

(2009) 02 P&H CK 0043
In the Punjab And Haryana At Chandigarh

Mehrabi amd Ors.

APPELLANT

Vs

The Commissioner, Gurgaon Division and Others

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 7

Citation : (2009) 02 P&H CK 0043

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The petitioners have filed this writ petition seeking to protect their possession over the land on the ground that they being proprietors/shareholders are entitled to retain the possession and the order of their eviction passed by Assistant Collector and subsequently upheld by the Collector etc. be quashed.

2. Petitioners claim to be owners and co-sharers being proprietors and in possession of land measuring 26 kanals, described in the writ petition. They rely on jamabandi for the year 1938-39 in support of their right. They would submit that ownership is shown as Shamlat Deh Hasab Rasad Kabja and in the column of cultivation, name of the grand-father and subsequently that of the petitioners is reflected.

3. The consolidation of this land took place in the year 1958-59 and in the jamabandi, the name of the Gram Panchayat came to be mentioned. The petitioners, however, claim to have continued to retain the possession. There are subsequently also some change in the entries in the jamabandies. The Gram Panchayat thereafter filed an application u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act") for eviction of the petitioners on the ground that Panchayat is the owner and petitioners are in unauthorised possession. In reply filed by the petitioners, they raised an objection in regard to

the title of the property. Assistant Collector converted the petition u/s 7 of the Act to a petition u/s 13-A of the Act. Finding that the petitioners had failed to prove ownership, he passed the order of their eviction on 4.6.2002. The petitioners filed an appeal as their father Noor Mohammad expired during pendency of the proceedings, which was dismissed on 20.3.2003. Revision was also dismissed holding that the Gram Panchayat is the owner and the possession of the petitioners has only been admitted after 1974-75 and so the benefit under Sections 4(3)(2) and Section 2(g)(viii) of the Act cannot be given to the present petitioners. This benefit could have been given only in case the petitioners had been in possession of the land in question for last 12 years since 26.1.1950. The petitioners have accordingly filed the present writ petition to impugn the said orders.

4. Two reasons have weighed with the authorities to hold against the petitioners. After conversion of the petition u/s 13-A of the Act, issues were framed and the parties were given opportunity to lead evidence. The submission of the petitioners was that before consolidation, the number of the land in question was 6 and 7, but it was found that after Khatoni Istemal Abadi and Naksha Haqdarbar, the land in question does not match with the old khasra Nos.6 and 7. As per Naksha Haqdarbar and Khatoni Taksim, the land in question was found to be owned by Civil Panchayat Deh as entered and Araj Matruke Gair Allotment Kabja Bhondedar is entered. The khasra number had not matched with the one which the petitioners had relied upon and after consolidation. There is an entry that the land in question is owned by Gram Panchayat, which continued upto 1969-70. It is only in the year 1974-75 when the Gram Panchayat was shown to be the owner of the land in question, for the first time, petitioner Noor Mohammad Gair Marusi was shown in unauthorised possession. It was accordingly found that the petitioners did not remain in possession of the land in question prior to 1974-75. It was, thus, noticed that the petitioners had rightly been evicted and their appeal had accordingly been dismissed. It has also been found that as per jamabandi of 1984-85, the entry of Araj Matruke in column of ownership instead of Gram Panchayat has Custodian General, Haryana vide his order dated 28.12.1984 has held the land in question to be in the ownership of the Gram Panchayat. The petitioners were found to be in possession over the land in question only after 1974-75. It is in this background that the petitioners were found not entitled to the benefit of provisions of Sections 4(3)(2) and 2(g)(viii) of the Act. The khasra numbers were also not found matching and hence the reliance of the petitioners on the jamabandies would be of no avail to them. I do not find any infirmity in the impugned order, which would call for interference. The attempt on the part of the Counsel for the petitioners to show and match the khasra numbers in the jamabandi entries would mean that the writ court will have to decide disputed question of facts, which may not be permissible having regard to the scope of writ jurisdiction.

5. The petition is accordingly dismissed.