

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

CWP-18395-2007

Reserved on: 24.02.2023

Date of decision: 3.03.2023

MOHINDER SINGH

...Petitioner

Versus

**DIRECTOR, DEPARTMENT OF RURAL DEVELOPMENT AND
PANCHAYATS AND OTHERS**

...Respondents

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

Present: Mr. Hoshiar Singh, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. Gram Panchayat Dhani Gurmukh Singh Wali, Block Guruharsahai, Tehsil Jalalabad (W), District Ferozepur instituted a petition under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”). To the said petition case No.173/DDPO became assigned. In the petition (supra), a relief was claimed for evicting one Mohinder Singh from the suit land measuring 6 Kanal 14 Marlas situated at village Nau Behram Sher Singh Wala, Tehsil Jalalabad (W), District Ferozepur.

2. The learned Collector concerned, made an affirmative decision, on the petition (supra), and, thus ordered for the eviction from the suit land, of the respondent therein, one Mohinder Singh. A deep reading of the order drawn by the learned Collector concerned, and, which becomes enclosed in Annexure P-8 unveils, that the resistance as opposed by the respondent to the making of an order of eviction on the petition (supra), became rested on the factum, that the learned Civil Court concerned, making an order of dismissal in a suit for

permanent prohibitory injunction, as became instituted by the Gram Panchayat concerned, against Mohinder Singh. Thus, on the basis of the said judgment and decree as becomes comprised in Annexure P-7 it became argued before the learned Collector concerned, that the Gram Panchayat concerned, is to be also non suited, in the petition under Section 7 of the Act. However, the non assigning of any credit to Annexure P-7 was grounded on the factum, that the dismissal of the Gram Panchayat's suit for rendition of a decree of permanent prohibitory injunction but *qua* a similar herein suit land, was with a rider that the possession thereon, of one Mohinder Singh, was yet made amenable to be restored to the Gram Panchayat concerned, through the latter adopting the legally ordained processes. Succinctly since, the petitioner could be lawfully evicted from the suit land not in pursuance to a decree of possession being rendered by the learned Civil Court concerned, but was to be evicted through a petition being constituted under Section 7 of the Act. The reason for the above inference, is firmly grounded, on the fact that Section 13 of the Act, provisions whereof stands extracted hereinafter, does ably dis-empower, any Civil Court concerned, to either receive or to adjudicate upon any suit containing a subject matter which is otherwise to be adjudicated, upon, by the lawfully constituted Authorities under the Act. Necessarily, hence only in a petition under Section 7 of the Act, a lawful order of eviction of the petitioner herein could be made by the learned Collector concerned, *qua* lands described in the revenue records as *Shamlat Deh*.

“13. Bar of Jurisdiction in Civil Courts:- No civil court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not Shamlat deh vested or deemed to have been vested in a Panchayat under this Act ; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or
(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.]”

3. The Aggrieved therefrom preferred an appeal thereagainst before the learned Appellate Authority. To the said statutory appeal became assigned appeal No.55 of 2006. The learned Appellate Authority through an order drawn thereon on 27.08.2007, and, as enclosed in Annexure P-10, after concurring with the verdict drawn earlier by the learned Collector concerned, hence proceeded to make an order of dismissal, on the statutory appeal (supra). The above concurrent orders have led the petitioner to institute the instant petition before this Court.

4. The petitioner herein claims himself to be the predecessor in interest of one Gurmukh Singh son of Bogha Singh. Thus, from his predecessor in interest (supra), hence a claim is reared *qua* lawful entitlement of the petitioner to the suit lands. However, the said claim *qua* lawful entitlement of the petitioner to the suit lands, could become well rested, only upon his making dependence upon the relevant savings clause, as, carried in Section 2(g) of The Punjab Village Common Lands (Regulation) Act, 1961, provisions whereof becomes extracted hereinafter.

“Section 2(g) xxx

but does not include land which--

(i) 3(-----]

(ii) has been allotted on quasi-permanent basis to a displaced person;

[(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the Jamabandi or is supported by a valid deed; [and is not in excess of the share of the co-sharer in the shamilat deh].

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

[(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act];

(vii) (-----]

(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or

[(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act;]”

5. Moreover, even after his placing reliance upon the hereinabove extracted savings clause, he had to also establish through adduction of cogent evidence comprised in jamabandis prior to 1950, and, theirs but revealing that one Gurmukh Singh was evidently prior to 1950 hence holding individual cultivating possession of the suit land. Significantly, the above could have been done, only when he had in his written statement or in the reply furnished to the eviction petition, hence made a permissible savings or exclusionary plea against the vestment of the suit lands in the Gram Panchayat. Moreover, since on the above premise(s) a question of title did become well raised. Thus the said well raised question of title could have been asked to be determined not in a petition

cast under Section 7 of the Act, but in a petition cast under Section 11 of the Act. However, a perusal of the records, does not reveal, that in the reply or written statement furnished to the said petition rather any permissible savings contention (*supra*) became carried therein nor also obviously the learned Collector concerned, deemed it fit, and, appropriate to convert the Section 7 petition into a Section 11 petition, and nor did he deem it fit to draw issues thereons, besides obviously did not aptly receive evidence in respect of the application to the *lis* of the hereinabove extracted savings clause.

6. The abandonment of the above available recourse, at the initial stage, by the petitioner herein, leads this Court to conclude, that at this stage, the petitioner is estopped from contending that through his predecessor in interest, he has a vested right, title or interest in the suit lands, nor hence can claim *qua* his lawful predecessor in interest, but was evidently holding lawful possession of the suit lands prior to 1950.

7. Even otherwise, assumingly if yet for doing substantial justice, the above opportunity could be assigned to the petitioner, so as to then enable this Court, to make an order of remand to the learned Collector concerned, hence for his making a fresh lawful decision with respect to the probative vigor of the apposite documentary evidence which may fall within the realm of the relevant savings clause. However, again this Court refrains from doing so. The reason is but simple inasmuch as, a perusal of the jamabandis as have been placed on record, reveal that they are drawn not for the years prior to 1950 but are drawn for the year 1974-75. Therefore, since the grace of the apposite savings clause was aptly purveyable but upon the petitioner, only when the jamabandis prior to 1950, were placed on record, and, theirs revealing that the evident lawful possession of the predecessor in interest of the petitioner was rather prior to 1950. Consequently, the omission to place on record the above jamabandi rather

the placings on record of the jamabandi prior to 1974, but with an echoing therein that the predecessor in interest of the petitioner was a *Gair Mumkin* on the suit lands. Resultantly, brings forth the conclusion that the above entry of predecessor in interest of the petitioner as a *Gair Marusi*, hence in the jamabandi for the year 1974-75, thus did make the predecessor in interest of the petitioner, during his lifetime and subsequently also the petitioner to be holding only a limited interest in the suit lands, inasmuch as, a *Gair Marusi* or as a non occupancy tenant thereons. The effect of the above limited capacity of a non occupancy tenant or as a *Gair Marusi* upon the suit lands, is that, it does make the above limited status, hence to become amenable to suffer its extinguishment, through the drawings of eviction orders against the petitioner herein, as is aptly done by both the Authorities below.

CONCLUSION

8. In sequel, the concurrently made orders of eviction by both the Authorities below are well merited, as they are planked upon a worthy appraisal of the documentary evidence, as became adduced before them.

FINAL ORDER

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

(SURESHWAR THAKUR)
JUDGE

3.03.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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