

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

**CWP-19619-2022 (O&M)
Date of Decision: 27.10.2022**

GRAM PANCHAYAT GIDERKHERA

..... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. P.K. Ganga, Advocate
for the petitioner.

LISA GILL, J.

CM-16535-CWP-2022

For the reasons mentioned in the application, duly supported by an affidavit of the applicant, same is allowed as prayed for. Documents Annexure P-11 and P-12 are taken on record, subject to just exceptions.

Application is disposed of.

CWP-19619-2022

This writ petition has been filed by the petitioner - Gram Panchayat, Giderkhera for setting aside order order dated 12.05.2014 (Annexure P-3), passed by the Assistant Collector, 1st Grade, Dabwali – respondent no.4; order dated 22.12.2017 (Annexure P-5), passed by the Collector, District Sirsa - respondent no.3 and order dated 30.03.2022 (Annexure P-8), passed by Commissioner, Hisar Division, Hisar –

respondent no.2, whereby the petition filed by petitioner – Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to the State of Haryana (now the Haryana Village Common Lands (Regulation) Act, 1961 as notified on 05.04.2021) (hereinafter referred to 'the 1961 Act') has been dismissed.

Brief facts necessary for adjudication of the matter, as narrated in the writ petition, are that Gram Panchayat claimed to be the owner of the land as described in the petition measuring 39 Kanal, 16 Marla, as per Jamabandi for the year 2006-2007. Respondent no.5 was stated to be in illegal possession of the said Gram Panchayat land. Application seeking eviction of respondent no.5 under Section 7 of the 1961 Act was filed on 08.05.2012 (Annexure P-1). In response to the notice issued to respondent no.5, he took a plea that he is in possession of the said land for the last more than 70 years without paying any Batai Tihai. It was further stated by respondent no.5 that Gram Panchayat had earlier filed an application under Section 7(2) of the 1961 Act against his father namely Mukhtiar Singh and father of the respondent was directed to be evicted from the land in dispute vide order dated 14.09.1966.

Mukhtiar Singh then filed a civil suit for setting aside order dated 14.09.1966, passed by the Assistant Collector 1st Grade, Dabwali. Suit filed by the father of respondent no.5 was decreed vide order dated 20.06.1968. Order dated 14.06.1966 was set aside and a declaration granted to the extent that rights of Mukhtiar Singh are protected under Section 4 (3) (ii) of the 1961 Act and that he cannot be ejected from the suit land except in due course of law. It was asserted that thereafter respondent no.5 continued in possession of the land in question after death of his father.

Assistant Collector 1st Grade, Dabwali vide impugned order dated 12.05.2014 (Annexure P-3) dismissed the application under Section 7 filed by the present petitioner while concluding that as per judgment dated 20.06.1968 passed by the trial Court, possession of the said respondent/his predecessor in interest over the land in dispute was proved since over 12 years prior to implementation of the 1961 Act. Reference was also made to the evidence in the form of Jamabandi for the year 1919-1920, which was submitted before the Assistant Collector, 1st Grade, Dabwali wherein it was found that the land was in possession of ancestors of the said respondent since 1934-1935. It was also concluded that no Batai etc. was being deposited by the said respondent/his predecessor in interest. Respondent no.5 additionally filed a suit seeking title to the land in question before the Assistant Collector, 1st Class, Dabwali, which was allowed on 28.02.1992 (Annexure P-12). Appeal preferred by the petitioner against order dated 12.05.2014 was dismissed by the District Collector, Sirsa vide order dated 22.12.2017 (Annexure P-5) on finding no ground for interference. Revision petition was then preferred by the petitioner challenging the above said orders. Said revision was also dismissed by the Commissioner, Hisar Division, Hisar vide impugned order dated 30.03.2022 (Annexure P-8) while reiterating that on perusal of the available record including the Jamabandi for the year 1919-1920, continuous possession of said respondent over the land in question was established from the year 1934-1935 and further that no Batai Tihai had been deposited with the Gram Panchayat. Aggrieved therefrom present writ petition has been filed by the petitioner-Gram Panchayat.

Learned counsel for the petitioner has vehemently argued that as per judgment dated 24.06.1968 (Annexure P-10) of the learned Civil Court, Mandi Dabwali, it has been categorically held that land in question is *Shamlat Deh* and vests with the Gram Panchayat. This issue was decided in favour of petitioner-Gram Panchayat, therefore, petitioner was well within its right to seek eviction of respondent no.5 from the Gram Panchayat land. Learned counsel for the petitioner has also stressed on the following observation of the learned Sub-Judge, 2nd Class, Mandi Dabwali dated 24.06.1968 to assert that liberty was afforded to the Gram Panchayat to seek ejection of respondent no.5 in due course of law;

'In the light of decision on issue no.2 above the suit of the plaintiff is decreed only to the extent that the order of Ld. AC 1st Grade dated 14.06.1966 is set aside and a declaration is granted to him that his rights are protected under section 4(3)(ii) of the Punjab Village Common Lands (Regulation) Act, 1961 and he cannot be ejected from the suit land except in due course of law. The perpetual injunction is also granted to the effect that the plaintiff be not ejected from the suit land except in due course of law.'

It is contended that in terms of judgment of the Hon'ble Supreme Court in ***State of Haryana through Secretary to Government of Haryana Vs. Jai Singh and others, 2022(2) RCR (Civil) 803***, once land in question vests with the Gram Panchayat, there can be no question of any protection being granted to an unauthorized occupant. It is thus, prayed that this writ petition be allowed and impugned order dated 12.05.2014 (Annexure P-3), passed by the Assistant Collector, 1st Grade, Dabwali – respondent no.4; order dated 22.12.2017 (Annexure P-5), passed the Collector, District Sirsa - respondent no.3 and order dated 30.03.2022 (Annexure P-8), passed by Commissioner Hisar, Division Hisar – respondent no.2 be set aside.

We have heard learned counsel for the petitioner and have gone through the file with his able assistance.

Perusal of the record reveals that possession of respondent no.5/his predecessor in interest since the year 1934-1935 is duly established on record. It has been specifically held by the learned Sub-Judge 2nd Class, Mandi Dabwali in the judgment dated 22.12.2017 that on the basis of documents on record and the statement of the witnesses PW2, PW3 & PW4 in the suit it was proved that Mukhtiar Singh was in cultivating possession of the suit property for more than a period of 12 years before enforcement of the 1961 Act. Learned counsel for the petitioner is unable to deny the same as well as the factum of respondent no.5 thereafter continuing in possession of the suit land. In this view of the matter, respondent no.5 is clearly entitled to the protection as provided under Section 4(3)(ii) of the 1961 Act, which reads as under:-

4. Vesting of rights in Panchayats and non-proprietors.-

.....
(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the
.....

(ii) rights of persons who were in cultivating possession of shamlat deh on the date of the commencement of the Punjab village Common Lands (Regulation) Act, 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954 and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.”

It is not denied that there has never ever been any payment of rent, Batai Tihai etc. by respondent no.5/his predecessor in interest. The Hon'ble Supreme Court in the case of **Puran and others Vs. Gram Panchayat, Faridabad, 2006(2) RCR(Civil) 164**, has held that;

“Clause (ii) of Section 4(3) will be attracted only if the following 3 conditions are satisfied:

- i) the person must be cultivating land which is part of the Shamilat deh of a village,
- ii) he should be cultivating such land for a period of 12 years immediately preceding the commencement of the Act;
- iii) and he should be cultivating such land without payment of rent or payment of charges in excess of the land Revenue and cess.”

Clearly all the three conditions as above stand fulfilled in the present case and cannot be denied by learned counsel for the petitioner.

Argument raised that in view of the judgment of the Hon'ble Supreme Court in ***State of Haryana Vs. Jai Singh's*** case (supra), application under Section 7 of the 1961 Act should have been allowed is devoid of any merit as the specific exemption as afforded under Section 4(3)(ii) of 1961 Act has not been set aside by the Hon'ble Supreme Court. Learned counsel for the petitioner is unable to point out any illegality, infirmity, irregularity or perversity in the impugned orders, which call for interference by this Court.

Keeping in view of the facts and circumstances as above, we do not find any ground whatsoever to interfere in this writ petition for setting

aside impugned order dated 12.05.2014 (Annexure P-3), passed by the Assistant Collector, 1st Grade, Dabwali – respondent no.4; order dated 22.12.2017 (Annexure P-5), passed the Collector, District Sirsa - respondent no.3 and order dated 30.03.2022 (Annexure P-8), passed by Commissioner Hisar, Division Hisar – respondent no.2.

No other argument has been addressed.

Writ petition is accordingly dismissed.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

27.10.2022
Sunil

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