

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

**Civil Writ Petition No. 20516 of 2017**

**Date of decision : March 03, 2023**

JASWANT SINGH (NOW DECEASED) THROUGH HIS LRS  
GURPREET KAUR AND OTHERS

....PETITIONERS

VERSUS

DIRECTOR, RURAL DEVELOPMENT AND PANCHAYATS, PUNJAB  
AND OTHERS

....RESPONDENTS

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

Present : Mr. G.S. Nagra, Advocate for the petitioners.

Mr. Maninder Singh, Deputy Advocate General, Punjab  
for respondents No. 1 and 2.

Mr. Vivek Salathia, Advocate, for respondent No. 3.

**KULDEEP TIWARI, J.**

1. The father of the petitioners had filed two different applications under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (in short, the Act of 1961) for declaration to the effect that he is owner in possession of the land measuring 11 kanals 12 marlas bearing Khasra No. 13/4 (8-0), 5/1 (3-12), as per *jamabandi* for the years 2005-06, situated in the revenue estate of village Tarpai, Block Majitha, Tehsil and District Amritsar and second application with regard to the land measuring 5 kanals 36 marlas bearing Khewat Khatauni No. 643/916, Khasra No. 5//24(5-6), as per *jamabandi* for the

year 2005-06, situated in the same revenue estate (supra), inter alia, with the pleading that he is a *Khewatdar* of the village and land in dispute is under his ownership and possession, being one of the co-sharer of the proprietary body. His possession over the land is continuous. His forefathers were in continuous uninterrupted possession over the land in dispute for the last 50 years. He never paid any rent to the respondents in this regard. The land in dispute is *Patti Purana* and *Patti Mehma* and was never kept for common purposes. Therefore, the land does not vest with the Gram Panchayat, as it falls in the exclusionary clause of *Shamlat Deh*, under Section 2(g) of the Act of 1961. He further submitted that name of his father was recorded in the column No. 5 of *Khasra Girdawari* since the year 1975. The respondent Gram Panchayat had filed written statement to the application with a pleading therein, that there is no record to establish that the petitioners' forefathers were members and co-sharers of the proprietary body. There is no document to establish that the petitioners or their forefathers were in continuous possession of land in dispute since the year 1950. In fact, the land belongs to *Patti Purana* and *Patti Mehama* and the petitioners are not *Pattidar*. Therefore, no question arises that they became owners by virtue of his possession. It was further pleaded that the land in dispute is under administrative control of Gram Panchayat. Earlier an application under Section 7 of the Act of 1961 was filed against the father of the petitioners and the same was

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allowed vide order dated 5.4.2010 which was further challenged by filing an appeal and the same was also dismissed by the Director, Rural and Development Panchayats-cum-Commissioner, Punjab, SAS Nagar, vide order dated 21.9.2012 and the father of the petitioners challenged the eviction orders (supra) by filing CWP No. 5538 of 2013. That writ petition was also dismissed vide order dated 15.3.2013 and thereafter, the possession of the land was taken over by the Panchayat and subsequently, the same was auctioned by the Gram Panchayat and is being cultivated by the Gram Panchayat's lessee.

2. Both the applications were dismissed by the Collector, Panchayat Land, Amritsar, vide even order dated 13.6.2012. The father of the petitioners made unsuccessful challenge to this order (supra) by filing statutory appeal before the Director, Rural Development and Panchayats, Punjab Mohali and the same was dismissed vide order dated 27.11.2015. Feeling aggrieved by the above order, vide which the title suit of the father of the petitioners was dismissed, the present writ petition under Articles 226/227 of the Constitution of India, is preferred before this Court by the petitioners.

3. The learned counsel for the petitioners argued that both the courts below have failed to appreciate that the petitioners through their forefathers are in continuous possession of the land since the year 1950 and they are owner in possession of 178 kanals 12 marlas and therefore, they are right holders of village Tarpai. To establish this, he

has placed on record *Khatoni Ishtemal*, *Naksha Hakdaran* and *jamabandi* for the years 1961-62. They also submitted that as per *jamabandi* for the years 1965-66 the suit land comprising of Khasra No. 13//4(8-0) and 5/1 (3-12), total 11K-12M belongs to *Shamlat Patti Purana ½*, *Shamlat Patti Mehma ½* *Hasab Hisas Jadi* and khasra No. 5/24(5-6) belong to *Mushtarka Malkan* and these khasra numbers are in possession of the petitioners since the time of their father and thus, the land was never ever reserved for the common purposes during consolidation or used for common purposes for the inhabitants of the village, in fact, the same is under possession of the petitioners before the year 1950.

4. Per contra, counsel for the respondents has stated that earlier application under Section 7 of the Act of 1961 was filed against the father of the petitioners and the learned Collector vide order dated 5.4.2010 has passed the eviction order which was challenged upto this Court by filing CWP No. 5538 of 2013 and the same was also dismissed vide order dated 15.3.2013 by this Court, therefore, his subsequent application under Section 11 of the Act of 1961 is not maintainable being hit by principle of *res judicata*.

5. We have examined the entire record and submissions made by counsel for the parties. So far as the argument raised by counsel for the respondents that since petition under Section 7 of the Act of 1961 has already been decided and order of eviction has been passed,

therefore, the same will operate as *res judicata* in subsequent petition filed under Section 11 of the Act of 1961 is concerned, we find no merit in this submission as decision on petition under Section 7 of the Act of 1961 does not operate *res judicata* in subsequent petition as Section 7 of the Act of 1961 proceedings are summary in nature whereas proceedings under Section 11 of the Act of 1961 are in the nature of suit, wherein, the Collector is required to decide the question of title. This issue is no more *res integra* and a Coordinate Bench of this Court in **Maghi Ram (deceased) through his Legal Representatives and another vs Gram Panchayat, Chirwa and others, CWP Nos. 5921 of 1985 and 16885 of 1996, decided on 30.3.2012**, has already decided this issue. The relevant extract is reproduced as under:-

*“As regards the plea that earlier orders passed under Section 7 of the 1961 Act, operate as res judicata in a subsequent petition filed under Section 11 of the 1961 Act, suffice to state that the controversy is no longer res-integra as a Division Bench of this Court in Tara Chand and Fateh Singh v. Gram Panchayat and Gram Sabha of Village Atil and others, 1979 PLJ, 1, followed by another Division Bench judgment in Civil Writ Petition No. 653 of 2011 (Balbir Singh v. State of Punjab and others), decided on 03.02.2012, have held that dismissal of a petition under Section 7 of the 1961 Act does not operate as res judicata in a subsequent petition filed under Section 11 of the 1961 Act. We would reiterate that proceedings under Section 7 of the 1961 Act are summary in nature,*

*whereas proceedings under Section 11 of the 1961 Act are in the nature of a suit which requires the Collector to decide the question of title.”*

Therefore, in view of the above discussion, the argument, as raised by the respondent- Gram Panchayat concerned, is rejected.

6. We are also unable to accept the submissions made by counsel for the petitioners for the simple reason that the petitioners have not placed any single document to depict that either they or their forefathers were in possession of the suit land prior to the year 1950, that too in accordance with their share in the *Patti* land, whereas, from the pleadings of the petitioners themselves, it shows that they have, for the first time, been recorded in the column of possession in *jamabandi* for the year 1965-66. The relevant pleadings made in the present petition are as under:-

*“4. That jamabandi for the years 1965-66, 1970-71, 1975-76 shows that suit land comprising of Khasra No. 13//4(8-0) and 5/1 (3-12), total 11K-12M belong to Shamlat Patti Purana ½, Shamlat Patti Mehma ½ Hasab Hisas Jadi and khasra No. 5/24 (5-6) belong to Mushtarka Malkan. The above mentioned khasra Numbers are in possession of the petitioners from the time of their forefather. A true copy of jamabandis for the years 1965-66, 1975-76, 1980-81, 1985-86, 1990-91, 1995-96, 2000-2001, 2005-06 and 2010-2011 are attached herewith as Annexure P-4 to P-12 and their true translation as Annexure P-4/T to P-12/T. Likewise khasra Girdawari for the period kharif 1996-*

*Rabi 1997 to kharif 2000-Rabi 2006 is attached herewith as Annexure P-13 and its true translation as Annexure P-13/T.”*

7. We have examined *Khatauni Ishtemal, Naksha Hakdaran and jamabandi* for the years 1961-62. This has no concern with the suit land qua which the petitioners have claimed title. In fact, the suit land is *Shamlat Patti* land. There is no document on record to establish that the petitioners have any share in *Patti* or that they are *Pattidar*, whereas the petitioners have been shown in possession as *Gair Marusi* (A non occupant tenant) in the column of cultivation. A non occupant tenant cannot acquire the status and rights of *Marusi* and claim ownership. 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, has 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 P-9) 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. Earlier also when the petitioners challenged the eviction order before this Court, by filing CWP-5538-2013, it was observed by this Court, in its order dated 15.03.2013, that the petitioners are unable to establish any right, title or interest in the disputed land, as the land is recorded as *Shamlat Patti*. In record of rights, the petitioners are shown as *Gair Marusi*. However liberty was given to the petitioners to establish their right upon the suit land by filing title suit. The relevant extract of the order (supra) reads as under:-

*"We have heard counsel for the petitioner, perused jamabandies for the years 1975-76 and 2001-02 (Annexures P-1 and P-2), and after due consideration of findings recorded in the impugned orders, are unable to hold that the petitioner has any right, title or interest, in the land, in dispute. The land, though, recorded as Shamilat patti, records the petitioner in possession as "Gair Marusi". The petitioner has not been able to place on record any material that may enable us to hold that findings recorded against the petitioner in summary proceedings are illegal and void."*

Despite giving adequate opportunity to establish their right

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before the court of competent jurisdiction, the petitioners are unable to prove on the record that they are *Pattidar* and as per their share, they are in continuous possession prior to the year 1950. In absence of any such evidence, we do not find any merit in the present writ petition. There is no infirmity or perversity in the concurrent findings recorded by the court of competent jurisdiction. Therefore, the present petition is dismissed.

(SURESHWAR THAKUR)  
JUDGE

(KULDEEP TIWARI)  
JUDGE

March 03, 2023

'dalbir'

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