

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 8028 of 2017(O&M)

Date of Decision: February 26 , 2021.

Manohar Lal and others

..... PETITIONER (s)

Versus

Gram Panchayat and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Onkar Rai, Advocate
for the petitioners.

Mr. Jagjeet Beniwal, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioners have filed this revision petition for setting aside order dated 18.09.2017 (Annexure P7) passed by the District Collector, Palwal whereby application under Section 11, Order 7 Rule 11 read with Section 151 CPC filed by the respondent-Gram Panchayat was accepted and petition under Section 13A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the 'Act') filed by the present petitioners, has been dismissed.

Brief facts necessary for adjudication of the matter are, that the

petitioners in their claim under Section 13A of the Act sought a declaration to the effect that they are owners-in-possession of the land as detailed therein with further prayer that respondent-Gram Panchayat be restrained from interfering in their peaceful possession or giving the same on lease or exchanging it in any manner. It is claimed that forefathers of the petitioners were in peaceful possession of the land in question. The land in question, it is stated, did not fall under Section 2(g) of the Act and that petitioners never paid any rent to the State. The matter was contested by the respondent-Gram Panchayat. Reply was filed while taking a specific objection that petitioners had concealed material facts as they did not reveal earlier proceedings initiated by them, which had attained finality after passing of judgment dated 30.01.2006 by the Hon'ble Supreme Court in Civil Appeal No.5517 of 2003.

The matter was listed for recording of evidence before the District Collector, Palwal. Evidence of two witnesses was recorded, when an application under Section 11, Order 7 Rule 11, CPC was moved by the respondent-Gram Panchayat on 19.03.2015. Impugned order dated 18.09.2017 was passed accepting said application of the Gram Panchayat and petition under Section 13A of the Act filed by present petitioners was dismissed. Aggrieved therefrom, this petition has been filed.

Heard learned counsel for the parties and have gone through the file as well as photocopies of the judgments passed in the civil suit filed by the petitioners.

It is a matter of record that the petitioners had earlier filed Civil Suit No.1083 of 1996 for declaration to the effect that they are owners-in-possession of the land in question, which is admittedly the subject matter of

petition under Section 13A of the Act. Said civil suit was decreed in favour of the plaintiffs i.e., the present petitioners vide judgment and decree dated 16.01.2002 passed by learned Civil Judge (Junior Division), Palwal. Appeal preferred by the respondent-Gram Panchayat was allowed by the learned Additional District Judge, Faridabad on 06.08.2002 with a specific finding of fact against the present petitioners while observing as under:-

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In view of the above judgment, under the facts and circumstances of the case, there is no evidence that the plaintiffs who as per themselves were given the suit land by the previous owners and which now vest in Gram Panchayat, the Gram Panchayat had granted any lease in favour of the plaintiffs after the suit land became to vest in it from previous owners.

15. Now a perusal of the Jamabandies referred to above shows that in the column No.9 regarding payment of rent, no doubt, it has been mentioned that no rent of the suit land beyond the amount of land revenue thereof and rate and cesses for the time being chargeable thereon, has been paid by the plaintiffs yet, again as held in judgment Naubat Vs. D.C.Bhiwani (Supra) 1981 PLJ 164 that merely by accepting rent tendered on behalf of unauthorised occupant he cannot claim himself to be allottee, lessee or grantee so as to avail protection of sub clause (a) of Rule 19 unless he has entered into possession in pursuance of any allotment, lease or grant made by Panchayat and in this case, it is not proved that the plaintiffs had entered into possession in pursuance of allotment, lease or grant made by the Gram Panchayat, as discussed above.

16. At this juncture, I would like to mention that even for availing the protection afforded by Section 4(3)(ii) of the Punjab Villages Common Lands (Regulation) Act, the plaintiffs must have proved that the plaintiffs are in cultivating possession for more than 12 years on the commencement of Punjab Villages Common Lands (Regulation) Act without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon. On the file, for the first time, it is in

the jamabandi Ex.P-1 for the year 1966-67 that the possession of the ancestors of the plaintiffs have been shown and except oral evidence, there is no cogent evidence that the plaintiffs or their ancestors were in cultivating possession for more than 12 years on the commencement of Punjab Villages Common Lands (Regulation) Act, 1953. Thus for all purposes, the plaintiffs are unauthorised occupants, what to talk of as tenant nevertheless occupancy tenant.

17. In view of above findings and discussion, the findings of the learned trial court recorded under issue No.1 that the plaintiffs have become owners in possession of the land in dispute by acquiring occupancy rights, cannot be sustained and are hereby set aside and issue No.1 is decided against the plaintiffs and in favour of the defendants. I also hold that the plaintiffs have no locus-standi to file the present suit and the suit is not maintainable in the present form.”

Regular Second Appeal No.3689 of 2002 preferred by all the petitioners as well as one Manohar Lal, was also dismissed by this High Court on 19.09.2002 while specifically observing as under:-

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In view of the above, in my opinion, the learned Additional District Judge was perfectly justified in holding that so far as the present case was concerned, it could not be said that the plaintiffs had acquired occupancy rights and had become the owners of the suit property. This is especially so, when the suit land had vested in the Gram Panchayat. It was found by the learned Additional District Judge that on the file, for the first time in the jamabandi for the year 1966-67 (Ext.P-1), the possession of the ancestors of the plaintiffs was recorded and except the oral evidence, there is nothing on the record to show that the plaintiffs were in possession of the suit property prior to 1966-67. That being so, in my opinion, the plaintiffs could not be allowed to urge that the suit land had vested in them or that they had acquired occupancy rights.”

Still further, Civil Appeal No.5571 of 2003 preferred by the challenging decision dated 19.09.2002 in RSA No.3689 of 2002 was

also dismissed by the Hon'ble Supreme Court on 30.01.2006. The said decision is reported in 2006(2) RCR(Civil) 164. The Hon'ble Supreme Court after dealing with contentions raised by the petitioners in great detail, observed as hereunder:-

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“Section 3 of the Act relates to vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords. It is evidence therefrom that the right, title and interest shall be deemed to vest only in an ‘occupancy tenant’. Occupancy tenant is defined under section 2(f) as meaning a tenant who, immediately before the commencement of the Proprietary Rights Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors-in-interest of an occupancy tenant. Admittedly, neither the appellants nor their predecessors were recorded as occupancy tenants in the revenue records immediately before the commencement of the Proprietary Rights Act, nor did they obtain a right of occupancy in respect of the said land either by agreement with the landlord or through a court of competent jurisdiction or otherwise after the commencement of the Act. The appellants, therefore, do not answer the definition of ‘occupancy tenant’ under the Proprietary Rights Act. Consequently, they cannot derive any benefit under Section 3 of the said Act.

11. If section 3 of the Proprietary Rights Act is inapplicable, the question that remains for consideration is whether they are entitled to the relief sought merely because the names of Sarjit and Jivan Lal (father of appellants 1 to 3 and father of appellants 4 and 5 respectively) were shown as cultivating the lands for some years from 1966-67. To get excluded from the vesting under section 4(1) of the Common Lands Act, by relying on section 4(3)(ii), the Appellants should prove that they and their ancestors were cultivating such land for a period of at least 12 years

prior to the commencement of the Common Lands Act. The Appellants have not produced any document prior to 1966 to show that they were in possession or cultivating the suit land. The oral evidence is also of no assistance. As against the pleading that the land was given to appellants' forefathers about a century prior to the filing of the suit, Appellant No. 1 (PW-3) admitted in his evidence that no record was available to show that they were so cultivating the land prior to 1966. In his cross-examination, he admitted that neither his grandfather nor his great grandfather cultivated the suit land. He stated that he was cultivating the land for about 25 years and earlier his tau (father's elder brother) was cultivating the land. PW2 (Aged 35 years) has stated in his evidence (recorded in the year 2000) to his knowledge appellants and earlier Sarabjit (father of appellants 1 to 3) was cultivating the land. His knowledge obviously cannot exceed 25 to 30 years. To same effect is the evidence of PW-1 who was aged 40 years when he gave evidence in 2000. There is thus no oral or documentary evidence to show possession or cultivation of suit land by appellants or their parents/ancestors prior to 1966. The evidence at best shows that for a few years between 1966-67 and 1986-87 and that too not continuously, the appellants (or the father of Appellant 1 to 3 and father of Appellant 4 & 5) unauthorisedly cultivated some portion of suit land. That does not entitle them to protection under section 4(3)(ii) of the Act. Consequently, the vesting under section 4(1) in the Panchayat cannot be questioned. In view of the above, it is unnecessary to go into the defence evidence that appellants were ejected in the year 1976-77 and that thereafter, appellants again illegally cultivated the land for a few years.

12. The suit is based on title. Title is not made out. As a consequence, the dismissal of the suit by the first appellate court, affirmed by the decision of the High Court in Second Appeal, cannot be said to suffer from any infirmity. The appeal is, accordingly, dismissed.”

In the face of the abovesaid admitted facts, I do not find any merit in the argument raised by learned counsel for the petitioners to the extent that the District Collector, Palwal has no jurisdiction to entertain the application

under Order 7 Rule 11 CPC, therefore, impugned order dated 18.09.2017 should be set aside. Learned counsel has relied upon judgment of a coordinate Bench in Pardeep Singh and others v. Ram Rattan and others, 2016(4) RCR(Civil) 27, to submit that provisions of Order 7 Rule 11 CPC are not applicable to the proceedings under the Act. It is submitted that reliance in Pardeep Singh's case (supra) has been placed upon a Division Bench judgment of this Court in Jagir Singh v. State of Punjab, 2013(4) RCR(Civil) 347. It is vehemently argued that it was incumbent upon the Collector to have permitted all the parties to lead evidence and thereafter, adjudication should have followed. Perusal of decisions in Pardeep Singh's case (supra) and Jagir Singh's case (supra) reveal that the said decisions are clearly distinguishable. None of the said cases pertain to a situation where a litigant had taken a recourse to a remedy, invited adjudication on merits and having failed therein sought his remedy under the Act. Written statement in the present case was duly filed by the Gram Panchayat. Moreover, learned counsel for the petitioners is unable to deny the fact that petitioners themselves had earlier filed the suit for declaration in regard to the property in dispute. In the present case, the matter has earlier been adjudicated on merits in proceedings admittedly initiated and pursued by the petitioners right upto the Hon'ble Supreme Court. Not only the First Appellate Court, but this Court as well as the Hon'ble Supreme Court have found that the petitioners were not entitled to the relief claimed in the civil suit. Learned counsel for the petitioners is unable to deny that petitioners seek the same relief of title to the property in their petition under Section 13A of the Act. Learned counsel for the petitioners has vehemently argued that as jurisdiction of civil courts is barred, decisions

rendered in the civil suit filed by the petitioners themselves, should be ignored and in fact, nullified and it is incumbent upon the revenue authorities to decide the petition under Section 13A of the Act separately on merits. Acceptance of such an interpretation and argument would clearly reflect a travesty of justice where a litigant is permitted to take benefit of his own wrong and unnecessarily keep indulging in protracted litigation. Similarly, the petitioners cannot derive any benefit from order dated 03.04.2008 in CWP No.4482 of 2008, Annexure P1, wherein Deputy Commissioner, Faridabad had been directed to decide an application for stay filed by the petitioners in the pending petition. By no stretch of imagination can it be held that the Division Bench in CWP No.4482 of 2008 has upheld the maintainability of petition under Section 13A of the Act, filed by the petitioners. Reference to earlier round of litigation is a mere narration of facts in view of the restricted prayer as noted in order dated 03.04.2008.

Admittedly the petitioners themselves had earlier filed civil suit for being declared full-fledged owners-in-possession of the suit property. Decision of the learned trial court in their favour was set aside by the First Appellate Court, which was upheld upto the Hon'ble Supreme Court. The Hon'ble Supreme Court has dealt with the matter in detail and decided the same on merits. Petition under Section 13A of the Act was filed in the year 2007, after dismissal of their appeal before the Hon'ble Supreme Court on 30.11.2006. Petition under Section 7 of the Act was admittedly filed by the Gram Panchayat against the petitioners. The same was adjourned *sine die* on 26.11.2009 to await decision of the petition under Section 13A of the Act. After dismissal of

petition under Section 13A of the Act, the petitioners admittedly filed another Civil Suit No.271/2006 qua the same property before the learned Civil Judge, Palwal which was dismissed on 17.11.2012. Petitioners' appeal challenging judgment dated 17.11.2012 was dismissed by the learned District Judge, Palwal on 02.07.2014 while imposing cost of ₹10,000/- for indulging in unnecessary litigation. Gram Panchayat again filed a petition seeking petitioners' eviction. Petitioners filed an application under Order 7, Rule 11 CPC for dismissing the same. Petitioners' application was dismissed by the Assistant Collector, Ist Grade, Palwal on 26.08.2016 and their revision petition against said order was also dismissed on 14.12.2019 by the Commissioner, Faridabad Division, Faridabad. Said orders have been challenged by the petitioners in Civil Revision No.1293 of 2020 which has been dismissed vide separate order, today itself. It is apparent that the petitioners have indulged in multifarious litigation in an unjustified manner.

Keeping in view the facts and circumstances of the case, I do not find any infirmity or illegality in the impugned order dated 18.09.2017 wherein the District Collector, Palwal has dismissed the petition under Section 13A of the Act filed by the petitioners.

Revision petition is, accordingly, dismissed with no order as to cost.

February 26 , 2021.
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(LISA GILL)
JUDGE

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