

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

CWP-34694-2019

Date of Decision: 28.11.2019

Surender Singh and others

. Petitioners

Vs.

Financial Commissioner and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA**

Present: - Mr.K.K. Garg, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 13.05.2015 by which their petition filed under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 [for short 'the Act'] has been dismissed, order dated 31.10.2017 by which their appeal was dismissed and the order dated 01.05.2019 by which the revision filed by them was also dismissed.

In brief, the predecessor-in-interest of the petitioners had allegedly purchased land measuring 10 marla 06 sarsai, situated in village Tigri from the Custodian/Rehabilitation Department in an open auction in 1965. It is alleged that one Raj Kumar filed a petition under Section 7 of the Act which was disposed of on 06.02.2007. The appeal filed by Raj Kumar against the said order dated 06.02.2007 was dismissed on 24.3.2008 but a further appeal filed by him against the aforesaid two orders was allowed on 04.12.2008 and the predecessor-in-interest of the petitioners was ordered to be evicted on the premise that the land in dispute was Shamlat deh and he

was in unauthorized possession. The revision petition filed by the predecessor-in-interest of the petitioner was also dismissed on 22.04.2009. Then the petitioners challenged the orders dated 04.12.2008 and 22.4.2009 by way of CWP-5347-2010 which was disposed of on 14.05.2012 with the following order: -

“After addressing arguments for some time counsel for the parties have arrived at a consensus that as there is ambiguity as to the land allotted to the petitioners the order of eviction shall apply to the land beyond 10 Marlas 06 Sarsai in possession of the petitioners and as regards land measuring 10 Marlas 06 Sarsai parties may be granted liberty to file a petition under Section 13-A of the Punjab Village Common Land (Regulation) Act, 1961 to establish their respective title.

In view of the statements made by counsel for the parties the impugned orders are modified to the extent that the order of eviction shall apply only to land in excess of 10 Marlas 06 Sarsai and with respect land measuring 10 Marlas 06 Sarsai, parties will be at liberty to seek their remedies for establishing their respective title.”

No petition was filed under Section 13-A of the Act by the petitioners or their predecessor-in-interest rather respondent No.4 had filed a

a petition under Section 13-A of the Act against the petitioners and the Gram Panchayat alleging that the Gram Panchayat, Tigri is the owner of land measuring 83 feet from East to West and 31 feet from North to South, which is an open vacant land within abadi deh, bounded as East : Gali Shaream, West : Gali Shaream, North : Residential house of Sardara and South: Gali Shaream. It was alleged that the land in dispute is in plot No.150 as per the field book of Village Tigri and is about 8 marla in size. The petitioners herein were claiming it to be owned by them whereas they are in possession of plot No.59 as per field book which is exactly 10 marla 6 sarsai. The said suit was contested by the present petitioners by filing their reply. During the pendency of the suit, the petitioners herein, filed an application for dismissal of the petition. The said application was taken up along with the main petition and vide order dated 13.5.2015, the Collector had decided that the land in dispute measuring 83 feet in length and 31 feet in width, falling in Plot No.150, is not shown in possession of anyone whereas the petitioners herein were claiming themselves to be in possession of 10 marla 6 sarsai. It was also held that the petitioners herein did not produce any document to prove that the land falling in plot No.150 was ever allotted to them. Aggrieved against the said order, the petitioners had filed an appeal which has also been dismissed by the appellate authority holding that the land in dispute is a part and parcel of plot No.150 whereas the petitioners are in possession of Plot No.59. It is also observed that plot No.150 is having a water tap of the Public Health Department which is being used by the villagers and as such the land in question is being used for a common purpose and the petitioners are having no concern with it. Against both the orders of the Collector and the Commissioner, the petitioners preferred a revision before the Financial Commissioner which was also dismissed on

01.05.2019. The Financial Commissioner has observed that the eviction order in respect of land measuring 10 marla 6 sarsai was set aside and the parties were left to seek their remedies for establishing their respective title on the remaining land but the petitioners did not file any suit/petition in respect of the land measuring 10 marlas 6 sarsai which was allegedly purchased by them from the Custodian/Rehabilitation Department. It is also observed that the present petition/suit has been filed in regard to the land bearing plot No.59 beyond the land measuring 10 marla 6 sarsai falling in Plot No.150. Financial Commissioner has also observed that the petitioners have failed to prove on record or to show any *prima facie* document in order to prove their ownership nor it has been denied by them that the suit land is Plot No.150 total measuring 08 marla and was not allotted to the predecessor-in-interest of the petitioners. Thus the argument of the petitioners for not framing the issues was also rejected. While challenging the aforesaid orders, the only argument raised is that the Collector had not framed the issues before deciding the *lis* between the parties. Although this point has been raised by the petitioners before the Commissioner who had dealt with it while rejecting the same on the ground that not an iota of evidence much less cogent has been produced in order to establish that the land in question had ever been allotted to them and they had legally become the owner of the land in dispute nor the petitioners have attached any evidence with this petition also to take this Court into confidence in regard to the availability of evidence which could not have been led them in the absence of framing of issues. Therefore, we do not find any substance in the argument raised by counsel for the petitioners for the purpose of interference in the impugned orders passed by the courts below regarding the concurrent finding of fact that the land in dispute does not belongs to the petitioners as

it had never been allotted or purchased by them from any competent authority and had otherwise vests in the Gram Panchayat as it is being used for the common purpose. No other point has been raised.

In view of the above, we do not find any merit in the present petition and the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

28.11.2019
Vivek

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*