

(2011) 08 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16222 of 2009

Harjinder Pal Kaur and Others	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Citation : (2011) 164 PLR 356

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The petitioners seek a writ of mandamus with a somewhat strange prayer for directing respondent Nos.1 to 8 to correctly

deliver possession to the rightful owners/their successors, once the Defence Estate Officer has decided to de-hire the land. Can a mandamus lie for

delivery of possession, be it to rightful owners, thus, would be a question, which would attract attention at the very outset?

2. This question was accordingly posted to the counsel for the petitioners but did not receive any satisfactory answer. The cause for seeking a

mandamus for possession arises in the background of the facts which are noticed in brief here.

3. 44 Kanals 16 marlas land situated within the revenue estate of Abohar, Tehsil Fazilka, District Ferozepur, was hired by the Ministry of Defence

through Defence Estate Officer, Bhatinda. The land was hired from following persons:-

1. Gurpartap Singh son of S.Narrain Singh
2. Smt. Balraj Kaur widow of Gur Gulab Singh

3. Smt. Gulraj Kaur d/o Gur Gulab Singh
4. Har Raj Singh son of Gur Gulab Singh (From 1 to 4 /3rd share)
5. Raj Joginder Singh
6. Balbir Singh
7. Harbans Singh sons of S.Bishan Singh (From 5 to 7 1/3rd share)
8. S.Basant Singh s/o Sunder Singh
9. S.Bachittar Singh s/o S.Basant Singh
10. S.Amrik Paul Singh
11. S.Raminder Singh sons of S.Bachittar Singh (From 8 to 11 1/3rd share)

4. The petitioners claim to have purchased the property from co-sharers vide registered sale deed. The land has statedly been transferred and given effect to in the revenue records. The petitioners have made reference to the jamabandies, copies of which have been annexed with the writ petition.

5. Defence Estate Officer, Bhatinda, on 12.3.2009, has decided to de-hire the land and to hand over the possession of the same to the owners or their successor-in-interest. The Defence Estate Officer accordingly enquired from Tehsildar, Abohar, District Ferozepur, the names of the persons, who were the owners or successor-in-interest of the land from whom the land was hired, so that the possession could be delivered to them. There was some correspondence exchanged between the Tehsildar and Defence Estate Officer and thereafter the Tehsildar had agreed for transfer of possession and wrote a letter in this regard to the Estate Officer on 19.3.2009. The grievance of the petitioners is that Tehsildar and the Halqa Patwari have deliberately prepared the wrong list of owners to whom the possession was to be handed over. The petitioners allege that in the list so prepared there are deliberate omissions regarding the owners and L.Rs of Gurpartap Singh, who was the co-sharer. The petitioners accordingly have filed this writ petition to seek the mandamus as noted above, seeking direction that the possession be handed over to all rightful owners.

6. Though the pleadings in this case have been completed but I have not been able to convince myself that writ of mandamus can be sought and issued for handing over possession of a land after identifying or ascertaining the true owners in the manner as is sought by the petitioners.

7. The land in dispute was hired by the Union of India, for which hire charges were being regularly paid to the owners. This arrangement has

continued for number of years. At this stage, to dispute the ownership of the land, which was under hire for years, would be uncalled for.

Obviously, the Estate Officer was paying hire charges to the rightful owners. If there was any other owner, he, by now, should have come forward

to claim the hire charges for all these years. Certainly, at this stage, when a decision has been taken to dehire the land, somebody can not just get

up and claim to be the owner of the land, may be on any basis like sale deed etc.

8. The dispute in regard to ownership or possessory rights arising out of inheritance, sale or any other such similar ground can not be gone into

while exercising writ jurisdiction. There would be serious dispute in regard to ownership rights and the same can not be determined effectively in

exercise of writ jurisdiction. It has rightly been replied by the private respondents that the petitioners under the disguise of present writ petition are

primarily seeking a decree of declaration of their ownership. The petitioners concededly have purchased a share from one of the co-sharer, who

could not have sold any particular khasra number, even if any sale deed was executed. The petitioners, thus, can not claim to be owners of any

particular khasra and they have, for this purpose, to seek partition after establishing their right to be owners of any part of the land, which originally

was never hired from them by the official respondents. The private respondents have also made an allegation of misleading against the petitioners

inasmuch as that the petitioners have filed wrong translation of jamabandies showing Narinder Singh son of Shivtar Singh to the owner whereas

they were only the cosharers and the land was shown to be in possession of Military authorities in the jamabandies. This fact has been omitted in

the jamabandies produced by the petitioners.

9. In view of the above noted position, no case for interference in exercise of writ jurisdiction is made out. The writ petition and the relief as

claimed are apparently misconceived. The writ petition is, therefore, dismissed.