

In the High Court of Punjab and Haryana at Chandigarh

[215]

CWP-750-2019

Date of Decision: 01.03.2024

JAIBIR

..... PETITIONER

VERSUS

COMMISSIONER KARNAL DIVISION KARNAL
AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. J.S. Cooner, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. A.G. Haryana with
Mr. P.P. Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. S.S. Momi, Advocate for
Mr. G.P. Nauch, Advocate for respondent No.4.

SURESHWAR THAKUR, J. (ORAL)

1. The brief facts of the case, are that, the Block Development and Panchayat Officer, Kaithal, filed an application under Section 7(2) of the Punjab Village Common Lands Act, 1961 (hereinafter to be referred to as “the Act of 1961”) before the Court of learned Assistant Collector 1st Grade, Kaithal and vide his order dated 26.10.2015, he ordered the ejectment of the petitioner from the land in question and imposed a penalty of Rs.10,000/- per hectare per year from the year 03.09.1996 till the vacation of the land. An appeal was preferred against the same by the petitioner before the Collector, Kaithal which was dismissed on 09.08.2016. Against the order of the learned Collector, Kaithal, the petitioner filed revision petition before the Commissioner, who vide order dated 24.08.2004 remanded their cases to the learned Collector, Kaithal, to decide the same on merit after hearing both the parties and giving them opportunity to produce evidence after spot inspection.

In compliance of order of the learned Commissioner, the learned Collector vide order dated 24.08.2004 remanded the case to Assistant Collector 1st Grade, Kaithal. The District Development and Panchayat Officer/Assistant Collector 1st Grade, Kaithal, vide order dated 26.10.2015 ordered the ejectment of the petitioner from the land in question and imposed Rs.10,000/- per hectare per year as penalty from the date of the filing of the application till vacation of the possession. Aggrieved by order of Assistant Collector 1st Grade, the petitioner filed an appeal before the learned Collector, Kaithal, which was dismissed vide orders dated 09.08.2016 and 25.10.2016. Further aggrieved by the orders dated 09.08.2016 and 25.10.2016, the petitioner filed the revision petition and prayed for acceptance of the same and dismissal of the application under Section 7(2) of the Act of 1961.

2. After hearing both the parties, i.e. the petitioner as well as the Gram Panchayat, the revision petition filed by the petitioner was dismissed and orders dated 09.08.2016 and 25.10.2016 were upheld, thus, vide order dated 27.06.2018, which is impugned in this writ petition.

3. Learned counsel for the petitioner contends that the authorities below did not appreciate properly the pleadings of the petitioner and the law applicable thereto and passed the impugned orders in an illegal and arbitrary manner.

4. Further, that the authorities below while passing the impugned orders did not consider that to maintain the petition under Section 7(1)(2) of the Act of 1961, the Gram Panchayat has to prove its ownership over the suit land, whereas, as per the revenue record, the proprietors of the village held a considerable share in the suit land. As such the application under Section 7 (1) (2) of the Act of 1961 by the Gram Panchayat was not maintainable against

the petitioner/proprietor.

5. We have heard the learned counsel for the parties and after considering the whole record available on the case file, we conclude as under:-

i) In the present case Section 7 of the Haryana Village Common Lands Act, 1961 is relevant and therefore the same is reproduced 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 immoveable 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 Haryana 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.

(2) The assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, [at the rate of one percent of the Collector rate of the land per acre per annum with the ceiling of total penalty amount equal to ten percent of the current Collector rate of the encroached land], having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(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.

(4) If any person refuses or falls to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years."

ii) In the order dated 27.06.2018 which is impugned herein, it has been observed after considering the revenue record, it emerged, that as per the revenue record, the land in question is Jumla Malkan land, which is owned by the Gram Panchayat rather since the beginning, and, that its income has been spent on development work of the Panchayat. Further, that the petitioner had taken the land on lease from 1974-75. Later on, they refused to pay the lease amount as a result thereof ejectment petitions were filed against the petitioner. It was further observed that as per the revenue record, the Gram Panchayat is shown owner, whereas, the petitioner is taking benefit by making cultivations of the disputed land, and, is paying nothing to the Gram Panchayat in the shape of Patta/Batai and further that a major portion of the land, is Banjar Kadim which, as per law, vests in the Gram Panchayat. Further, the petitioner throughout did not produce any document, thus, qualifying him as owner of the disputed land, whereas, in terms of the proviso to Section 7 of the Act of 1961, he was required to do so.

iii) Now, a bare perusal of the above mentioned Section 7 of the Act of 1961 shows that the title is to the disputed lands, thus, is to be proved by the production of documentary evidence.

iv) However when, in the present case, as per the revenue record, the land in question is recorded as Banjar Kadim land and as per lease register, the land in question was given on lease in the year 1974-75. Further, when as per Jamabandi for the year 1991-92, as was available before the Courts below, qua Khewat No. 738 min/717min, Khatoni No.1031, the name of owner is mentioned in column No.4 as “Gram Panchayat Deh 122463/123183 share, and Satpal s/o Man Singh s/o Mattu 720/123183”. In addition to above, in column No. 5 the name of cultivator with description is mentioned as “Banarsi s/o Munshi s/o Bhramnand r/o of the village Gair Marusi”. The said column No.9 in the apposite Jamabandi is extremely important, and, wherein rate qua the detail of rent paid, by the tenant is mentioned as “Bila Lagan Bavajah Nazayaz Kabaz”. Therefore, as per the observation of the revisional authority, the entry (supra) in column No.9 of the Jamabandi, shows that the petitioner is in unauthorised occupation of the land in question, therebys he could not be declared as owner.

6. Therefore, in view of the above, apt observations, we find no merit in the writ petition, and, the same is dismissed.

7. All the pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

March 01, 2024