

(2014) 01 P&H CK 0175

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 2412 of 1995

Mohan Dutt

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Jan. 14, 2014

Acts Referred:

- Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 - Section 4, 5, 7

Citation: (2014) 175 PLR 388 : (2015) 2 RCR(Civil) 564 : (2015) 1 RCR(Rent) 425

Hon'ble Judges: Hemant Gupta, J; Fateh Deep Singh, J

Bench: Division Bench

Advocate: Adarsh Jain, Advocate for the Appellant; Pardeep Singh Poonia, Additional Advocate General and Ashok Kumar Sharma, Advocate for the Respondent

Final Decision: Allowed

Judgement

Hemant Gupta, J.

The challenge in the present writ petition is to order (Annexure P/5) passed by Collector, Palwal under Sections 4, 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (For Short, the Public Premises Act) whereby, the petitioners were ordered to be evicted, inter alia for the reason that the petitioners cannot retain the land in question after they cease to render religious services being dholi dars. Such order was affirmed in appeal by the Commissioner, Gurgaon Division, Gurgaon vide order dated 11th November 1994 (Annexure P/6). Learned counsel for the petitioners vehemently argued that the predecessor-in-interests of the petitioners were recorded as Dholi dars in the jamabandi for the years 1939-40, 1964-65 and for the years 1989-90. The jamabandi for the year 1939-40 and 1989-90 has been attached with the writ petition. The order passed by the Collector, Palwal shows that the jamabandi for the years 1964-65 is on record. Learned Counsel for the Petitioner has produced said jamabandi for the perusal of the Court during hearing as well.

2. Though, the jamabandi for the years 1939-40 does not correlate the land in question in the absence of record showing the new khasra numbers in lieu of the khasra numbers mentioned therein, but jamabandis for the year 1964-65 and 1989-90 reflects the petitioners to be owner in possession of land as dholidars in the column of cultivators. The entry in the column of rent is "Payment of rent is exempted in lieu of religious services rendered". On the basis of such record, it is argued that in terms of Section 4(3)(ii) of Punjab Village Common Lands (Regulations) Act, 1961 the existing rights of dholidars are protected and, thus, on the basis of Haryana Amending Act No. 9 of 1992, the land in dispute could not be mutated in the ownership of Municipal Committee as successor-in-interest of Gram Panchayat. It is also argued that during the pendency of the writ petition Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 (For short the 2010 Act) conferring proprietary rights/ownership rights on the dholidars, who are in possession as dholidars for the period of last 20 years on the appointed day i.e. from the day of publication on which the said Act came into force. Thus, it is contended that as the petitioners are in possession from more than 20 years even prior to the initiation of the proceedings under the Public Premises Act, therefore, the petitioners are entitled for conferment of proprietary rights under the aforesaid Act.

3. It is also argued by learned counsel for the petitioners that Collector and the Commissioner under the Public Premises Act, exercise summary jurisdiction on the assumption that the property in question is a public property. The disputed question of title such as rights of dholidars could not have been examined by the Collector in proceedings under the Act. Therefore, the order of eviction passed against the petitioners is not sustainable.

4. Learned counsel for respondent No. 4 Municipal Committee argued that petitioners were, recorded as dholidars and having failed to render religious services their licence as dholidars came to be terminated and, thus, Municipal Committee with whom the land vested is competent to seek ejectment of the petitioners. It has been so ordered by the Collector, which affirmed by the Commissioner.

5. We have heard learned counsel for the parties.

6. We find that the orders passed by the Collector and affirmed by the Commissioner are not sustainable for more than one reason. Firstly, the entry in the revenue record produced by the petitioners before the Collector reflected the petitioners as dholidars in occupation of the land in question. Even if, the Gram Panchayat was owner, the dholidar could not be evicted in view of the statutory provisions contained in Section 4(3)(i) of Punjab Village Common Lands (Regulations) Act, 1961. Section 4 of the Act is reproduced as under:-

"Vesting of rights in Panchayats and nonproprietors:-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests wherever in the land,-

(a) which is included in the shamlat deh of any village and which has not vested in panchayat under the shamlat law shall, at the commencement of this Act, vest in a Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non proprietor, shall on the commencement of the shamlat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the shamlat law shall be deemed to have been vested in panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the;

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Maqararidars;

(ii) rights of persons in cultivating possession of shamlat deh for more than twelve years (immediately proceeding the commencement of the Act) without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon:

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."

7. Learned Collector has negated an argument that the petitioners cannot be evicted being dholidar for the reason that vesting of rights under the Punjab Village Common Lands (Regulations) Act, 1961 is not relevant as there is no such provision in the Public Premises Act. We find that the argument is fallacious as before passing an order of eviction, the rights of the parties have to be examined in the light of Statutes applicable. The rights of dholidars from eviction are protected in respect of Panchayat land in view Section 4(3)(i) of Punjab Village Common Lands (Regulations) Act, 1961. Therefore, the findings recorded by the Collector in exercise of the summary jurisdiction is not tenable.

8. Apart from the said fact, we find that in terms of 2010 Act, the proprietary rights have been conferred on dholidars. Undisputedly, the petitioners were recorded as dholidars in the jamabandi for the years 1964-65. The eviction proceedings were

initiated on 27th July, 1993. Therefore, even before initiation of proceedings, the petitioners were recorded as dohlidars for the period of 20 years. Thus, in terms of 2010 Act, the petitioners are entitled to proprietary rights on payment of such compensation which the Collector may determine in terms of Section 4 of the 2010 Act. In view of the statutory enactment, we find that the order of the Collector passed against the petitioners is not sustainable. Consequently, we allow the present writ petition by setting aside the orders Annexure P/5 and Annexure P/6 and direct the Collector to determine the compensation payable to the petitioners on being satisfied that the petitioners are the dohlidars for the period of 20 years prior to the appointed day in accordance with law.