

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13566 of 2019 (O&M)

Date of decision: 14.11.2019

Baljit Kaur

....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE SUVIR SEHGAL**

Present: Mr.A.P.Kaushal, Advocate for the petitioner.

RAKESH KUMAR JAIN, J.(Oral)

Petitioner is the widow of Jatinder Singh son of Nirmal Singh, who has prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 15.10.2015 passed by the DDPO-cum-Collector, Hoshiarpur by which the petitioner has been ordered to be evicted from the land in dispute and the order dated 09.05.2018 passed by the Joint Development Commissioner (IRD), Punjab (exercising the powers of the Commissioner) by which appeal filed by the petitioner was dismissed.

The facts in brief are that respondent No.4 (Gram Panchayat) filed a petition under Sections 3 to 5 and 7 of the Punjab Public Premises Eviction (Rent & Recovery) Act, 1973 for seeking eviction of the petitioner from an area measuring 8 Kanal 1 marla comprised in Khatauni No.100-934/1095, Khasra No.38//24/1(4-11), 43//4(3-10) situated in village Khanaura, Hadbast No.270, Tehsil and District Hoshiarpur on the ground

that the petitioner is in unauthorised possession of the land, reserved for common purposes and the control and management of the land vests with the Panchayat. Respondent No.4 has also averred in the petition that the land in dispute was auctioned on 10.07.2014 in favour of Gurdeep Lal s/o Bishan Dass resident of Khanaura for a sum of ₹7,000/- and possession was delivered to him but the petitioner has obtained injunction from the civil court in a suit filed for permanent injunction only on the basis of alleged possession. The petition filed by respondent No.4 was allowed on 15.10.2015 and the appeal filed by the petitioner against that order was dismissed by the Commissioner vide order dated 09.05.2018.

Counsel for the petitioner has submitted that the land in dispute has been recorded as *Mushtarka Malkan*, therefore, it does not vest in the Gram Panchayat. It is averred in the petition that Nirmal Singh, father-in-law of the petitioner, was the proprietor of some area in village Khanaura and was in possession of the land in dispute as such.

During the course of hearing, the petitioner was asked to place on record *jamabandi* to show the entry of possession of Nirmal Singh pursuant to which a miscellaneous application bearing CM No.12916 of 2019 was filed by the petitioner to place on record *jamabandi* for the year 2014-15. The application was allowed on 7.11.2019 and *jamabandi* for the year 2014-15 (Annexure P-5) was taken on record. From the perusal of the *jamabandi* (Annexure P-5) it is evident that Nirmal Singh was not recorded as proprietor in possession rather his possession is recorded as tenant at Will (*Gair Marusi*) as he is not paying rent to anybody.

Be that as it may, the main argument of the petitioner is that

since the land in dispute is recorded as *Mushtarka Malkan*, therefore, it belongs to the proprietor and does not vest in the Gram Panchayat for the purpose of maintaining the petition filed under the Act.

We have heard learned counsel for the petitioner and after perusal of the record, are of the considered opinion that there is no merit in this petition.

In the case of ***Roop Singh Versus District Development and Panchayat Officer, Bathinda 2008(1) PLR 383*** a Division Bench of this Court has decided a similar controversy in which it has been held that entry in the revenue record was *Jumla Malkan Hasab Rasad Khewat* but the land was being used for common purposes. The land was being managed and controlled by the Gram Panchayat and the income derived from the land was spent on the welfare of the residents of the village. Then it is deemed to have been used for common purposes and thus the Gram Panchayat was well within its jurisdiction to maintain the petition under the provisions of the Act.

Thus, in view of the decision in the case of ***Anoop Singh's case (supra)***, we do not find any reason to interfere in this petition because the petitioner himself has taken a contradictory stand in the petition wherein it is averred that her father-in-law was a proprietor and in the *jamabandi* his father-in-law is recorded as *Gair Marusi* tenant though he is in possession without paying any rent. The land is being used by the Gram Panchayat for augmenting its income which is also evident from the fact that it had been leased out by way of auction in the

year 2014 to one Gurdeep Lal.

No other argument has been raised.

In view of the aforesaid facts and circumstances, we do not find any merit in the petition and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

14.11.2019
Meenu

(SUVIR SEHGAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No