

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

201

**CWP No.27287 of 2013
Date of Decision:18.07.2019**

Nahar Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Jitender Singla, Advocate for the petitioners.

Mr. Shreesh Gupta, Sr. D.A.G., Punjab.

Mr. J.S. Bhandohal, Advocate
for respondent No.4.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners are aggrieved against the order dated 02.07.2007 passed by respondent No.3-Divisional Deputy Director, Rural Development and Panchayats, Patiala and order dated 09.05.2013 passed by respondent No.2-Director, Department of Rural Development and Panchayats, Punjab by which their petition filed under Section 11 of Punjab Village Common Lands (Regulation) Act, 1961 (for short “the Act”) for seeking declaration of their title over the property in dispute comprised in Khasra No.29/1 (0-10) and 29 min (4-9), total 4 Bighas and 19 Biswas situated in Village Kansuha Khurd, Tehsil Nabha, District Patiala, on the ground that they are in cultivation possession as owners prior to the year 1950 have been dismissed.

Counsel for the petitioners has submitted that a petition under Section 7 of the Act was also filed by respondent No.4-Gram Panchayat simultaneously when the petition under Section 11 of the Act was filed by the petitioners and both the petitions were clubbed

together and respondent No.3, vide a common order dated 02.07.2007, dismissed the petition filed by the petitioner under Section 11 of the Act and allowed the petition filed by respondent No.4 under Section 7 of the Act against the petitioners. Though the petitioners have alleged that once the title suit was filed, it should have been tried separately by framing issues but in any case, the appeal filed by the petitioners was also dismissed on 06.02.2009.

Aggrieved against both the orders dated 02.07.2007 and 06.02.2009, the petitioners filed a writ petition bearing No.15696 of 2012 which was partly allowed by this Court vide order dated 12.09.2012, the order dated 06.02.2009 was set aside and the matter was remanded back to respondent No.2 for fresh adjudication in accordance with law by granting opportunity to the petitioners to lead evidence and the Gram Panchayat to rebut the same. It is alleged that after the remand, the petitioners have tendered revenue record in evidence in order to prove their title over the property in question but the jamabandies for the year 2002-03 BK (1945-46 and 1949-50) which were translated by the petitioners from Urdu to Punjabi were not taken into consideration by respondent No.2 on the ground that the said documents were photostat copies and ultimately held that the petitioners have not been found in cultivation possession of the property in question as owners on or before 26.01.1950.

Counsel for the petitioners has submitted that the petitioners have got the original/certified copies of jamabandies in Urdu for the period 2002-03 BK (1945-46 and 1949-50) of the property in question which can be tendered before respondent No.2 in case his

order is set aside and the matter is remanded back to him to consider the said evidence in accordance with law because as per the petitioners in the jamabandi for the year 1945-46 their predecessors-in-interest are recorded in possession as owner paying revenue of ₹10/- per annum and in the jamabandi for the year 1949-50 they are recorded in possession as Malkiat Khud and Mamla Bill Mukta paying ₹2/- per annum.

Counsel for the respondent (Gram Panchayat), while contesting the petition has submitted that there were 12 cases out of which the order of eviction has attained finality in 10 cases in which it has been decided finally that the said persons are not the owners of the land for which they have filed the suit for declaration.

In this regard counsel for the petitioners has submitted that title over the land in dispute of the land owners has to be independently assessed by the Court on the basis of revenue record tendered by them in evidence.

We have heard learned counsel for the parties, perused the record and are of the considered opinion that the arguments of learned counsel for the Gram Panchayat is not tenable because any order having been passed against the other persons against whom the Gram Panchayat has filed the petition under Section 7 of the Act or the said persons have filed the petition under Section 11 of the Act and the petition under Section 7 of the Act has been allowed and petition under Section 11 of the Act has been dismissed on their own facts but the petitioners can seek their title over the property in dispute as owners on the basis of the evidence in their possession.

Respondent No.2 has dismissed the suit of the petitioners primarily on the ground that the evidence tendered by them were phtocopies of the jamabandies whereas the petitioners have now shown to us that they are in possession of original/certified copies of the jamabandies in Urdu. Thus in such circumstances, we would grant one more opportunity to the petitioners to prove their case to prove their title over the property in dispute before respondent No.2.

Therefore, the present petition is allowed and the impugned order passed by the appellate authority-respondent No.2 is set aside and the matter is remanded back to him to decide again after taking fresh evidence from the petitioners regarding the original/certified copies of the revenue record in Urdu for the purpose of his satisfaction and pass a speaking order in accordance with law.

The parties are directed to appear before respondent No.2 on 04.09.2019.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

18.07.2019
Kothiyal

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