

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**Civil Writ Petition No. 15574 of 2023****Date of decision : August 08, 2023**

UJJAGAR SINGH (NOW DECEASED) THROUGH HIS LRS

....PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

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

Present : Ms Rashika Bansal, Advocate,
Mr. Dheeraj Mahajan, Advocate, for the petitioners
Mr. Maninder Singh, DAG, Punjab

KULDEEP TIWARI,J.

1. Respondent No. 4-Gram Panchayat, Village Saidowal Kalan, Tehsil and District Gurdaspur, preferred an application, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as the "Act of 1961"), thereby seeking ejectment of the present petitioners/respondents therein, from the land measuring 1 kanal 12 marlas, primarily on the ground, that the land vests in the Gram Panchayat, as in the relevant revenue record, the Gram Panchayat is recorded as the owner thereof. The present petitioners were alleged therein to have illegally encroached upon the petition land years ago. Prior to such encroachment being made, respondent No.4-Gram Panchayat used

to auction the land and the lease amount derived therefrom was utilized for the welfare activities of the village concerned. The application (supra) as moved by the respondent No. 4-Gram Panchayat, was allowed by the court of the learned Collector concerned, vide impugned order dated 26.4.2022 (Annexure P/1). Aggrieved by the eviction order (Annexure P/1), the present petitioners made a challenge thereto by preferring a statutory appeal before the statutory appellate authority concerned. However, the petitioners remained unsuccessful, as the appeal was dismissed vide order dated 31.5.2023 (Annexure P/4). Therefore, now, the petitioners have knocked the doors of this Court, seeking quashing of the impugned orders (supra), on the ground that the orders passed by the Authorities concerned are based on surmises and conjectures as the respondent No. 4-Gram Panchayat has not produced any evidence before the Authorities concerned, to establish the factum of vestment of the petition land in it. Moreover, the necessary ingredients for invoking the provisions of Section 7 of the Act of 1961 have also not been proved by the Gram Panchayat concerned, therefore, the eviction application ought to have been dismissed straightway, being not maintainable. However, the Authorities concerned, in a very slipshod manner, through the orders (supra) ordered the eviction of the petitioners from the petition land.

2. Learned counsel for the petitioners has vehemently argued that the authorities concerned did not take into consideration

either the *Khatoni Pamiash*, wherein one Pishora Singh has been recorded in possession over the suit land since the year 1956, or the factum qua the dismissal of the stay application as filed in the civil suit by the successor of said Pishora Singh, vide order dated 19.4.2001, or, the factum qua allowing the correction of *Khasra Girdawari* in favour of petitioners' father, vide order dated 19.6.2000.

3. We have considered the submissions made by the learned counsel for the petitioners and perused the records.

4. However, we do not find any merit to accept the contentions as raised by the learned counsel for the petitioners. It remains undisputed by the learned counsel for the petitioners that in the relevant revenue record, the Gram Panchayat concerned is recorded as the owner of the petition land. Moreover, there is no record whatsoever available before this Court which could either establish that the possession of the petitioners dates back even prior to the year 1950, or that they are proprietors of the village concerned, possessing any share in the *Shamilat* land. Further, a perusal of the order as passed by the learned Collector concerned, shows that a specific query was put to the petitioners with regard to their possession and ownership, which was denied by the petitioners themselves before the Court of the learned Collector concerned. For ready reference, the same reads as under:-

“Court asks the following questions to the respondent:-

1. Whether you have any document to show your possession over the suit land since 1950 ?

Answer: No

2. Whether you are coming as owner in the column of ownership as per the Jamabandi ?

Answer : No”

5. Learned counsel for the petitioners is unable to deny the above observation of the learned Collector concerned. Apart from this, he is also unable to refer to any document which could establish anything contrary to the observation (supra), as made by the learned Collector concerned. The reference to the *Khatoni Pamiash*, as made by the learned counsel for the petitioners is also not helpful, as in the column relating to the nature of the land, and entry of '*Silab Daria*' exists and in the column of cultivation thereof, one Pishora Singh son of Khem Singh is recorded as '*Gair Dakhildar*'. However, there is no pedigree table/*sazra-nasab* to establish that Pishora Singh is the ancestor or predecessor-in-interest of the petitioners.

6. Learned counsel for the petitioners has further argued that the petitioners are in the process of filing an application under Section 11 of the Act 1961 for adjudication of title and therefore, till a decision is made on such application, by the competent Authority concerned, the order of eviction may not be enforced. However, we are unable to accept such a misplaced submission. A perusal of the impugned orders (supra) reveal that the petitioners have evidently never raised any dispute with regard to title. If at all, there was any dispute of title, the petitioners were required to raise, in a manner prescribed under Section 7 of the Act of 1961. In absence of not

raising such a title dispute, the petitioners cannot claim that eviction orders (supra) became unenforceable against the petitioners.

7. Now, heading towards the issue, which relates to acquisition of status and right of Marusi by a person recorded as '*Gair Dakhildar*' in the revenue record(s), it is a well established law that a non occupant tenant cannot acquire the status and right of *Marusi* and claim ownership. As quoted hereinabove, the petitioners have been evidently recorded as '*Gair Dakildar*' in the relevant revenue record(s), right from the very inception. The above conclusion gathers support from a judgment passed by this Court, in ***CWP No.20563 of 2008***, titled ***“Jaleb Khan and others V/s Commissioner, Gurgaon Division, Gurugaon and others”*** decided on 20.7.2009, wherein it has been held as under:-

“After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. The Gram Panchayat, Agon (respondent No.3) filed a petition under Section 7 of the Act seeking eviction of the petitioners. As per Jamabandis for the years 1962-63, 1967-68 and 1997-98 (Annexures P-7, P-8 and P9) respectively the ownership of the land in question is recorded in the name of Gram Panchayat. In the column of cultivation, Kallu son of Kale Khan son of Chhota Khan is recorded as 'Gair Marusi' in the three afore-referred Jamabandis. Therefore, the predecessor-in-interest of the petitioners having been recorded as 'Gair Marusi' he cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) as contended by

the learned counsel for the petitioners. The fact that the petitioners acquired rights of ownership being an occupancy tenant is clearly misconceived.”

8. Therefore, in view of the above, it can be safely concluded that the petitioners cannot acquire the status and right of *Marusi* and consequently claim ownership.

7. In absence of any document, which may bring the case of the petitioners, in exclusion of Section 2(g) of the Act of 1961, we do not find any illegality or perversity in the orders passed by the Authorities concerned and therefore, the same are affirmed and the present writ petition is dismissed being bereft of any merit.

8. Since we are dismissing the writ petition, all the pending application(s), if any, stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 08, 2023

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>