

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

CWP-10276-2019

Reserved on: 09.01.2023

Date of decision: 17.01.2023

JAGDISH

...Petitioner

Versus

**COMMISSIONER, KARNAL DIVISION, KARNAL, DISTRICT KANRAL
AND OTHERS**

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Tushar Wadhwa, Advocate for
Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Raman Sharma, Addl. A.G. Haryana

SURESHWAR THAKUR, J.

1. Through concurrently made orders respectively by the learned Assistant Collector, Ist Grade, Panipat, and, by the learned Collector, Panipat, besides by the learned Commissioner, Karnal Division, Karnal, and, as become respectively embodied in Annexure P-3, in Annexure P-6, and, in Annexure P-8, the petitioner became ordered to be evicted from the petition land.

2. The petitioner becomes aggrieved from the above made concurrent orders, and, has taken to, through his instituting thereagainst, the instant petition, hence cast a challenge theretos.

FACTS

3. During the course of consolidation proceedings, the disputed lands were reserved for their user by the Kumharan community. In the ownership column of the apposite jamabandi, the entry of Gram Panchayat Vasideh, exists, whereas, in the column of cultivators, an entry of Makbuja Kumharan occurs, but with a further reflection of the predecessor-in-interest of the petitioner, one

Shri Chand rather being described to cultivate it, as a Gair Marusi. The above reflection in the name of the predecessor-in-interest of the petitioner, was contended by the Gram Panchayat, to be connotative of its tantamounting, to qua the predecessor-in-interest of the petitioner, during his life time, and, subsequently the writ petitioner rather holding unauthorized possession of the disputed khasra numbers.

4. As above stated, the above contention was accepted by all the Authorities below, thus leading to an order of eviction being made *qua* the suit khasra numbers against the petitioner.

ANALYSIS OF THE ABOVE ENTRIES

5. Before proceeding to analyse the signification of the above made entries, it is imperative to bear in mind, the conspicuous factum, that the reservation (*supra*), of the disputed khasra numbers, was made by the consolidation authorities, during the course of theirs holding consolidation operations in the mohal concerned. The reservation (*supra*), was challengeable, but within the permissible period of limitation. However, there is no evidence on record, suggestive that within the permissible period of limitation, any challenge became cast against the above made reservation(s) by the consolidation authorities. Therefore, the reservation (*supra*), as made of the writ land, in favour of the Kumharan Community, is to be deemed to be a validly made reservation, and, it is also to be deemed to be made for a purpose beneficial, to the entire village proprietary body, as the pottery work as was to be done by the Kumharan Community, rather on the suit khasra numbers, is to be presumed, to be an avocation beneficial to the village proprietary body, unless evidence surged forth, that the making of potteries by the Kumharan Community rather was purposeless, as, the same was not required by any member of the village

proprietary body concerned. However, in the absence of the above evidence, it is to be but concluded, that the said reservation was infact beneficial to the entire village proprietary body.

6. Since on the above stated plank rather a valid reservation (supra), was made of the suit khasra number in favour of the Kumharan Community. Therefore, but necessarily the suit khasra numbers were required to be enjoyed only by the Kumharan community, and, not by any other member of the village, much less either by the predecessor-in-interest of the petitioner, or subsequent, on his demise by the petitioner herein.

7. The further reason for making the above conclusion, ensues from the factum, that the predecessor-in-interest of the petitioner, was recorded to be a Gair Marusi, on the suit khasra numbers. Though, he may have chosen to validate the said entry, but only when there was tangible evidence surging forthwith, that he, alike the other members of the Kumharan Community also was engaged in pottery work. However, neither the above contention has been raised nor it has been proven. Therefore, it has to be concluded, that neither the predecessor-in-interest of the petitioner nor the petitioner herein belong to the Kumharan Community nor hence both were entitled to engage themselves in the avocation of making potteries. Furthermore, it has to be also concluded that the cultivation of the suit khasra number, as made on the basis of an entry of a Gair Marusi, was but completely outside the ambit of reservation (supra).

8. Even otherwise, since the reservation of the suit khasra number was for a specific/earmarked purpose, and, that too for user only by a specified community, besides also for a specific purpose, inasmuch as, the apposite community carrying thereons, rather the specific avocation hence meant for the benefit of the entire village proprietary body. Therefore, but reiteratedly hence

imperatively, the writ lands/suit khasra number, were never meant for bringing them under cultivation either by the predecessor-in-interest or by the petitioner, as, bringing to cultivation of the suit khasra numbers either by the predecessor-in-interest or latter by the petitioner would tantamount to unlawful change of user of the suit khasra numbers, from the purpose for which they were specifically/vividly carved or earmarked.

SUMMARIZATION OF PRINCIPLES

- I. The land which is validly reserved for the carryings therein of pottery avocation by a particular community, then the said earmarked user of the writ lands, cannot be subjected to any change. Thus, if the predecessor-in-interest of the petitioner started cultivating the same or made user thereof for any other purpose(s), than for which it was reserved or earmarked, thereupon the said user was grossly impermissible.
- II. Occupants or persons holding possession of writ lands, as Gair Marusi land, are mere non-occupancy tenants thereons, and, hold no vested right(s) to continue to hold possession thereof, especially when the rights of non-occupancy tenants are acquired through unlawful change of user of the writ lands.

CONCLUSION

9. This Court finds no merit in the writ petition, and, the same is dismissed. The concurrently made orders against the petitioner by both the Authorities are maintained, and, affirmed.

10. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

17.01.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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