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## **Dharambir and Another Vs Financial Commissioner and Others**

**CWP No. 13659 of 2011**

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**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 1, 2011

**Acts Referred:**

Constitution of India, 1950 " Article 226, 227#Punjab Land Revenue Act, 1887 " Section 44, 7#Punjab Village Common Lands (Regulation) Act, 1961 " Section 13A

**Citation:** (2011) 164 PLR 569

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Alok Singh, J.

Petitioners have invoked writ/supervisory jurisdiction of this Court under Article 226/227 of the Constitution of India,

assailing the order passed by learned Collector, Jind, dated 21.10.2008 (Annexure P-1) dismissing the suit of the Plaintiffs/Petitioners u/s 13-A of

the Punjab Village Common Lands (Regulation) Act, 1961 as applicable within the State of Haryana (hereinafter referred to as "the Act"),

judgment and order dated 26.5.2009 (Annexure P-2) passed by Divisional Commissioner, Hisar, as well as judgment and order dated 27.4.2011

(Annexure P-3) passed by Financial Commissioner, Haryana, confirming the order passed by learned Collector, dismissing the suit of the

Plaintiff/Plaintiffs.

2. Brief facts inter alia are that Plaintiff/Petitioners preferred a suit u/s 13-A of the Act contending that they are the proprietors and permanent

residents of pana sehwat of the village; there are other proprietors also; as per jamabandi for the year 1959-60 shamlat pana sehwat is owner

and in possession of the land measuring 118 bigha 6 biswas; in column of ownership in the jamabandi the entry is shamlat pana sehwat hasab

rasad rakba khewat and in the column of cultivation the entry is makbuja malkan; the Assistant Collector, IInd Grade, Jind, on the basis of letter

dated 22.11.1961, without giving any intimation to the proprietors of pana sehrawat, sanctioned mutation of this land in favour of gram panchayat

vide order dated 19.8.1964; although, entry is in favour of gram panchayat w.e.f. 19.8.1964, but in fact Petitioners and other proprietors are in

actual physical possession of the land in dispute since they are using the land for baras, gitvar, bitoras; gram panchayat on the basis of mutation in

its favour is threatening the Plaintiffs/Petitioners to evict them, therefore, cause of action arose to file suit u/s 13-A of the Act.

3. Learned Collector/trial Court has framed as many as nine issues and having perused the evidence and material placed before him has come to

the conclusion that Plaintiffs/Petitioners have failed to prove their ownership/possession over the property in dispute; mutation was sanctioned in

favour of the gram panchayat way back in 1964 while present suit was filed in 2006 and Plaintiff/Petitioners have failed to produce any evidence to

show their right and possession over the property in dispute. It has further been observed by learned Collector that land in dispute is gair mumkin

johar and banjdar kadim and as per revenue record the land in dispute is not worth cultivation; johar and banjar land is being used for common

purposes since long. Learned Divisional Commissioner as well as learned Financial Commissioner have also confirmed the findings recorded by

learned Collector. Hence the writ petition.

4. Learned Counsel for the Petitioners, Mr. Bhoop Singh, has vehemently argued that although part of the property is recorded as johar and banjar

kadim, however, since Petitioners are in possession of the property in dispute much prior to the appointed day i.e. January, 1950, therefore, any

mutation made in favour of gram panchayat in 1964 shall not take away rights and title of the Petitioners. He has further argued that mutation does

not confer any title and it is the source of the title which is to be seen. Learned Counsel for the Petitioners has placed reliance on the judgment

passed by learned Single Judge of this Court in the case of Bachna v. Gram Panchayat 2005 (2) LAR 517 and has argued that in case of Bachna

(supra), mutation was carried out in favour of the gram panchayat in 1964, however, on the basis of entries and possession of the Plaintiffs therein

in the year 1950 mutation sanctioned in favour of gram panchayat in the year 1964 was rightly ignored and Plaintiffs were declared owners in

possession of the property in dispute.

5. Section 44 of the Punjab Land Revenue Act, 1887 (as applicable to Haryana) reads as under:

44. Presumption in favour of entries in Records-of-rights and annual records. -An entry made in a record-of-rights in accordance with the law for

the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules thereunder, shall be presumed to be

true until the contrary is proved or a new entry is lawfully substituted therefor.

6. From the perusal of Section of 44 the Punjab Land Revenue Act, 1887 (as applicable to Haryana), I have no hesitation to hold that entry made

in record-of-rights in accordance with law for the time being in force shall be presumed to be true until contrary is proved.

7. In the present case, mutation was sanctioned in favour of the gram panchayat way back in 1964 while Petitioners have brought their suit in

2006. It is not the case of the Plaintiffs/Petitioners that they were not aware of the entries/mutation in favour of the gram panchayat, which was

carried out 46 years before in 1964. If Plaintiffs/Petitioners did not challenge any entry for long i.e. for more than 46 years, now they shall be

debarred from challenging the same in view of principle of waiver, acquiescence and estoppel. Long standing entries have strong presumption of

their correctness unless proved by cogent evidence otherwise. Learned Collector as well as two other appellate authorities have rightly recorded

that Plaintiffs have failed to prove their possession over the property in dispute. The finding of possession is a finding of fact.

8. In the case of Bachna (supra) entries were made in favour of the gram panchayat in 1964, however, proceedings u/s 7 of the Act to evict the

occupiers therein were initiated in 1966 within two years wherein question of title was raised by the occupiers, therefore, in view of the facts and

circumstances of that case where entries were challenged within two years, this Court has held that mutation in favour of the gram panchayat does

not confer any title in favour of the gram panchayat. However, in the present case long standing entries for 46 years were not challenged within

reasonable time, therefore, suit of the Plaintiffs/Petitioners challenging the entries after 46 years is clearly barred by principle of estoppel, laches,

waiver and acquiescence. Ratio of judgment of this Court in the case of Bachna (supra) is of no help to the Petitioners. Moreover, as observed

hereinabove that Plaintiffs/Petitioners have failed to prove their possession, therefore, I am not inclined to permit the Petitioners to challenge the

long standing entries after 46 years.

9. Petition is dismissed.