

2024:PHHC:117310-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101)

**CM-13200-CWP-2024 in/and
CWP-12773-2006
Decided on: 06.09.2024**

Chajju Ram

.....Petitioner (s)

Versus

Commissioner, Gurgaon Division & others

....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr.Amit Jain, Sr.Advocate
with Mr.Anupam Mathur, Advocate, for applicant/petitioner (s).

Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Mago, DAG, Haryana.

Mr.Jaivir Yadav, Sr.Advocate
with Mr.Tarun Yadav, Advocate, for respondent No.3.

G.S. Sandhawalia, J. (Oral) :

CM-13200-CWP-2024

1. Application has been filed for bringing on record the legal representative of the deceased-petitioner, Chajju Ram, who had expired on 14.12.2016, leaving behind his legal representative as mentioned in para no.2 of the application. The said claim is on the basis of registered Will dated 05.10.2016 (Annexure A-1). It has further been stated that there are no other legal representative.

2. Accordingly, in view of the averments made in the application duly supported by affidavit of the legal representative- Narender Kumar and without commenting upon the authenticity and

veracity of the Will, the present application is allowed. Legal representative- Narender Kumar is allowed to be brought on record, only for the purpose of pursuing the present litigation. Office to append the same at appropriate place.

3. CM stands disposed of. By consent of counsels for the parties, main case is taken up on Board today itself.

CWP-12773-2006

4. Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India, is to the order dated 22.06.2004 (Annexure P-6) passed by the Commissioner wherein the order of the Assistant Collector dated 08.07.2004 had been set aside and it was held that the possession of the present petitioner on the disputed land would be illegal after the expiry of the lease period and he was liable to be ejected under Section 7 of the Punjab Village Common Land (Regulation) Act, 1961 (for short, the 'Act') and the Assistant Collector was not correct to hold that the question of title was involved in the said case.

5. The reason which prevailed with the Commissioner to come to the said conclusion was that from the record of the said case and photocopy of the resolution, it transpired that the Gram Panchayat had given the land on lease to the petitioner for establishing lime kiln for three years from 1972 to 1974 and thereafter, again in the year 1981-82, the land was given on lease. Instead of surrendering the possession, the petitioner kept his possession by constructing five khokhas and gave the same on rent to the private-respondents without the permission of the Panchayat and therefore, on the expiry of the lease period, the possession was stated to be illegal.

6. Mr.Jain, Senior Counsel for the petitioner submits that the question of title was never raised while referring to the written statement whereby plea was taken that he had constructed residential house which was not covered under the definition of *Shamlat Deh* and it did not vest with the Gram Panchayat. It is, accordingly, pleaded that specific plea was taken that petitioner was owner of the property and therefore, the Gram Panchayat had no locus-standi. Senior Counsel has tried to convince us that the issue has to be decided under Section 2(g)(vi) of the Act and thus, it was a case of exception of land being *Shamlat* land. It is further submitted that the Gram Panchayat had filed no appeal before the Collector and there was no finding of tenancy.

7. Senior Counsel for respondent No.3-Gram Panchayat, on the other hand, submitted that the eviction petition specifically mentioned that notice was sent on 21.09.1994 under Section 106 of the Transfer of Property Act, 1882 for termination of the tenancy and he had been asked to surrender the possession within a period of 6 months. It is submitted that a tenant cannot claim title and has to surrender possession and there is a estoppel, as such. It is further submitted that there is no specific denial regarding serving of the notice and throughout the case of the petitioner was that he was a tenant and he had not paid the rent and on that ground, the possession could be termed as illegal.

8. State Counsel has also supported the stand of counsel for the Gram Panchayat and further pointed out that there is an admission in the written statement also which is the best piece of evidence.

9. A perusal of the reply would also go on to show that in para no.4, in reply to the averments of the Gram Panchayat in the eviction

petition regarding the notice under Section 106 of the Transfer of Property Act, 1882, the stand was that the notice in question was without any authority and no resolution of the Gram Panchayat had been placed on record. The Advocate for the Gram Panchayat had issued the notice dated 21.09.1994 and the same was not served in a proper manner and no date of termination of the tenancy was mentioned in the same. Further, the plea taken was that the story regarding termination of tenancy was wrong. It is not disputed that at the initial point of time, the petition had been dismissed on 15.05.1996 by the Assistant Collector while placing reliance upon the judgment of the Co-ordinate Bench in **Jagir Singh Vs. Gram Panchayat, Village Mirajpur & others, 1989 PLJ 494**. The said order was taken to the Collector by the Gram Panchayat in appeal, which was allowed by noting that the question of tenancy should be decided under the Act and the order passed by the Assistant Collector was silent.

10. Once counsel for the petitioner has himself pleaded in the written statement before the Assistant Collector that the land had been taken on lease and mentioned that the lease amount was being realised even after 31.03.1993 and notice under Section 106 had become infructuous and maintenance of the application under Section 7 of the Act, was being challenged apart from raising the plea that they were in possession since the last 35-40 years, they are stopped from raising the issue of title.

11. The matter was then taken up by the Assistant Collector wherein again, it was put-forth by counsel for the petitioner that on account of the land having taken on lease, the possession was not illegal and entry had come in the Jamabandi regarding the statement of witnesses

namely the Sarpanch. Reliance was again placed upon the judgment in Jagir Singh (supra). The Assistant Collector held that prima facie question of title arises and the same should be decided first and accordingly, asked the petitioner to submit his claim. It was, at this stage, the Gram Panchayat approached the Commissioner directly because the order was not a final order and therefore, revision petition was preferred as an appeal would not be maintainable which meets the objection raised by Senior Counsel for the petitioner.

12. As noticed, the Commissioner had then perused the record and came to the conclusion that the Assistant Collector was not justified to permit the present petitioner to raise the question of title.

13. We are of the considered opinion that the petitioner cannot set up the issue of title having admitted the fact that he was a lessee since even from the written statement in para no.8, apart from other objections raised, it has been averred that the Gram Panchayat had been realising the amount from the petitioner even after 31.03.1993 and the notice issued under Section 106 was infructuous. Thus, there is an admission made that there was a tenancy, as such. If that is so, petitioner is de-barred from raising the issue of title once there was no categorical denial regarding the aspect of tenancy and even the Commissioner had gone through the record to come to the conclusion that the land was given on lease from 1972-74 for establishing lime kiln and thereafter, again extended in 1981-82 and there was resolution to this effect. A Co-ordinate Bench in **Kuldip Singh & others Vs. Gram Panchayat, Pehar Kalan, Tehsil Rajpura & others, (2005) 141 PLR 734**, dilated on the provisions of Section 116 of the Indian Evidence Act in similar circumstances and held as under:

“8. Counsel for the petitioners has candidly conceded that the petitioners are lessees in possession under the Gram Panchayat. It is so pleaded in paragraph 5 of the writ petition, which reads thus:-

"Although the above mentioned land, being not shamlat deh, never vested in the Gram Panchayat yet the Gram Panchayat started leasing it out. The petitioners did not know the legal position, and had taken the land in dispute on lease. The petitioners thereafter came to know that the land had not vested in the Gram Panchayat and, therefore, the provisions of [Punjab Village Common Lands \(Regulation\) Act, 1961](#) hereinafter called the Act, did not apply. The Gram Panchayat filed application under [Section 7](#) of the Act."

9. The Collector, while deciding the present controversy, and on the basis of evidence, produced by the Gram Panchayat, in the shape of Jamabandis, the list of lessees and copy of the lease register, arrived at a conclusion that the land in dispute was leased out to the petitioners on different occasions and, therefore, the petitioners had no right to raise a question of title. Despite arriving at the aforementioned conclusion, the Collector still proceeded to examine the matter on merits and held that the land belonged to the Gram Panchayat, the petitioners were not old co-sharers and that the land had not created by applying a prorata cut. The appellate authority upheld the aforementioned order. The petitioners' admission that they were tenants under the Gram Panchayat, on payment of rent, dis-entitles them from impugning the title of the Gram Panchayat.

10. [Section 116](#) of the Indian Evidence Act, 1870 estops a tenant or a person, claiming through such tenant from denying his landlord's title. A tenant cannot, except where law so permits, impugn the title of his landlord and, thus, seek to alter the very nature of his possession. The petitioners, being lessees of the Gram Panchayat, which fact is not only admitted, but is also fortified by the entries in the Jamabandis, the lists of lessees and the lease register, were not entitled to raise a dispute regarding the title of the Gram Panchayat.”

14. The Commissioner was well justified in holding that the limited aspect of jurisdiction which the Assistant Collector was to exercise was the issue of tenancy as ordered by the Collector at the initial stage on 29.10.1997 (Annexure P-4) . The Assistant Collector had, thus, expanded the scope of the lis without any prima facie material and especially more so when on an earlier occasion, the matter had been remanded by the Collector with the directions that only the issue of tenancy was to be decided as per the provisions of the Act. The said order dated 29.10.1997 had not been challenged by the petitioner and had become final inter se and the petitioner was also estopped at that stage to raise the challenge before the Assistant Collector, having not raised challenge to the order of the Collector before the Commissioner or before this Court. It is, in such circumstances, the Commissioner was well justified to set aside the order of the Assistant Collector who had unnecessarily opened up the Pandora's Box.

15. It is also to be noticed that the view taken in Jagir Singh (supra) was also considered by a Full Bench of this Court in **Harbans Singh & others Vs. Director, Rural Development & Panchayat Punjab & others, 2014 (4) PLR 762** on a reference made wherein it was also held, while dilating upon the provisions of Section 4(3) of the Act, it was held that a person who is claiming protection of his rights should be in cultivating possession of the Shamlat Deh for more than 12 years immediately preceding the commencement of the 1961 Act.

16. Keeping in view the above, we do not find any plausible reason to interfere in the order passed by the Commissioner dated

22.06.2004 (Annexure P-6) and the present writ petition is, accordingly, dismissed.

17 Parties to appear before the Assistant Collector, Gurugram on 04.11.2024.

(G.S. SANDHAWALIA)
JUDGE

06.09.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	