

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

CWP-7782-2020 (O&M)
Date of Decision:-23.03.2021

Sudesh Kumar and others

... Petitioners

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Aman Bahri, Addl. A.G. Haryana.

Mr. Vinod K. Kanwal, Advocate
for respondent No.5.

Mr. Sanjiv Gupta, Advocate
for respondent No.7.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The respondent No.6-Bharat Bhushan filed an ejectment
petition against the petitioners and respondent No.7 under Section 7 of The
Punjab Village Common Lands (Regulation) Act, 1961 (for short 'Act of

1961') on 21.7.2016 (Annexure P-2). The petitioners submitted reply (Annexure P-4) thereto. After adjudicating upon the controversy, the Assistant Collector Ist Grade, Indri, by his order dated 12.2.2018 (Annexure P-5) allowed the petition and gave directions that the petitioners and other encroachers be ejected from the land bearing Khasra No.26//14, 23/2 and 47.

Aggrieved by the order passed by Assistant Collector Ist Grade, Indri dated 12.2.2018 (Annexure P-5), the petitioners preferred an appeal before the Collector, Karnal. The aforesaid appeal was dismissed by the Collector, Karnal, after hearing both the parties, vide order dated 22.10.2018 (Annexure P-7). The petitioners being dissatisfied with the said two orders i.e. Annexure P-5 and Annexure P-7, filed a revision petition impugning the same before the Commissioner, Karnal Division, Karnal. The revision petition filed by the petitioners was also dismissed by an order dated 9.3.2020 (Annexure P-9). The instant writ petition has been filed by the petitioners impugning the aforesaid orders passed by the different revenue authorities.

The writ petition has been contested by respondents No.1 to 5 & 7. Replies on behalf of the contesting respondents were filed.

We have heard the counsel for the parties.

During the course of hearing, the learned counsel for the petitioners referred to the definition of '*Shamilat Deh*' as provided in Section 2(g) of the Act of 1961 (as applicable to Haryana). The counsel for the petitioners contended that as per exclusion clause of Section 2(g) of Act of 1961, "*Abadi Deh*" is excluded from the definition of '*Shamilat Deh*'.

The learned counsel further contended that the land in question bearing Khasra No.26//14 regarding which respondent No.7-Raj Kumar filed petition (Annexure P-2) under Section 7 of the Act of 1961 was recorded as '*Abadi Deh*', in the revenue record. The counsel for the petitioners referred to *Jamabandi* for the year 2015-16 (Annexure P-1) to substantiate his argument.

The counsel for the petitioners further argued that even in the petition (Annexure P-2), the petitioners therein specifically pleaded that land bearing Khasra No.26//14(6-7) is '*Gair Mumkin Abadi*', thus making it clear that the land in question is '*Abadi Deh*'. However the revenue authorities while passing the impugned orders failed to notice the said fact. The learned counsel further argued that the subject land being '*Abadi Deh*', the Assistant Collector Ist Grade, Indri had no jurisdiction to deal with the matter under Section 7 of the Act 1961. So the impugned order (Annexure P-5) passed by Assistant Collector Ist Grade, Indri was illegal and non-est in law. The subsequent orders (Annexure P-7 and Annexure P-9) passed by the revenue authorities whereby impugned order (Annexure P-5) was upheld, are also liable to be set aside, being illegal.

The State counsel while supporting the orders passed by the revenue authorities, contended that the land in question bearing Khasra No.26//14 is not part of '*Abadi Deh*'. The State counsel while referring to *Jamabandi* for the year 1965-66 (Annexure R-7/1) submitted that the said land was recorded as '*Banjar Kadim Thur*' owned by the Gram Panchayat in the revenue record. It was further contended that later on the petitioners in

collusion with the revenue Patwari got changed the entries of the land in question as ‘*Gair Mumkin Abadi*’ and then started raising illegal construction therein. The petitioners being trespassers were rightly ordered to be evicted, by the revenue authorities. It is further contended that the writ petition deserves to be dismissed.

We have considered submissions made by the parties.

Section 7(1) of the Act of 1961 (as applicable to Haryana) reads as follows:-

“7. *Power to put Panchayat in possession of certain lands.*

(1) An Assistant collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorized by the Block Development and Panchayat Officer, after making summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree

for possession of land under the Punjab Tenancy Act, 1887.

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.”

Admittedly, proceedings under Section 7 of the Act of 1961 are summary proceedings. Primary question raised in the present case before revenue authorities was whether the petitioners were in unlawful possession of land including land bearing Khasra No.26//14.

It is the case of the Gram Panchayat that the subject land is owned by it. To establish this fact the counsel for the contesting respondents has placed reliance on *Jamabandi* for the year 1965-66 (Annexure R7/1), as per which the subject land was recorded as ‘*Banjar Kadim Thur*’ owned and cultivated by Panchayat Deh. A presumption therefore, arises that the land in dispute is owned and vests in the Gram Panchayat. The petitioners have failed to rebut the said presumption by producing reliable evidence/documents. The petitioners are relying upon *Jamabandi* for the year 2015-16 (Annexure P-1) wherein the category of land in question was recorded as ‘*Gair Mumkin Abadi*’. The petitioners failed to produce revenue record of the previous years to show that the nature of the subject land is ‘*Abadi Deh*’, since long. One thing is clear that even in *Jamabandi*

Annexure P-1 the nature of the land in question was not recorded as '*Abadi Deh*' and rather it was shown '*Gair Mumkim Abadi*'. A Co-ordinate Bench of this Court in CWP-19418-2010 titled as Nirmal and Another vs. State of Punjab and Others decided on 4.9.2012, had observed "*that 'Abadi Deh' should not be confused with 'Gair Mumkin Abadi' or 'Abadi'. The former expression denotes land within Lal Lakir, whereas latter expression denotes habitation or inhabited structures. The 'Abadi Deh' of revenue estate is situated within 'Lal Lakir' and is generally assigned a single Khasra number, with no further demarcation of land.*" Furthermore in the absence of revenue record of previous years, the petitioners have failed to explain as to how the nature of the land in question changed from '*Banjar Kadim Thur*' to '*Gair Mumkim Abadi*' during the period from 1965-66 to 2015-16. For the aforesaid reasons, the petitioners cannot take any benefit of the fact that in *Jamabandi* (Annexure P-1), the subject land was recorded as '*Gair Mumkin Abadi*'.

Admittedly, the petitioners have not claimed their title regarding the subject land, which as per *Jamabandi* for the year 1965-66 was owned and possessed by the Gram Panchayat. Even as per the *Jamabandi* (Annexure P-1) the subject land is recorded to be owned by Gram Panchayat and in the column No.5, it is recorded to be occupied by '*Khudkasht Aadii*'. As per demarcation report dated 17.5.2016 (Annexure P-3), the petitioners and respondent No.7 were found to be in illegal possession of the subject land.

Having considered the facts and circumstances of the case, we are satisfied that the petitioners failed to place on record reliable documents to show that the subject land is 'Abadi Deh' or that Gram Panchayat has got no concern with it. The petitioners being in an unauthorized possession of the subject land have no right to retain its possession. So the revenue authorities rightly passed eviction order against them, in accordance with law.

Consequently, this writ petition is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

23.03.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No