

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

CWP-25292-2023

Date of Decision: 08.11.2023

Teja Singh and others

..... Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Kumar, Advocate, for the petitioners.

Rajesh Bhardwaj, J.

Prayer in the present petition is for setting aside the impugned order dated 19.09.2023 (Annexure P-13) passed by the learned Joint Development Commissioner, Exercising the Powers of Commissioner, Punjab, whereby, the appeal filed by the petitioner has been dismissed against the impugned order dated 12.05.2015 (Annexure P-8) passed by learned Collector-cum-DDPO, Barnala, whereby, the petition filed by respondent-Gram Panchayat under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short, 'the Act'), is allowed and order of eviction has been passed against the petitioners and also for setting aside the impugned order dated 12.05.2015 (Annexure P-8).

Facts of the case are that respondent-Gram Panchayat filed a petition under Section 4 and 5 of the Act for eviction of the petitioners before the Collector-cum-DDPO. It was contended by the respondent-Gram Panchayat that the petitioners were in unauthorized possession and hence, Gram Panchayat had passed a resolution dated 02.07.2011 for initiating eviction proceedings against them. Service was effected upon the petitioners

and they contested the eviction petition filed by the Gram Panchayat. On hearing both the sides and perusing the record, the Collector-cum-DDPO found the petitioners to be in unauthorized possession of the land in dispute and thus, evicted them from the land vide impugned order dated 12.05.2015 (Annexure P-8). Aggrieved by the same, the petitioners filed an appeal before the learned Joint Development Commissioner-respondent No.2. Learned Joint Development Commissioner heard both the sides and finding no infirmity in the eviction order dated 12.05.2015 passed by the learned Collector-cum-DDPO, dismissed the appeal vide impugned order dated 19.09.2023 (Annexure P-13). Aggrieved by the same, the petitioners are before this Court by way of filing the present petition.

Learned counsel for the petitioners has submitted that the impugned orders are unsustainable in the eyes of law. He submits that the Collector-cum-DDPO had failed to appreciate the fact that the Gram Panchayat did not tender any evidence to substantiate the fact that the land in dispute falls in the definition of the Act. He submits that demarcation report was not tendered as an evidence. He has submitted that the contentions raised by the petitioners to conduct demarcation of the land was not considered by the respondent-authorities. He submits that no notice under Section 4 of the Act was issued to the petitioners by the Collector-cum-DDPO, hence, the eviction proceedings are illegal. It is submitted that petitioner Teja Singh had constructed a cattle shed over the disputed land and also planted trees over it. It is submitted that the petitioners are in possession of the disputed land since the time of their forefathers. He has submitted that the appeal filed by the petitioners was also illegally dismissed by the Appellate Authority by observing that demarcation report

dated 08.06.2011 was not tendered into evidence. It is submitted that in view of the facts and circumstances of the case, both the impugned orders being illegal and arbitrary, deserve to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is deciphered that the respondent-authorities perused the revenue record and appreciated the arguments raised by both the sides. The petitioners were granted due opportunities for producing their evidence to prove their authorized possession which they miserably failed to do so. On perusal of the revenue record, it was found that the land in dispute was *Mushtarka Malkaan* land and the same was not partitioned according to the *Khewatdars* and thus, as per mandate of Section 42-A of the East Punjab Holdings (Consolidation and Fragmentation) Amended Ordinance-2007, the land could not be partitioned in any manner. The Panchayat was declared as its owner/custodian permanently. Thus, the petitioners were found to be in unauthorized possession of the same and hence, they were rightly evicted by the learned Collector-cum-DDPO vide order dated 12.05.2015. In the appeal filed by the petitioners, both the sides were duly heard and record was re-appreciated. It was found on the appreciation of the record that in the *Jamabandi* for the year 2009-10 in the ownership column the disputed land was entered as *Jumla Mushtarka Malkaan Hasab Rasad Kabja Khewat*. In the cultivation column, there was entry of *Maqbuza Malkaan* and type of land was entered as *Gair Mumkin*. The petitioners constructed *Barra* for their cattle. As per settled law, *Mushtarka Malkaan* land vests in Gram Panchayat and thus, appeal filed by the petitioners was also dismissed. On perusal of the record, it is apparent that the land in dispute being *Mushtarka*

Malkaan vests in the Gram Panchayat and thus, the petitioners were rightly found to be in unauthorized possession and were ordered to be evicted. Hence, the present petition being devoid of any merit is hereby dismissed.

08.11.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No