

CWP-16236-2020 (O&M)

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

CWP-16236-2020 (O&M)
Date of Decision: January 25, 2023

SABIR AND OTHERS Petitioners

VERSUS

STATE OF HARYANA AND OTHERS Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Ms. Pratula Sethi, Advocate for the petitioners.
Mr. Amit Aggarwal, DAG, Haryana.
Mr. S.P. Chahar, Advocate for respondent No. 3.

LISA GILL, J.

Petitioners have filed this writ petition being aggrieved of their ejectment from the land in question on an application/petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 [now Haryana Village Common Lands (Regulation) Act, 1961 as notified on 05.04.2021 (for short – ‘1961 Act’)] vide order dated 30.09.2016 passed by learned Assistant Collector First Grade, Sonapat.

Brief facts, as pleaded in the writ petition, are that the petitioners filed application dated 17.05.1994 before the learned Assistant Collector 2nd Grade, Sonipat for correction of *Girdawari* regarding land measuring 181 kanals 10 marlas as described in the writ petition. Plea taken

in this application seeking correction of khasra girdawaries was that the petitioners had taken land on lease from the proprietors since three years prior thereto. It was stated that mutation of land in dispute was sanctioned in favour of the Gram Panchayat, however, land was being cultivated by the petitioners having been taken on lease from the proprietors of the land, who were in fact owners of said land recorded as *Hasab Rasad Raqba Khewat* and that they were in possession thereof, thus, girdawaries should be corrected. The Assistant Collector 2nd Grade vide order dated 12.06.1997 while concluding that the petitioners were in possession of the property in question, directed correction of khasra girdawari.

Petitioners thereafter filed suit for permanent injunction against the respondent - Gram Panchayat, again with the claim that they had taken the said land on lease on yearly rent of Rs.50/- per killa in June 1991 from the proprietary body of the village and that mutation of the land in question being entered in favour of the Gram Panchayat, was irrelevant and ineffective qua their rights. Gram Panchayat was proceeded exparte. Suit was decreed while restraining the Gram Panchayat from interfering in the possession of plaintiffs over the suit property illegally or forcibly, except in due course of law.

Another suit for permanent injunction was filed by the petitioners against one Pale son of Dhara, yet again with the plea that land in dispute had been taken on yearly rent of Rs.50/- per acre in June 1991 and that plaintiffs were in possession of the suit property as lessee alongwith Mange Ram and Ram Saran. In this case too, respondent Pale, was proceeded exparte and the suit decreed while finding the petitioners to be in possession of the suit property.

Petition under Section 7 of the 1961 Act was filed by the Gram Panchayat against the petitioners on 17.02.2016. Ejectment proceedings were contested by the petitioners, taking the plea that land was of shamlat thola with its proprietors being the owner. They claimed to be its lessees and in possession of the land in question since twelve (12) years prior to 09.01.1954. However, Assistant Collector First Grade, Sonipat vide order dated 30.09.2016 while concluding that petitioners were in unauthorised occupation of Gram Panchayat land directed their ejectment alongwith Mange Ram. It was held that no evidence had been led nor any document brought on record to indicate that the land in dispute had ever been taken on lease from the Gram Panchayat or that petitioners had become owners thereof. Appeal filed by the petitioners was dismissed by the Collector, Sonipat vide order dated 25.09.2018. Revision was filed by the petitioners challenging said orders. Divisional Commissioner, Rohtak Division, Rohtak dismissed the said revision petition vide order dated 17.05.2019. Notice, Annexure P9 was issued to the petitioners to hand over vacant possession of the property in question. Petitioners have filed this writ petition challenging order dated 17.05.2019 (Annexure P7) and notice dated 24.12.2019 (Annexure P9).

Notice of motion was issued in this writ petition on 06.10.2020 while noting the contentions on behalf of the petitioners that petitioners raised the question of title but without any advertence thereto authorities have proceeded against them in a summary manner under Section 7 of the 1961 Act itself. Separate written statements have been filed on behalf of respondents No. 1, 2 and 3 controverting the claim of the petitioners.

In the written statement filed on behalf of respondents No. 1 and 2, it is stated that the writ petition has become infructuous as possession of the land was handed over to the Gram Panchayat on 02.01.2020 and has thereafter been leased out in open auction to successful bidders in the village on 18.02.2020 for a sum of Rs. 6,35,000/-. However, this was controverted by the petitioners, who claimed that possession was still with them. Learned counsel for the Gram Panchayat at the time of arguments clarified that possession indeed was taken and handed over to the Gram Panchayat on 02.01.2020 and land leased out to the successful bidders for one year, however, petitioners thereafter again took forcible possession of the land after expiry of the lease period.

Learned counsel for the petitioners vehemently argued that once the question of title has been raised, the authorities could not have proceeded in a summary manner against the petitioners directing their ejectment. It was incumbent upon the authorities to have decided the question of title which could be decided only after framing of proper issues and leading of evidence by the parties. It is contended that petitioners have placed all the relevant documents on record to show that petitioners have been in possession of the property in question prior to 1950. Learned counsel for the petitioners seeks to rely upon Section 4(3)(ii) of the 1961 Act and further submits that the land in question was never put to or utilised for common purposes. It is, thus, prayed that this writ petition be allowed and ejectment of the petitioners from the property in question be set aside.

Learned counsel for the respondents per contra while controverting the arguments on behalf of the petitioners submits that as per revenue record the land in question is panchayat land and that petitioners

have led no evidence whatsoever to indicate or prove their possession over the property prior to 1950. It is rather the case of the petitioners themselves that they took the land on lease in June, 1991 from proprietors of the shamlat thola. It is, thus, prayed that this petition be dismissed.

Heard learned counsel for the parties and have perused the file with their able assistance.

Perusal of the file and particularly order dated 12.06.1997, judgment dated 24.12.1998 and judgment dated 27.02.2006 reveal that the case of the petitioners themselves is that they have taken the land on lease purportedly from proprietors of the village in June, 1991. Learned counsel for the petitioners have argued that the land in question does not vest in the Gram Panchayat. We are, however, unable to accept this argument. Admittedly, land in dispute is described as *Shamlat Deh Hasab Rasad Rakba Khewat*. Sections 3 and 4 of the 1961 Act provide that the said Act shall apply and before the commencement of 1961 Act the Shamlat Law shall be deemed always to have applied to all lands, which are Shamlat Deh as defined in clause (g) of Section 2 of the Act.

Section 3(1) of the 1961 Act reads as under:-

“3. Lands to which this Act applies.—(1) This Act shall apply and before the commencement of this Act the Shamlat Law shall be deemed always to have applied to all lands which are shamlat deh as defined in clause (g) of section 2.”

Section 4 of the 1961 Act, which provides for vesting of rights in Panchayat and non-proprietors, is reproduced hereunder:-

“4. Vesting of rights in Panchayat and non-proprietors.-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement,

instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the land:-

- (a) which is included in the Shamilat deh of any village and which has not vested in a Panchayat under the Shamilat law shall at the commencement of this Act vest in a Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted ;
- (b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall, on the commencement of Shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(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 ;-

- (i) existing rights, title or interests of persons who, though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedars, Butimars, Basikhopohus, Saunjidars, Muqarrirdars;
- (ii) rights of persons who were in cultivating possession of shamilat 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 charges not exceeding the land revenue and cesses payable thereon.
- (iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

It is, thus, apparent that land described as ‘Shamilat Deh’ which had come to vest in a Gram Panchayat under the shamilat law, i.e. the 1954 Act, would be excluded from the definition of Shamilat Deh only if it fell within any of the exclusion clauses enacted by Sections 2(g), 3 and 4 of the

1961 Act. The words '*Hasab Rasad Zare Khewat*' do not describe the nature of the land.

A Division Bench of this High Court in the case of **Nachhattar Singh and others versus Joint Development Commissioner/Rural Development and Panchayats, Punjab and others 2012 (47) RCR (Civil) 813** in this respect has observed as under:-

“11 A perusal of Section 3 of the 1954 Act and the opening sentence of sub-clause (1) of Section 3 and Section 4 of the 1961 Act, leaves no manner of doubt, as to legislative intent that land “Shamilat Deh”, that had come to vest in a Gram Panchayat under the shamilat law, i.e., the 1954 Act, would be excluded from “Shamilat Deh”, only if it falls within any of the exclusion clauses enacted by Sections 2(g), 3 or 4 of the 1961 Act.

12. At this stage, it would be appropriate to point out that before enactment of the 1954 Act, proprietary and possessory rights, in “Shamilat Deh” of a village, vested in proprietors but to the exclusion of non proprietors. Shamilat Deh of the village was generally assigned the nomenclature “Shamilat Deh Hasab Rasad Zare Khewat” or such like similar expressions. Shamilat Deh is the common land of a village because it described as such (common land) and not because of the words “Hasab Rasad Zare Khewat, “Hasab Hissas Mundarja Shajra Nasab”. The words “Hasab Rasad Zare Khewat, “Hasab Hissas Mundarja Shajra Nasab” etc. denote the manner of calculating share holdings of proprietors, and, therefore, do not qualify or indicate the nature of the land. It would also be necessary to point out that after enactment of the 1954 and the 1961 Acts, the expressions “Hasab Hissas Mundarja Shajra Nasab” etc., lost their relevance as “Shamilat Deh” of a village, came to statutorily vest in a Gram Panchayat. Our opinion is fortified by the following Division Bench judgments of this Court:- **Gram Panchayat Ugani versus State of Punjab, 1997(2) PLJ 3;**

Kashmir Singh and others versus Joint Development Commissioner (IRD), Punjab, Chandigarh and others, 2006(1) L.A.R. 607 and Civil Writ Petition No.9368 of 2007 (Sita Ram etc. versus Gram Panchayat Ismaila etc.).

13. After enactment of the 1954 Act, all the rights, title or interest, held by proprietors and non-proprietors in “Shamilat Deh, whatever be the words and expressions that follow the words “Shamilat Deh”, came to vest in Gram Panchayat by a statutory declaration contained in Section 3 of the 1954 Act.

14. It is, therefore, beyond debate that as the land was, admittedly, “Shamilat Deh”, it came to vest in the Gram Panchayat under Section 3 of the 1954 Act and as Sections 2(g), 3 and 4 of the 1961 Act, do not exclude land described as “Shamilat Deh Hasab Rasad Zare Khewat”, “Shamilat Deh Hasab Hissas Mundarja Shajra Nasab” etc., from “Shamilat Deh”, the land, in dispute, is included in “Shamilat Deh” and, therefore, vests in the Gram Panchayat.”

Contention raised by learned counsel for the petitioners is that once the question of title was raised, issues should have been framed, evidence allowed to be led and the matter referred for a decision on the question of title first and only thereafter could the petition under Section 7 of the 1961 Act be decided. At this stage, it is necessary to refer to the provisions of Section 7 of the 1961 Act, relevant portion of which reads as under:-

“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 authorised by the Block Development and Panchayat Officer, after making such

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.

xxx xxx xxx

(3) The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

xxx xxx xxx”

A bare perusal of Section 7 of the 1961 Act reveals that proviso to Section 7(1) provides that if the question of title is raised and it is prima facie proved on the basis of documents that question of title is really involved, the Assistant Collector First Grade shall record a finding to that effect and first decide the question of title in the manner laid down therein. It is apparent that a prima facie case has to be first established by the petitioners on the basis of relevant documents. It is pertinent to note that when any party as a matter of routine merely raises the question of title without any attending documents, the Assistant Collector is not obliged to

themselves as reflected in orders dated Annexures P1, P3 and P4 is that they had taken the land on lease purportedly from some proprietors of the village in June, 1991. Therefore, the first argument raised on behalf of the petitioners that they are in possession of the land in question since before 1950 is clearly negated. Argument on behalf of the petitioners that they are in possession of the suit property since prior to 1950 through the proprietors is also not substantiated in any manner. The petitioners did not produce any document whatsoever to even prima facie establish this assertion. Learned counsel for the petitioners was unable to point out even the name of the proprietors from whom the petitioners are alleged to have taken the land on lease in June, 1991. In this factual matrix, it is correctly observed by the authorities and specifically by the Divisional Commissioner that petitioners could not prove on record their possession of the land in question prior to 1950 and that purported possession of *Shamlat Deh Hasab Rasab Rakba Khewat* was not of more than the area of proportionate cut of the concerned share holders.

It is correctly observed by the Collector, Sonipat vide order dated 25.09.2018 that the appellant did not produce either consolidation Scheme, *Naksha Haqdarbar*, *Khatouni Pamaish* etc., therefore, the question of title of the petitioners does not arise. It was indeed incumbent upon the petitioners to have at least established the foundational facts, which would prima facie establish their case. As noted in the foregoing paras, the statute provides for decision of the question of title only once a prima facie case is established. Even at the time of arguments before us, learned counsel for the petitioners was unable to point out any relevant document, which would indicate that the petitioners have been successful in establishing a prima

CWP-16236-2020 (O&M)

facie case qua title to the land, as claimed. Once the petitioners were unable to establish a prima facie case in their favour, it was not incumbent upon the competent authority to go through the motions of framing of issues and calling upon the parties to lead evidence in this regard.

Learned counsel for the petitioners is unable to point out any infirmity, illegality or irregularity in the impugned orders which call for any interference by this Court.

No other argument has been addressed.

Present writ petition is, accordingly, dismissed.

(LISA GILL)
JUDGE

January 25, 2023
Rts

(RITU TAGORE)
JUDGE

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