

128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11216-2026 (O/M)
Date of decision : 16.04.2026

Lakhmi alias Lakshmi Chand

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Preetinder Singh Dhaliwal, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Prayer in this civil writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside order dated 01.09.2017 (Annexure P-3), passed by learned Joint Commissioner, Municipal Corporation, Faridabad (in short 'Joint Commissioner') as well as order dated 05.02.2025 (Annexure P-7), passed by learned Commissioner, Faridabad Division, Faridabad (in short 'Divisional Commissioner').

2. Briefly, petitioner claims that his father, namely, Badle son of Shri Chander was a 'gair marusi' tenant on land measuring 34 kanal - 5 kanal, situated in village Sihi, Tehsil Ballabgarh, District Faridabad.

2.1 It is averred that previously Faridabad Complex Administration (predecessor of Municipal Corporation, Faridabad) filed a

petition in the year 1994, seeking ejectment of predecessors of petitioner, namely, Badle, under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (in short '1972 Act'); whereupon an eviction order dated 23.04.1994 was passed and even an appeal filed against aforesaid eviction order dated 23.04.1994 was dismissed, vide order dated 17.02.1995.

2.2 It appears that the aforesaid two orders came to be challenged by the petitioner and others by filing a writ petition (CWP-18641-1995) before this Court, which came to be allowed, vide order dated 14.03.1997 (Annexure P-1); whereby the matter was remanded to learned Collector, Ballabgarh for fresh decision in accordance with law. A further direction was issued to learned Collector, Ballabgarh to decide the objections raised by petitioners in aforesaid writ petition as regard locus standi of Fardibabd Complex Administration to seek eviction under 1972 Act and also the issue as to whether petitioners could be treated as unauthorized occupants.

2.3 It is not disputed before this Court and rather admitted in para 7 of writ petition that the land in question is 'shamlat deh'. The relevant extract of para 7 reads as under :-

“7. That the land in question is Shamlat deh and the proprietors are cultivating the same since prior to 1941. The provisions of the Haryana Public Premises and Land Act will not apply to such type of land. The present land cannot be said to be covered by either the definition of premises or public premises under Section 2 (d) and (e) of the Act, particularly in the absence of any price and compensation for the land having been paid by the

Municipal Committee earlier Faridabad Complex Administration.”

2.4 It appears that over a period of time, Municipal Corporation, Faridabad was formed and the land in question came within the municipal limits of Municipal Corporation, Faridabad.

2.5 It transpires that learned Joint Commissioner passed an order dated 01.09.2017 (Annexure P-3) under Section 408A(2) of Haryana Municipal Corporation Act, 1994 (in short '1994 Act') for demolition of structure/house raised on Rect. No. 73, Killa No. 13 to the extent of 35x70.

2.6 An appeal filed by petitioner against aforesaid demolition order dated 01.09.2017 (Annexure P-3) has also been dismissed, vide order dated 05.02.2021 (Annexure P-5), passed by learned Divisional Commissioner.

2.7 Thereafter, the petitioner is stated to have filed another writ petition (CWP-942-2022) before this Court, which came to be decided, vide order dated 07.02.2023 (Annexure P-6), the relevant extract of which reads as under :-

“Learned counsel for the petitioner as well as learned counsel for contesting respondents have jointly submitted that since the primary challenge to the order dated 05.05.2021 (Annexure P-4) is on account of the fact that the counsel for the petitioner was not heard, thus, they have stated that the impugned order dated 05.02.2021 (P-4) be set aside with a direction to respondent No. 2 to decide the appeal filed by the petitioner afresh after hearing all the concerned counsels.

Learned Senior counsel for the contesting respondents has submitted that respondent No. 2 be directed to decide the appeal within a time bound manner.

Keeping in view the above-said facts and circumstances, the present writ petition is disposed of with the following terms: -

- (i) The order dated 05.02.2021 (Annexure P-4) passed by the Commissioner, Faridabad Division, Faridabad, is set aside.*
- (ii) Respondent No. 2 is directed to decide the appeal filed by the petitioner against the order dated 01.09.2017 afresh within a period of two months from the date of receipt of certified copy of this order.*
- (iii) The petitioner through his counsel as well as respondents through their counsel are directed to appear before the Commissioner, Faridabad Division, Faridabad on 14.02.2023 and inform the Court about the order passed in the present case.*
- (iv) Counsels appearing for the parties are directed to fully cooperate with the Commissioner, Faridabad Division, Faridabad for the expeditious disposal of the case.”*

2.8 On remand, learned Divisional Commissioner again rejected the appeal, vide order dated 05.02.2025 (Annexure P-7).

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court for seeking relief(s), as noticed hereinabove.

4. I have heard learned counsel for petitioner and have perused the paperbook with his able assistance.

5. Learned Divisional Commissioner, while rejecting the appeal, filed by petitioner, vide order dated 05.02.2025 (Annexure P-7), has returned the following findings :-

“After hearing the learned advocates of both the parties and examining the property record on file, this court has again reached the conclusion that according to the copy of Jambandi year 2008-2009 which is presented on the file, there is no entry regarding possession or construction. If it was an old construction, then there would have been entry of Gair Mumkin Gaith/House etc. on it. Notice has been issued after construction was done in the knowledge of the department. The facts presented in the arguments regarding Gair Marusi, tenant and eviction are not applicable to the said notice proceedings. Eviction and compensation are different from this proceeding. Because the owner of the said land is the Municipal Corporation. The appellant party has failed to prove whether a Gair Marusi or cultivator owner can change the shape of any construction or land without the consent of the land owner. No rule or authority has been presented in this regard. The decision whether the possession is legal or illegal has to be made in the eviction case. The appellant did not say in his arguments that he had not been given notice as per the construction on land in dispute, on which basis, the matter of investigation does not arise. It is clear from this that the appellant has raised illegal construction and the opposite party has issued the right notice to demolish it. In case the facts presented in the appeal of the appellant are found to be baseless, keeping the previous order of this Court dated 05.02.2021 intact, the appeal is dismissed. Order was pronounced. File be consigned to the record room after its compliance.”

5.1 A perusal of above extracted finding returned by learned Divisional Commissioner in its order (Annexure P-7) would show that he has examined the copy of jamabandi for the year 2008-09 and returned a finding that there is no entry regarding possession or construction. Had there been an old construction, then there would have been entry of gair mumkin gaith/house etc. in the revenue record. Learned Divisional Commissioner has further observed that the petitioner herein has failed to prove as to whether a gair marusi can change nature of land by raising any construction without the consent of land owner.

5.2 Before this Court, learned counsel for petitioner has failed to refer to any material in the shape of revenue record/khasra girdawari entries to demonstrate nature of his possession over the land in question.

5.3 According to the petitioner, the land in question is a shamlat deh although, it is being claimed that the proprietors of village Sihi are cultivating the land prior to 1941; however, in my considered view, in case the petitioner and others were claiming any right, title or interest in the land recorded as shamlat deh, in that eventuality they were well within their right to file a title suit in terms of Section 13-A of Haryana Village Common Lands (Regulation) Act, 1961 and 1964 Rules framed therein. No such recourse appears to have been adopted by the petitioner. It appears that the impugned orders have passed only in respect of construction/house (35x70), comprised in Rect. No. 73, Killa No. 13, village Sihi (across canal).

6. In view of above, I see no compelling reason, which may warrant interference by this Court in the present proceedings.

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

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

(HARSH BUNGER)
JUDGE

16.04.2026
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No