of the Act,1961. Consequently, the proceedings were rightly initiated under the Act,1961 and there is no illegality in the orders passed by

the Authorities below.

Seen from another angle, the legislative intent while enacting the 1961 Act, was to provide the Gram Panchayats with a speedy remedy for getting common lands (as defined under Section 2(g) of the Act) of the village vacated, by excluding the jurisdiction of any other court of law. In case, such like objections, as raised by petitioner are sustained by the Courts, then there would be no end to the litigation and the purpose of the legislature to provide the village community with lands for common purposes, would stand defeated.

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

March 05, 2019
Vinay

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