

Date of Decision: May 04, 2022

BUDHI (SINCE DECEASED) THROUGH HIS LRS AND OTHERS
...Petitioners

Versus

STATE OF HARYANA AND OTHERS
...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Aditya Jain, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Petitioners have approached this Court challenging the order dated 21.11.2006 (Annexure P-1) passed by the Assistant Collector, 1st Grade, Palwal-respondent No. 4, whereby petition preferred under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '1961 Act') seeking eviction of the petitioners by private respondents No. 5 to 11 was allowed and a fine of Rs. 4000/- per hectare yearly was imposed upon them, order dated 31.05.2011 (Annexure P-2) passed by the District Collector, Palwal-respondent No. 3 dismissing the appeal of the petitioners and the order dated 15.01.2021 (Annexure P-3) passed by the Commissioner, Faridabad Division, Faridabad-respondent No. 2 dismissing the revision petition.

2. It is the contention of the learned counsel for the petitioners that the petitioners have been given an opportunity to lead evidence as the question of title arises in the present case. The predecessors-in-interest of the petitioners had built the houses on the land during the year 1938-39.

The possession being prior to 26.01.1950, the cut off date, the petitioners being in continuous possession of the said land were entitled to continue in

possession of the land in question. It is asserted that the petition under Section 7 of the 1961 Act at the instance of the private respondent No. 5 to 11 is not maintainable.

3. Another plea, which had been taken by the petitioners, is that they had taken 1 Kanal and 5 Marlas of land in auction from the Gram Panchayat and had built their houses etc. There is no evidence on record that the Gram Panchayat, Janoli is the owner of the property in question. The houses have been built by the predecessors-in-interest of the petitioners and they are continuing in possession thereof since the year 1938-39 and, therefore, they cannot be dispossessed. Assertion has also been made that the fine, which has been imposed upon the petitioners, is unjust and unreasonable and deserves to be set aside. Counsel, therefore, prays that the impugned orders be set aside and the writ petition allowed.

4. Having considered the submissions made by the counsel for the petitioners, we are not inclined to accept the same for the simple reason that the he has not been able to place on record any revenue record to substantiate his contention with regard to the predecessors-in-interest of the petitioners being in possession of the land in question and thereafter, construction of the houses in the year 1938-39, as alleged. Rather, to the contrary, in the Jamabandis, which have been produced on record before the authorities below, Gram Panchayat has been shown to be the owner and in the column of cultivation, either it is mentioned '*Makbuja Pasture*' or '*Banjar Kadim*' as also '*Gair Mumkin Gait*'. In none of the entries of the revenue record, ownership of the petitioners has reflected. No revenue record establishes the fact that there are houses built on the land in dispute, as alleged, since the year 1938-39.

5. The plea of the petitioners that they had taken 1 Kanal and 5 Marlas of land in auction from the Gram Panchayat also cannot be accepted as there is nothing on record to show that any auction was held by the Gram Panchayat for the land in question or that the petitioners had deposited any amount in pursuance to the said auction nor is there any entry in the revenue record to this effect. The ownership of the Gram Panchayat still exists qua the land in question. None of the contentions, therefore, raised by the counsel for the petitioners is substantiated from the records and, therefore, it is a bald assertion and pleading on the part of the petitioners, which cannot be accepted especially when the revenue record is to the contrary.

6. It would not be out of way to mention here that the Assistant Collector, 1st Grade, Palwal-respondent No. 4, vide order dated 21.11.2006 (Annexure P-1), had imposed penalty of Rs. 4000/- per hectare yearly, which amount the petitioners were required to deposit for entertainment of their appeal. The said amount having not been deposited also was taken into consideration while dismissing the appeal and the said aspects find mentioned in the order passed by the revisional authority as well. On this ground also, the challenge to these impugned orders cannot sustain.

7. In the light of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

May 04, 2022

pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No