

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

CWP-24583-2018
Date of Decision: 05.02.2024

SATBIR SINGH AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Sumit Sangwan, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana and
Mr. P.P. Chahar, D.A.G., Haryana
for respondents No.1 to 4.

None for respondent No.5.

None for respondents No.6 & 7.

Mr. Surinder Gaur, Advocate
for respondents No.8 to 11, 15 and 16.

HARSH BUNGER, J.

1. Prayer in the present petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 24.04.2015 (Annexure P-9) passed by the learned Commissioner, Rohtak Division, Rohtak and also an order dated 15.02.2018 (Annexure P-10) passed by the Financial Commissioner, Haryana.

2. Shorn of unnecessary details, brief facts culminating into the filing of the instant writ petition are that an eviction petition came to be filed by the Gram Panchayat, Village Sersa, Tehsil and District Sonapat against one Ran Singh son of Thakaria (father of the petitioners, herein). The said eviction petition filed against Ran Singh came to be allowed by the Assistant Collector Ist Grade, Sonapat and Ran Singh was ordered to be evicted from the land in question, comprised in *killa No.76//16/2 (3K-12M)*. The aforesaid order dated 22.10.1986 came to be challenged by above-said Ran Singh by way of filing an appeal before the Collector, Sonapat, which came to be allowed vide order dated 14.02.1989 (Annexure P-1) and the matter was remanded by holding as under :-

“6. After hearing both the parties, I have perused the record available on file, the evidence and the order under challenge. From the perusal of documents Ex.AX-1 to Ex.AX-4, it is clear that with respect to the suit land, the suits were contested in the Civil Court and from the perusal of Ex.RX1 to RX8, it is also clear that Sh. Sultan Singh had remained a member panchayat and he had registered the Hibbenamas and mutation recorded from the side of Panchayat while he was not a member panchayat. From these facts, it is concluded that the question of title is involved in this case. The counsel for the appellant has raised the point of ownership in his argument. It was incumbent upon the Assistant Collector Ist Grade first to decide the question of title by converting the petition under Section 13-A from Section 7 of the Punjab Village Common Lands Act (Regulation) but he did not do so. Therefore, while accepting the appeal, I, remand this matter to the Assistant Collector Ist Grade with the direction that he will, after converting the petition from Section 7 to Section 13-A of the Act, I decide the matter on

merits afresh after giving an opportunity to both the parties to lead their respective evidence. Both the parties are directed to appear before the Assistant Collector Ist Grade, Sonapat on dated 7.3.1989 for further proceedings. The file be consigned to the record room after due compliance.”

3. It appears that upon remand, while the proceedings were pending before the Assistant Collector Ist Grade, Sonapat, said Ran Singh had expired and the present petitioners (being the legal heirs of aforesaid Ran Singh) were brought on record and thereafter, the title suit under Section 13-A of the Punjab Village Common Lands Act, 1961 (in short 'the 1961 Act') was filed by the petitioners herein, claiming that they are the owners in possession of the land comprising Killa No.76//16/2 (3K-12M). For deciding the question of title of the land in question, the following issues were framed :-

- “(i) Whether the petitioners are owner in possession of the suit land? OPP*
- (ii) Whether the suit land vest in the Gram Panchayat? OPD*
- (iii) Whether the gift deeds in favour of the respondents are correct? OPD*
- (iv) Whether the petition is maintainable in the present form? OPD*
- (v) Whether this Court has jurisdiction to decide the petition? OPD*
- (vi) Whether the suit is within limitation? OPD*
- (vii) Whether the suit does not disclose any cause of action? OPD*
- (viii) Relief.”*

4. The parties led their respective evidence in support of their claims.

5. Thereafter, the learned Assistant Collector Ist Grade, Sonapat vide his order dated 29.06.1995 (Annexure P-2) held that from the revenue record produced by the petitioners herein, it is proved that they are in possession of the suit land since 1937 and therefore, they cannot be evicted from the suit land as the protection under Section 4(3)(ii) of the 1961 Act, is available to them.

6. It is borne out from the record that the afore-said order dated 29.06.1995 (Annexure P-2) passed by the Assistant Collector Ist Grade, Sonapat came to be challenged by way of two appeals i.e. Case No.228 of 1995, which came to be filed by the persons, who claims to be the allottee of the land in question by way of gift deeds executed by the Gram Panchayat. The second Appeal bearing Case No.231 of 1995, came to be filed by the present petitioners before the learned Collector, Sonapat. Both the afore-said appeals came to be decided vide common order dated 29.11.1995 (Annexure P-3) passed by the learned Collector, Sonapat; whereby, the order dated 29.06.1995 (Annexure P-2) passed by the Assistant Collector Ist Grade, Sonapat was set aside and the matter was remanded to the Assistant Collector Ist Grade (District Revenue Officer), Sonapat with the direction that whether or not, the forefather of the petitioners herein, namely Thakria son of Jhabbar was in possession of the suit land on 26.01.1950 or for the 12 years preceding 09.01.1954. It was further directed that the matter would be decided afresh after taking evidence from both the sides.

7. Upon remand, the Assistant Collector Ist Grade, Sonapat, vide his order dated 09.04.2002 (Annexure P-4) held that from the revenue record/evidence produced by the petitioners, it is proved that their

possession is coming since 1937. Accordingly, the petitioners were declared as owners in possession of the suit land.

8. The afore-said order dated 09.04.2002 (Annexure P-4) came to be further challenged by the Gram Panchayat by way of an appeal filed before the Collector, Sonapat; however, the same was dismissed vide order dated 02.12.2004 (Annexure P-5) passed by the learned Collector, Sonapat. The afore-said order dated 02.12.2004 (Annexure P-5) passed by the learned Collector, Sonapat was further challenged by way of filing two Revision Petitions, out of which, one Revision Petition bearing No.134 of 2005 came to be filed by Gram Panchayat, Sersa and the other Revision Petition bearing No.126 of 2005 came to be filed by the afore-said allottees of the land, in question.

9. Both the afore-said revision petitions came to be decided by the learned Commissioner, Rohtak Division vide his order dated 03.05.2007 (Annexure P-6); whereby he set aside the orders passed by the lower Courts and remanded the cases to the Collector for fresh decision on merits.

It appears that the above-said order dated 03.05.2007 (Annexure P-6) passed by the learned Commissioner, Rohtak Division, Rohtak was challenged by the present petitioners before the Court of Financial Commissioner, Haryana by filing a revision petition; however, the said petition was dismissed vide order dated 12.09.2007 (Annexure P-7) passed by the Financial Commissioner, Haryana.

10. The present petitioners, thereafter, challenged the order dated 12.09.2007 (Annexure P-7) passed by the Financial Commissioner, Haryana as well as order dated 03.05.2007 (Annexure P-6) passed by the Commissioner, Rohtak Division, Rohtak by way of ***CWP No.2029 of 2008***;

wherein on the basis of the consent of the parties, the order dated 12.09.2007 (Annexure P-7) passed by the Financial Commissioner, Haryana as well as order dated 03.05.2007 (Annexure P-6) passed by the Commissioner, Rohtak Division, Rohtak were set aside and the matter was remitted to the Commissioner, Rohtak Division, Rohtak for deciding the case afresh.

11. The learned Commissioner, Rohtak Division, Rohtak, vide his order dated 24.04.2015 (Annexure P-9) accepted the revision filed by the Gram Panchayat and set aside the order dated 09.04.2002 (Annexure P-4) passed by the Assistant Collector Ist Grade as well as order dated 02.12.2004 (Annexure P-5) passed by the learned Collector.

12. A further revision petition filed by the petitioners before the Court of Financial Commissioner, Haryana was also dismissed vide order dated 15.02.2018 (Annexure P-10).

13. In the afore-mentioned circumstances, the petitioners have filed the instant writ petition before this Court.

14. We have heard learned counsel for the parties and perused the paper-book with their able assistance.

15. The primary contention of the petitioners is that they are in possession of the land in question since the year 1937 and therefore, they cannot be evicted from the said land as their possession is protected under Section 4(3)(ii) of the 1961 Act. In order to substantiate this plea that the petitioners, through their predecessors-in-interest, are in possession of the land in question since the year 1937, the petitioners have placed reliance upon a Jamabandi for the year 1944-45 pertaining to Khasra No.373 (114)

and Khasra No.374 (118) along with a copy of Khasra Girdwari of the said Khasra No.373 and 374 pertaining to Kharif 1937 upto the crop of Rabbi 1941.

We have perused the afore-said two documents.

As per the Jamabandi for the year 1944-45, the land bearing Khasra Nos.373 and 374, is recorded as the ownership of Bhagwan Sahai @ Badle son of Shiv Sahai Nisaf (1/2 share) and Zile Singh, Umrao Singh sons of Bakhtvyar Singh (1/2 share). In the cultivation column of the said Jamabandi of the year 1944-45, the entry is “Bhagwan Sahai etc., co-sharer mortgaged to through Thakaris son of Jhabar, Gair Marusi. The Khasra Girdawari also reflects similar entries in the ownership and cultivation column; however, the nature/quality of land is stated to be “**Rosli**”. The petitioners have further placed on record a translated copy of Khatauni Pamaish of Village Sersa pertaining to Khasra Nos.373, 374 along with other Khasra Nos. As per the Khatauni Pamaish, it appears that the afore-said Khasra Nos.373, 374 along with other Khasra Nos. were converted into a new Khasra No.16/2 and its area is shown as 03K-12M and the nature of land is stated to be “**Rosli**”. It is also noticed that as per Khatauni Pamaish (Annexure P-12), the said Khasra Nos. were allocated to *Shamilat Deh*.

16. Apart from the afore-said documents, no other revenue record has been placed on record in the instant writ petition.

17. Provisions of Section 4(3)(ii) of the 1961 Act (as applicable to Haryana) is reproduced as under :-

"(ii) rights of persons who were in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or

the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon."

18. Section 2(g) of 1961 Act defines "Shamlat Deh", wherein exceptions were carved out to show the circumstances under which land would not fall within the definition of Shamlat Deh land. Under Section 4(3)(ii) of the Act, it is stated that the rights of those persons will not be affected by the Shamlat Law, who were in cultivating possession of the Shamlat Deh land on the date of commencement of Punjab Village Common Lands (Regulation) Act, 1953. It is further borne out from the said provisions that such person is supposed to be in cultivating possession for more than 12 years on the above said date without payment of rent or by payment of charges not exceeding the land revenue.

19. Coming to the case in hand, it is to be examined as to whether the petitioners fulfil the conditions envisaged under Section 4(3)(ii) of the 1961 Act. As far as the reliance by the petitioners upon the Jamabandi for the year 1944-45 and also the Khasra Girdawari entries pertaining to the period from 1937-41 are concerned, it would be seen that Khasra Nos.373, 374, which the petitioners claim were the old Khasra Nos. of the land, which is present in dispute i.e. Khasra No.76//16/2 (3K-12M), the said Khasra Nos.373 and 374 are not recorded as Shamlat Deh, rather the said Khasra Nos. are shown to be the ownership of private individuals. Furthermore, the nature/quality of land is stated to be "**Rosli**". It is not in dispute that the said land is an uncultivable land, inasmuch as that **Rosli** land is the one where the soil is mixed with the sand. [Rosli land is uncultivable

(see *Inder Singh v. State of Punjab*, 2012(3) L.A.R. 104 and *Prithi Ram v. Gram Panchayat of Village Reona Bhola*, 2014(3) RCR (Civil) 754)]. The other document upon which the reliance is placed by the petitioner is the Khatauni Pamaish (Annexure P-12), on the basis of which the petitioner is trying to impress that the land presently in dispute i.e. Khasra No.76//16/2 (3K-12M) was carved out from Khasra Nos.373, 374 along with other Khasra Nos. It is observed that although the said document reflects that Killa No.16/2 is carved out from Khasra Nos.373, 374 along with other Khasra Nos.; however, the rectangle number of the said Killa No.16/2 is not forthcoming; therefore, it cannot be ascertained that the said Killa No.16/2 is a part of which rectangle number and in the absence of the same, it cannot be said that the land in question i.e. Khasra No.76//16/2 is carved out from old Khasra Nos.373 and 374. Furthermore, the petitioners have not placed on record the copy of the Misal Haqiat (1st Jamabandi of the Revenue Department prepared after consolidation) so as to co-relate the land in dispute comprised in Khasra No.76//16/2 with the claimed old Khasra Nos.373 and 374. It has come on record that the consolidation was held in the year 1956 in Village Sersa.

20. As regards the condition borne out from Section 4(3)(ii) of the 1961 Act that the person should be cultivating the land without payment of rent or payment of charges in excess of land revenue and cess, the learned Commissioner, Rohtak Division, Rohtak, vide his order dated 24.04.2015 (Annexure P-9) has returned the following findings :-

“15. Fourthly, the land revenue entry is only 3 rupees for the whole land in Ex.P-25. The jamabandi entry of the rent shown in 1940-41 jamabandi, Ex.P-24 is 38 rupees, Chkota Sal, which is a rent. In order to claiming

exemption under Section 4 (3)(ii), it must be proved as without payment of rent or payment of charges not exceeding land rent and cesses. The recorded rent is much higher than land revenue, so even this ingredient is not proved.”

21. As regards the factum of cultivating possession, the learned Commissioner, Rohtak Division, Rohtak has returned the following findings :

“16. Fifthly, in 1957 shown in Ex.P-17 the name of persons in the cultivating possession regarding suit land as shown as Baldeva, Bhima Pisran Data Ram s/o Surja equal share Gair Morsian Sakin they, while Thakaria is the name of forefather of respondent-Satbir etc. so even their possession in 1957 jamabandi is not proved, if they claim as a stray entry then the next jamabandi and consequent girdawari should be produced by him, but he failed to produce 1960-61, 1964-65, 1969-70, 1974-75, 1979-80 and 1984-85 jamabandi. As per Section 114 (g) of Indian Evidence Act 1972, the evidence which could be produced, but is not produced, then Court can presume that such document is unfavourable to the person, who is not producing it. Therefore, non-production of next jamabandi after 1957 cannot work in favour of Satbir etc. for proving their claim of stray entry.”

22. Learned counsel for the petitioner has failed to dislodge the afore-said findings returned by the Commissioner.

23. Considering the totality of circumstances, the petitioners have failed to prove on record on the basis of the relevant revenue records/documents and other evidence that their case falls within the parameters of Section 4(3)(ii) of the 1961 Act. In the absence of the same, no relief can be granted to the petitioners. Resultantly, the instant petition

fails and the writ petition is, accordingly, dismissed.

24. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(HARSH BUNGER)
JUDGE

February 05, 2024
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No