

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2706-1999 (O/M)

Date of decision : 15.10.2024

Shamshad Ali

..... Petitioner(s)

Versus

The Financial Commissioner (Revenue) Haryana and others

..... Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sandeep Vermani, Advocate
for the petitioner.
Mr. Rajneesh Chadwal, AAG Haryana.
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HARSH BUNGER, J. (ORAL)

1. Petitioner (Shamshad Ali) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 25.03.1997 (Annexure P-4), whereby the learned Financial Commissioner, Haryana has accepted the reference made by learned Commissioner, Gurgaon and set aside the orders dated 29.03.1994 (Annexure P-4) and 15.09.1994 (Annexure P-5), passed by learned Assistant Collector 1st Grade, Gurgaon, and learned Collector, Gurgaon, respectively.

2. Briefly, the petitioner filed a suit under Section 77 (3)(d) of the Punjab Tenancy Act, 1887 (in short 'the 1887 Act') before the Court of learned Assistant Collector 1st Grade, Gurgaon; claiming occupancy rights in respect of land comprised in Killa No. 199/1, measuring 11 marlas, situated at village Pataudi, District Gurgaon. It was the pleaded case of the petitioner that he and his ancestors had been cultivating the aforesaid

land as “gair marusi” for the last more than 30 years and they were never ejected from the land nor the rate of rent was enhanced. Accordingly, it was prayed that the petitioner was entitled to the tenancy rights in the aforesaid land.

2.1 The aforesaid claim of the petitioner was contested by the Government/State of Haryana, inter alia, on the plea that the land in question was an evacuee property, which vested with the custodian and that the petitioner was an unauthorized occupant. It was also pleaded that the petitioner does not fulfil the conditions of claiming tenancy rights.

2.2 It transpires that the learned Assistant Collector, vide order dated 29.03.1994 (Annexure P-1), allowed the suit filed by the petitioner and he was declared as a tenant over the aforesaid land, measuring 11 marlas, comprised in Killa No. 199/1.

2.3 State of Haryana challenged the order dated 29.03.1994 (Annexure P-1), by filing an appeal before the learned Collector, Gurgaon, however, the same was dismissed, vide order dated 15.09.1994 (Annexure P-2), being time barred.

2.4 Thereafter, State of Haryana preferred a revision petition before the learned Commissioner, Gurgaon, who vide its order dated 16.03.1995 (Annexure P-3), made a reference to the learned Financial Commissioner, Haryana, which reads as under :-

“ After hearing both the sides and going through the case record, I find that a material irregularity has been committed. Occupancy rights can only be given on agricultural land. Jamabandi entries and other revenue documents placed on record clearly show the land in

question as 'Ghair Mukmkin Gait' putting it in the category of non-cultivable land. That being so the Asstt. Collector 1st Grade could not have given occupancy rights on this land. The case is therefore, recommended to Financial Commissioner, Revenue for setting aside the orders of Collector dated 15.9.94 and of Assistant Collector 1st Grade dated 29.3.94."

2.4 The aforesaid reference came to be allowed by learned Financial Commissioner, vide order dated 25.03.1997 (Annexure P-4) by holding as under :-

"4. I have considered the arguments advanced by the learned counsel for both the parties and have studied the case file. For a suit under Section 77 (3) (a) for establishment of claim to a right of occupancy, it is imperative that the relationship of landlord and tenant exists. Section 77 (e) (d) reads as under :-

"Suits by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right :"

Thus, the suit for establishing a claim to a right of occupancy has to be filed by a tenant. A perusal of the evidence in the court of Assistant Collector shows that the plaintiff/respondent has been claiming occupancy rights on the basis of his being a landlord. Fayyaz, a witness of the plaintiff has stated that father and grand-father of Shamshad Ali were the owners of the land before 1947 and when in 1947, Shamshad Ali's father went to Pakistan, Shamshad Ali started staying with his maternal grand-father and the land was declared evacuee property during the consolidation operations. He has further stated that after 5-6 years, Shamshad Ali came back to the village and occupied the land in dispute as owner, since this land belonged to his father and grand father. Even during the

arguments, the learned counsel for the respondent argued that the plaintiff/respondent and his predecessors-in-interest have been in possession of this land for more than 150 years. It was not even claimed that he was ever a tenant on this land. Thus, occupancy rights cannot be granted to a person who claims that he has been an owner of the land. Moreover, as Commissioner, Gurgaon Division has pointed out in his order dated 16.3.1995, the revenue record shows that the land in dispute is “Ghair Mumkin gait” and occupancy rights cannot be granted in respect of non-cultivable land. For establishing a claim of occupancy right, a tenant has to show that there was the intention of the landlord not to eject the tenant and strong presumption can be raised in this respect if the tenancy has lasted for many years and no efforts have been made to increase the rent even if there has been a rise in price of agricultural produce. All these aspects have not been proved in respect of the land in question which is non-agricultural in nature. In this case particularly, the suit for establishing occupancy rights cannot succeed since the plaintiff claims himself to be an owner and not a tenant. Hence, the reference made by the Commissioner is accepted and the orders dated 15.9.1994 and 29.3.1994 passed by the Collector and Assistant Collector respectively, are set aside.”

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Heard.

5. A perusal of Section 5 of the 1887 Act would show that a tenant can have a right of occupancy if he is occupying the land for thirty years and paid no rent beyond the amount of the land revenue thereof.

5.1 The land within the meaning of Section 5 of the 1887 Act is the one which is defined under Section 4(1) thereof, which reads as

under :-

"Land means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agriculture purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land".

5.2 It is interesting to note that the Punjab Security of Land Tenures Act, 1953 (in short 'the 1953 Act') has adopted the definition of "land" as given in the 1887 Act. The definition of "land" in Section 2(8) of the 1953 Act reads as under :

"Land" and all other terms used, but not defined in this Act, shall have the same meanings as are assigned to them in the Punjab Tenancy Act, 1887 (Act XVI of 1887).

5.3 A Division Bench of this Court in the case of ***Nemi Chand Jain v. The Financial Commissioner, Punjab and another, 1963 Punjab Law Journal 137*** has interpreted the provisions of Section 2(8) of the 1953 Act and held that the land which is described as Banjar Qadim cannot be treated as land in determining the surplus area of the landowner. It was held as under :-

"According to Section 2(8) of the Punjab Security of Land Tenures Act, the word "land" has the same meaning as is assigned to it in the Punjab Tenancy Act. Before land can fall under the definition of the "land" as given in Section 4(1) of the Punjab Tenancy Act, two factors are essential to be proved : (i) that it should not be land which is occupied as the site of any building in a town or village, and (ii) is occupied or has been let for agricultural purpose or for purpose subservient to agriculture, or for pasture. The fact that the land is banjar jadid or banjar qadim goes to show that it has not been occupied or let for agricultural

purposes or for purposes subservient to agriculture. The non-cultivation of land for a number of years goes to show that it does not answer to the definition of the word "land". The definition of the word "land", as given in the Punjab Tenancy Act, looks to the actual state of the land and the use to which it has been put and not to its future potentialities. Therefore, banjar jadid or banjar qadim land cannot be held to answer to the description of "land" as given in the Act."

5.4 Later, a Full Bench of this Court in the case reported ***Rajinder Parshad and another v. The Punjab State and others, 1966 Punjab Law Journal 28*** has held that the land recorded as "Ghair Mumkin" in revenue records but is not occupied or let for agricultural purposes or purposes subservient to agriculture or for pasture, is not land within the meaning of Section 2(8) of the 1953 Act.

5.5 Hon'ble Supreme Court in the case reported as ***Munshi Ram v. The Financial Commissioner, Haryana, 1979 Punjab Law Journal 182*** has held that the land which is described as Banjar Jadid, Banjar Qadim and Gair Mumkin land, does not fall within the purview of land as defined under Section 2(8) of the Punjab Security of Land Tenures Act, 1953, and cannot be taken into account while computing surplus area, approving Division Bench decision of this Court in ***Nemi Chand Jain's case (supra)***.

6. Concededly, in the instant case, the land in dispute is recorded as "***Gair Mumkin Gait***", which is a non-agricultural land located in or near the residential area of the village. Therefore, the land in dispute would not come within the meaning of "land" as envisaged under Section 4(1) of the Punjab Tenancy Act, 1887, over which the

occupancy rights can be claimed. Since occupancy rights cannot be claimed by the petitioner in respect of such land, which is recorded as “*Gair Mumkin Gair*”; accordingly, the suit filed by the petitioner claiming was liable to be dismissed.

6.1 A perusal of impugned order dated 25.03.1997 (Annexure P-4) would show that the learned Financial Commissioner has recorded a finding of fact that land in dispute is non-agricultural in nature and the requirements/factors for establishing occupancy rights, have not been proved. It is further observed that the petitioner is claiming himself to be an owner and not a tenant, therefore, he cannot succeed in suit for establishing occupancy rights.

6.2 Learned counsel for petitioner has failed to dislodge the aforesaid findings returned by the learned Financial Commissioner.

7. In view of the above discussion, there is no scope for any interference in the order dated 25.03.1997 (Annexure P-4), passed by learned Financial Commissioner, Haryana.

8. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

15.10.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No