

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

CWP-30891-2024 (O&M)
Date of decision : 25.02.2025

KRIPAL SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Prateek Rathee, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

Mr. Onkar Singh, Advocate
for respondent No.3.

HARSH BUNGER, J. [ORAL]

Prayer in the present writ petition, filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of *certiorari* for setting aside the order dated 14.06.2024 (Annexure P-5) passed by the learned Collector, Gurugram.

2. Briefly, respondent No.3-Saroj Devi filed a suit against one Raghunath son of Sh. Bane Singh; claiming right of occupancy under Sections 5 and 8 read with Section 77(3)(d) of the Punjab Tenancy Act, 1887 (for short 'the 1887 Act') before the learned Collector, Gurugram, on the plea that she was in the possession to the extent of 1/3 share in the land, measuring *51 kanal-7 marlas* situate at Village Harsaru, Tehsil Harsaru, District Gurugram (here-in-after referred to as 'the land in question'). It was the pleaded case of respondent No.3 that prior to her, her predecessors

were in possession of the said land for more than 100 years. It was further pleaded that in the revenue records, the person mentioned in the ownership column, never remained in possession or cultivated the land in question and even his whereabouts were not known for the last about 60 years nor any of his legal heirs, is there in the village. Respondent no.3 claimed that she and her predecessors-in-interest had made the land cultivable. It was claimed by respondent No.3 that she fulfills the conditions of right of occupancy in terms of Section 5 of the 1887 Act and therefore, acquired proprietary rights under Section 3 of the 1887 Act. Accordingly, respondent No.3 prayed that the proprietary rights and right of occupancy be conferred upon her.

2.1 It appears that notices were sent to said Raghunath son of Sh. Bane Singh, however, since no one came present on his behalf, accordingly, *ex-parte* proceedings were initiated against him and subsequently, vide impugned order dated 14.06.2024 (Annexure P-5), the learned Collector, Gurugram allowed the claim of respondent No.3 and held her entitled to have proprietary rights in respect of the land in question.

3. Petitioner-Kripal Singh claims himself to be the successor in interest of Sh. Raghunath and has accordingly, filed the instant writ petition, challenging the above-referred order dated 14.06.2024 (Annexure P-5), on the plea that Sh. Raghunath expired in the year 1924; whereupon, his estate was inherited by his three sons namely, Ram Kanwar Singh, Sheodan Singh and Munshi Singh. It is further claimed that one of the sons of Sh. Raghunath namely, Sh. Munshi Singh, expired on 16.07.1986 and his share devolved upon his five legal heirs namely, Vidya Devi (widow), Gajraj Singh, Jai Parkash Singh (sons) and Smt. Om Wati, Smt. Bhagwati (daughters). It is still further stated that

afore-said Gajraj Singh expired on 04.08.2016 and his share was acquired by the petitioner-Kripal Singh and Seema (wife of the petitioner) on the basis of a registered Will dated 10.07.2014 executed by Sh. Gajraj Singh.

3.1 Apart from the above, petitioner states that in the revenue record, father's name of Sh. Raghunath Singh was wrongly mentioned as Bane Singh instead of Lachhu Singh. It is contended by the petitioner that the names of some of the persons (including respondent No.3) have been recorded in the cultivation column of the land in question, although, no tenancy was created in favour of respondent No.3 either by the petitioner or any of his predecessors-in-interest. Petitioner claims that he is in cultivating possession of the land in question; therefore, learned Collector has wrongly passed the impugned order and also that the learned Collector had no jurisdiction to entertain the matter. Accordingly, prayer has been made for setting aside the impugned order.

4. Upon issuance of notice of motion in this case, respondent No.3 appeared through her counsel and had filed the written statement wherein, a preliminary submission was made that the petitioner has not come to the Court with clean hands as he has concealed the material fact that the order dated 14.06.2024 (Annexure P-5) which has been impugned in the present writ petition, had already been challenged by one Smt. Rajbala by filing an appeal before the learned Commissioner, Gurugram Division, Gurugram, which has been allowed vide order dated 19.12.2024 (Annexure R/1) by setting aside the order dated 14.06.2024 (Annexure P-5) and the matter was further remanded to learned Assistant Collector Ist Grade, Gurugram. It is further submitted that petitioner-Kripal Singh along with others had also filed a Civil Suit before the Civil Judge (Senior Division), Gurugram, wherein, respondent No.3 has also

been impleaded as defendant No.5 and the following reliefs have been sought therein :-

“i) a decree of declaration to the effect that the correct father’s name of Raghunath Singh is “Lachhu Singh” and the revenue entry – “Raghunath Singh son of Bane Singh”, in the ownership column of record of right (jamabandi) pertaining to the suit is wrong and incorrect and is liable to be corrected accordingly; that the plaintiffs are the successors-in-interest of Raghunath Singh son of Lachhu Singh as shown in the pedigree tables given in para no.1 of the plaint; that the plaintiffs are the owners/co-shares in possession to the extent of their respective shares in the land comprising in Rect. No.58, 18/2(4-2), 19(8-0), 22(8-0), Rect. No.59, 3(7-7), 4/1(5-16), 6/1(7-10), 7/2(6-14) kittas 7, measuring 47 Kanals 9 Marlas, situated within the revenue estate of Village Harsaru, Tehsil and District – Gurugram; that the revenue entries in the cultivation column showing the defendants as gair morusi of suit land are wrong, incorrect, illegal, arbitrary, unlawful, unauthorized, baseless, unfounded, dishonest, malafide, made at the back of the plaintiffs without following the prescribed procedure and accordingly the same liable to be corrected to the effect that the land is under “self-cultivation of the owners” (khudkast makbujia malkan), may kindly be passed in favour of the plaintiffs and against the defendants;

ii) a decree of mandatory injunction directing the defendants no.1 and 2 to correct the ownership and cultivation column of the record of rights (jamabandi) pertaining to the suit land by substituting the words “Raghunath Singh son of Lachhu Singh” in the ownership column” and “khudkasht makbujia malkan” in the cultivation column, may kindly be passed in favour of the plaintiffs and against the defendants no.1 & 2:

iii) a decree of permanent injunction restraining the defendants no.3 to 5 from interfering in any manner whatsoever in the vacant peaceful physical possession of the

plaintiffs over the suit land; from creating any third party right in respect of the suit land by taking undue advantage of the wrong revenue entries of the ownership and cultivation column in the record of rights (jamabandi) pertaining to suit land by impersonating Raghunath Singh son of Lachhu Singh, may kindly be passed in favour of the plaintiffs and against the defendants no.3 to 5;

iv) to award the costs of the present suit in favour of the plaintiffs;”

4.1 Apart from the afore-said submissions, various preliminary objections have also been taken in the written statement filed by respondent No.3-Saroj, to the present writ petition and even on merits, the averments made by the petitioner in the writ petition have been controverted.

4.2 While re-interating the stand taken in the above mentioned written statement, learned counsel for respondent No.3 submits that since the order impugned in the present writ petition i.e. order dated 14.06.2024 (Annexure P-5), already stands set aside by the learned Commissioner, Gurugram; accordingly, the present writ petition has been rendered infructuous.

5. Heard.

6. It is not disputed before this Court that the order impugned in the present writ petition i.e. order dated 14.06.2024 (Annexure P-5), already stands set aside by the learned Commissioner, Gurugram, vide its order dated 19.12.2024 (Annexure R/1), the relvant extract of which reads as under :-

“17. Upon consideration of the facts and relevant statutory provisions, it is clear that the dispute revolves around the respondent’s claim to occupancy rights and subsequent proprietary rights, as adjudicated by the SDO(C), Gurugram. The impugned order dated 14.06.2024 was issued by the SDO(C), Gurugram, acting in the capacity of a

Collector. However, under the Haryana Tenancy Act, 1887, the officer is designated as an Assistant Collector 1st Grade for matters concerning occupancy rights. Section 77 of the Act specifies that disputes of this nature must be treated as suits and adjudicated in compliance with the procedural safeguards outlined in the Code of Civil Procedure, 1908.

Section 77, Haryana Tenancy Act, 1887:

“The following suits shall be instituted in, and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted...An Assistant Collector of the first grade may hear and determine any of the suits mentioned in the second and the third groups of that sub-section.”

18. The SDO(C) failed to comply with these procedural requirements. The matter was decided summarily, without framing issues, collecting evidence, or involving all necessary parties, including the appellant. This procedural lapse undermines the fairness and legality of the adjudication.

19. The respondent based her claim on long-term possession and invoked Section 5 of the Haryana Tenancy Act, 1887, which states:

“A tenant who proves that he has continuously occupied land for thirty years and paid no rent thereof beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).”

20. While the respondent asserted long-term possession, the records, including the Jamabandis, do not support her claim as an occupancy tenant. Instead, they identify her as a Gair Maurusi tenant (tenant at will), which does not confer occupancy rights.

21. Section 9 of the Haryana Tenancy Act, 1887 further clarifies that no tenant shall acquire a right of occupancy by mere lapse of time. The respondent also invoked Section 3 of

the Haryana Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, which provides:

“All occupancy tenants as defined in Section 2(f) shall, as from the commencement of this Act, become the owners of the land comprised in their tenancies.”

22. *However, this benefit applies only to tenants recorded as occupancy tenants in the revenue records at the commencement of the Act. The respondent failed to establish such a record, rendering her claim legally unsustainable.*

23. *The subordinate court did not adhere to Section 88 of the Punjab Tenancy Act, 1887, which mandates that the Code of Civil Procedure shall, so far as it is applicable, apply to all proceedings in Revenue Courts whether before or after decree. Therefore, the failure to frame issues, summon witnesses, and collect relevant evidence-including genealogical records and village testimonies-violated principles of natural justice.*

24. *Further while adjudicating the matter, the Assistant Collector must specifically consider the applicability of Section 59 of the Haryana Tenancy Act, 1887, which governs the inheritance/succession of occupancy rights. The section provides a clear hierarchy for the devolution of such rights, prioritizing male lineal descendants, followed by the widow, widowed mother, and, ultimately, male collateral relatives. In the absence of any qualifying heirs, the occupancy rights are extinguished.*

25. *The determination of heirs in accordance with Section 59 requires a detailed examination of genealogical records and other supporting evidence. Any failure to array the rightful legal heirs of Late Amar Singh in the proceedings violates the statutory devolution mechanism and principles of natural justice. Therefore, all eligible heirs must be identified, included as necessary parties, and their respective claims adjudicated in light of the statutory framework.*

26. *Based on the above findings and statutory provisions the impugned order dated 14.06.2024 along with the related mutation bearing No.5586 sanctioned on its basis is set aside*

and the matter is remanded to the SDO(C)-cum-Assistant Collector 1st Grade, Gurugram, with directions to:

- 1. Treat the matter as a suit under Section 77 of the Punjab Tenancy Act, 1887.*
- 2. Frame appropriate issues, array all necessary parties, and collect complete evidence, including genealogical records and revenue documents.*
- 3. Follow the procedure prescribed under the Code of Civil Procedure, 1908, and adjudicate afresh.*
- 4. Both parties are directed to appear before the Assistant Collector 1st Grade-cum-SDO(C), Gurugram, for further proceedings.”*

7. Since the order impugned in the present writ petition i.e. order dated 14.06.2024 (Annexure P-5), has already been set aside by the learned Commissioner, Gurugram and the matter stands remanded to the learned Assistant Collector 1st Grade, Gurugram, as noticed above; in my considered view, no further orders are required to be passed in the present writ petition and the same is, accordingly, dismissed.

7.1 It goes without saying that the petitioner would be at liberty to raise all his pleas, as raised in the present writ petition, before the concerned authority to whom the matter stands remanded in terms of order dated 19.12.2024 (Annexure R/1) passed by the learned Commissioner, Gurugram Division, Gurugram.

8. All pending applications (if any) shall also stand closed.

February 25, 2025
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No