A GRAM PANCHAYAT, VILL HARIPURA

v.

THE COMMISSIONER, FEROZEPUR DIVISION AND ANR.

SEPTEMBER 15, 2006

B [A.K. MATHUR AND TARUN CHATTERJEE, JJ.]

Land and Tenancy Laws:

Punjab Village Common Lands (Regulation) Rules, 1964: Rule 6.

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Execution of lease—Payment and acceptance of rent—Entitlement to claim as a tenant—Gram Panchayat filed an application under Ss. 4 and 7 of the Punjab Public Premises (Eviction and Rent Recovery) Act for ejectment of tenants from the land owned by it as the said tenants were cultivating the land unauthorisedly—The Collector, after examining the Jamabandi and D *Khasra Gridawari, concluded that the land belonged to the Gram Panchayat and that the tenants were liable to be evicted under Section 5 of the Public Premises Act—It was also held that there was only one entry in the revenue record to the effect that the tenancy was from year-to-year basis and that did not characterize the tenants as authorized tenants of the land in question—* E *Commissioner allowed the appeal filed by the tenants—However, the High Court held that after the Panchayat became the owner it was receiving the rent from the tenants and, therefore, the Panchayat accepted them as tenants—Correctness of—Held: A particular method has been prescribed as to how the lease has to be executed as per Rule 6—Deposit of rent or even acceptance* F *of rent by the Gram Panchayat would not make a tenant a lawful tenant under the Gram Panchayat—A lawful tenant is one who has been admitted as a tenant after following the due procedure of law—Since the tenants were inducted without following the due procedure prescribed under Rule 6, they cannot be declared as lawful tenants under the Gram Panchayat—Punjab Public Premises (Eviction and Rent Recovery) Act, 1973, Ss. 4 & 7—Punjab* G *Security of Land Tenures Act, 1963, S. 8.*

An application was filed by the appellant-Panchayat under Sections 4 and 7 of the Punjab Public Premises (Eviction and Rent Recovery) Act, 1973 against the contesting respondents for their ejectment on the ground that the appellant was the owner of the land in question and that the contesting

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respondents were cultivating the land unauthorisedly. The Collector, after examining the Jamabandi and Khasra Gridawari, came to the conclusion that the land belonged to the appellant and that the contesting respondents were liable to be evicted under Section 5 of the Act. It was also held that there was only one entry in the revenue record to the effect that the contesting respondents were tenants from year-to-year basis and that did not characterize them as authorized tenants of the land in dispute. The Commissioner held that as per the Jamabandi the contesting respondents had been shown as tenants paying rent per annum and allowed the appeal filed by them.

However, the High Court accepted the reasoning given by the Commissioner and held that the contesting respondents were not unauthorized occupants but were tenants of the appellant-Panchayat. It was also held that by virtue of Section 8 of the Punjab Security of Land Tenures Act, 1963 tenancy did not come to an end on change of ownership or even on the death of the land owner. The High Court further observed that after the appellant-Panchayat became the owner it was receiving the rent from the contesting respondents and, therefore, the appellant accepted them as tenants. Hence the appeal.

Allowing the appeal, the Court

HELD: 1.1. A particular method has been prescribed as to how the lease has to be executed as per Rule 6 of the Punjab Village Common Lands (Regulation) Rules, 1964. Therefore, unless proper lease is granted in the manner prescribed in Rule 6 of the Rules till that time simply because someone has paid rent that would not entitle him to claim as a tenant. In the absence of statutory provisions and rules thereunder, it is difficult to accept that since the rent had been deposited with the Gram Panchayat that would make the contesting respondents as tenants. Thus, the conclusion drawn by the Commissioner and affirmed by the Division Bench of the High Court cannot be sustained. [264-D, E, F]

1.2. Simply someone has paid or deposited the rent with the Gram Panchayat voluntarily after unauthorisedly occupying the Gram Panchayat land, he would not be deemed to be a tenant. This would be mockery of law. A lawful tenant is one who has been admitted as a tenant after following the due procedure of law. It is not one man show of the Sarpanch of the Gram Panchayat that he can surreptitiously take someone as a tenant without following the procedure under the rules. In case the Sarpanch or any Panch

A **inducts someone as a tenant without following the procedure prescribed under the Rules, then such induction of the person will not be authorized or lawful and the Gram Panchayat will not be bound by that. [264-F, G, H; 265-A]**

Gram Panchayat, Village Haripura **v.** *Commissioner,* **(1989) PLJ 221 (Pun) (FB), approved.**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 433 of 200.

From the Judgment and Order dated 21.7.1998 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 11066/1998.

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C.A. No. 434 of 2000.

Sushil Kumar Jain, H.D. Thanvi and Sarad Singhania for the Appellant.

D V.C. Mhajan, Dhiraj and P.N. Puri for the Respondents.

Rr-Ex-Parte.

The Judgment of the Court was delivered by

E **A.K. MATHUR, J.** Both these appeals involve common questions of law & fact therefore, they are disposed of by this common order.

For convenient disposal of these appeals, the facts given in C.A.No.433 of 2000 are taken into consideration.

F This appeal is directed against the order dated 21.7.1998 passed by learned Division Bench of the High Court of Punjab & Haryana. The Division Bench disposed of C.W.P. No.11059 of 1998 and C.W.P.No.11066 of 1998 both by this order. The Division Bench took the view that by virtue of Section 8 of the Punjab Security of Land Tenures Act, 1963, (hereinafter to be referred to as the Act of 1963) tenancy does not come to an end on change of G ownership or even on the death of the land owner. It was also held that the appellants became the owner of the disputed land and the contesting respondents were tenants. This finding of fact was given on the basis of the *jamabandi* i.e. revenue records. In *jamabandi* it was recorded that the respondent was a tenant on payment of Rs.64/- *per kila sal tamam* i.e. for one year. It further observed that after the Gram Panchayat became the owner

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it was receiving the rent from the contesting respondents, therefore, the Gram Panchayat accepted them as tenants. This was contested by the Gram Panchayat and it was submitted that such voluntary deposit of rent by occupier of land cannot be deemed to be tenant. In this connection, the Full Bench decision in the case of *Gram Panchayat, Village Haripura* v. *Commissioner, Ferozepur and Ors.*, reported in (1989) Punjab Law Journal 221 was placed before the Division Bench. The Division Bench distinguished this case and dismissed the writ petition holding that the decision in the case of *Gram Panchayat, Haripura* (supra) was with regard to tenancy on year to year lease basis and after expiry of the lease by efflux of time tenancy had come to an end. Aggrieved against this order of the Division Bench present special leave petition was filed and leave was granted and it was registered as appeal. Learned counsel for the appellant submitted that the view taken by the Division Bench is erroneous and Full Bench decision squarely covers the present case on facts as well as law.

Brief facts of this case are that an application was filed by the Gram Panchayat, Haripura through its Sarpanch under Sections 4 & 7 of the Punjab Public Premises (Eviction and Rent Recovery) Act, 1973 against the contesting respondent for his ejectment from the land situated within the revenue estate of the village Haripura on the ground that the Gram Panchayat is the owner of the land in question and the contesting respondent was cultivating the land unauthorisedly and the respondent has not vacated the land in question despite request and the respondent be ordered to pay Rs.2933.60 as rent for use and occupation of the land in dispute. The respondent on being summoned appeared and was given an opportunity to file his reply. Both the parties were directed to place evidence in support of their respective pleas. The Gram Panchayat produced Sh.Badasukh, Panch and Nathu Ram, Sarpanch and respondent produced Ramesh Gupta, Ahlmed of court of E.M., Abohar Sh. Krishan Murari Clerk and Sh. Gurdev Singh Patwari Halqe Haripura. It was submitted before the Collector that there is no valid record produced by the respondent to show that he has been cultivating the land with the consent of the Gram Panchayat therefore the Sarapanch of the Gram Panchayat has been authorised to file the present suit. It was prayed that the respondent be ejected from the land in question. On the other hand, it was submitted by the respondent that the rent for the land in question has already been paid by the respondent and that the respondent has been cultivating the land as a tenant at will under the Gram Panchayat since very long time. It was also contested by the Gram Panchayat that mere entry of the respondent in the revenue record as a tenant from year to year does not characterise him as an

A authorised tenant in the land in question.

The Collector after examining the *Jamabandi* and *Khasra Gridawari* came to the conclusion that the land belongs to the Gram Panchayat, Haripura and that it is public premises as defined under Section 2(e) of the Act. It was also pointed out that the respondent has not been able to bring any material B to show that this land was leased out or granted or otherwise entered into possession of the land authorisedly. There is only an entry in the revenue record as tenant from year to year basis and that does not characterise him as an authorised tenant of the land in dispute. The Collector ordered that the respondent is in unauthorised possession of the land in question and C accordingly he is liable to be evicted under Section 5 of the Act. However with regard to the damages for use and occupation of the land in question, the Collector found that the Gram Panchayat has failed to produce any record from which it could be inferred that the amount for the period in question is still due against the respondent. Therefore, this part of the relief was denied. Against this order dated 3.3.1983, an appeal was preferred by the respondent D before the Commissioner. Learned Commissioner after examining the matter set aside the order of the Collector and held that as per the Jamabandi, the respondent had been shown as *Gair Marusi* paying lagan @ Rs.64/- per killa per annum. Therefore, on the basis of the entry made in the *Jamabandi*, learned Commissioner concluded that the respondent cannot be held to be E an unauthorised occupant of the land in question. Learned Commissioner on the basis of the *jamabandi* allowed the appeal filed by the respondent and set aside the order of the Collector and dismissed the application of the appellant. Aggrieved against this order the Gram Panchayat filed a writ petition before the High Court which came to be dismissed along with Writ Petition No.11059 of 1998. The Division Bench of the High Court accepted the reasoning F given by the Commissioner to the effect that on the basis of the entry in *Jamabandi* the respondent was not unauthorised occupant but he was a tenant of the Gram Panchayat. The Division Bench also cursorily distinguished the Full Bench judgment in the case of *Gram Panchayat, Haripura* (supra) on the ground that it was a case of year to year lease and after expiry of the G lease by efflux of time the tenancy had come to an end.

We have heard learned counsel for the parties and perused the records.

We fail to understand the reasoning given by the Division Bench in distinguishing the Full Bench judgment. The Full Bench judgment clearly H covered the facts of the present appeal. In order to appreciate the controversy,

it may be relevant to mention the facts of the Full Bench decision, which relate to the same Gram Panchayat of village Haripura. The land in question was '*Shamilat Deh*' . By virtue of the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as the Shamilat Law), the *Shamilat Deh*, the land vested in the Gram Panchayat. It is alleged that the owners of the *shamilat* land adopted a device & formed a memorandum of association of Haripura Trust Committee, Haripura and got it registered. It was mentioned therein that the General Committee would consist of 8 members who are the owners of the *shamilat* land which has been transferred to the Trust and the land was mutated in the name of the Trust in the year 1954. By the same device those persons were inducted as tenants of the trust. This *shamilat* law was substituted by new enactment known as Punjab Village Common Lands (Regulation) Act, 1961. Section 2(g) of the said Act of 1961 defined '*Shamilat Deh*'. i.e. various types of lands were included in shamilat deh and no dispute was raised that the present land is not *shamilat deh.* Prior to mutation in favour of the Trust, it continued as *shamilat deh.* In the year 1957, a corrective mutation was entered and the land was remutated in favour of the Gram Panchayat. It was submitted that though the land was mutated in the name of the Trust but the contesting respondents claimed that they were the tenants of the trust. In the year 1965-66 the consolidation operation took place and the contesting respondents claimed that they continued as tenants under the Gram Panchayat and that in *Jamabandi* for the year 1970-71 each of them was recorded as tenant on payment of fixed cash rent. The appellant-Gram Panchayat Haripura filed five separate petitions before the Collector, Fazilka under sections 4 & 7 of the Act of 1961 and the same plea was raised that they were not unauthorised occupants and on the basis of *Jamabanbdi* of 1971, they were recognised as tenants by the Gram panchayat. The Collector,, however, did not feel persuaded and passed an order of ejectment in all the five cases. The matter was taken up in appeal before the Commissioner, Ferozepur Division. The Commissioner relying on the *jamabandi* of 1970-71 held that on the basis of the aforesaid *jamabandi* nothing further was required to prove the status of the tenants since they were recorded as tenants under the Gram Panchayat and the *jamabandi* entries shall be presumed to be correct as they were not rebutted. Therefore, the Commissioner reversed the decision of the Collector. Under these circumstances the matter was brought up before the Full Bench of the High Court. The Full Bench after going through the revenue records came to the conclusion that each tenant was shown in col. 5 of the *jamabandi* as '*Gair Marusi*' which means a tenant-at-will under the Gram Panchayat. In col. 9, meant for the rent, entry is 'Lagan Naqdi Rs.64/- fee *Killa Saal Tamaam*' which when translated in English

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A means " Rent-in-cash at the rate of Rs.64/- per acre for the whole year" and the same argument was raised before the Full Bench that because of this entry, unless the tenancy is terminated by giving notice under section 106 of the Transfer of Property Act the tenant has a right to continue over the land and the provisions of Sections 4 & 7 o the Act of 1961 are not applicable. Thereafter, the Full Bench quoted the provisions of Section 3 of the Act. B Section 3 of the Act reads as under :

"*Unauthorised Occupation of Public Premises.*

3. For the purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises -

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(a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) where he, being an allottee, lessee or grantee, has, by reason D of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises; or

(c) where any person authorised to occupy any public premises E has, whether before or after the commencement of this Act,-

(i) sub-let, in contravention of the terms of allotment, lease or grant, without the permission of the State Government or of any other authority competent to permit such sub-letting, the whole or any part of such public premises, or

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(ii) otherwise acted in contravention of any of terms, express or implied under which he is authorised to occupy such public premises.

Explanation.- For the purposes of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to G have entered into possession as allottee, lessee or grantee."

The Full Bench interpreted this provision and observed as under:

"It is patent from the reading of the aforequoted provisions that any person who has entered into possession of a public premises otherwise than under and in pursuance of any allotment, lease or H

grant, is an unauthorised person deemingly, and may not be so under the provisions of any other law. The opening words of the afore-quoted provision are also a pointer that unauthorised occupation of any public premises for the purposes of the Act qua a person is deemingly and it is on that basis that the Act works. The explanation specifically makes it clear that for the purpose of clause (a) a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee."

The Full Bench also quoted sub-rule (7) of Rule 6 of the Punjab Village Common Lands (Regulation) Rules, 1964, and pointed out that as per the *Jamabandi* rent was payable in advance at the rate of Rs.64/- per acre for the land in question and if the rent is already paid then the lease shall be determinable by efflux of time. Therefore, it was observed that the *Jamabandi* in question established a tenancy from year to year determinable only by a notice in writing under section 106 of the Transfer of Property Act is not correct. It was further observed that the view taken by the Commissioner in treating the contesting respondents as tenants at will that they had a right to continue on the land uninterrupted till the lease in their favour is not terminated cannot be sustained. It was also pointed out that there is prescribed procedure as to how auction of land in *shamilat deh* should be done. It was observed as under :

"Rule 6 afore-referred to has also other facets which have to be taken note of. Sub-rule (1) therefore provides that all leases of land in *shamilat deh* shall be by auction, after making publicity in the manner laid down in sub-rule (10). All documents executed in this connection shall be signed by a Sarpanch or in his absence by the Naib Sarpanch or in the absence of both by a Panch performing the duties of the Sarpanch and two other Panches authorised for the purpose by the Gram Panchayat. It is obvious therefrom that the creation of a lease and that too, by public auction has to be authenticated and documented by three persons named therein. It is not a one-man show. Obviously, this rule has been enacted to protect the interests of the Panchayat, and seemingly in order to undo the vast corruption resorted to by some of the Sarpanches of the Panchayats in passing over the panchayat properties to their favourites and others by underhand means in causing loss to the revenue of the Panchayat, which is meant to be spent for the welfare of the rural population. So, a lease in contravention of rule 6 is no lease in the

A eye of law and obviously the Panchayat can, in such circumstances, resort to the provisions of section 4 of the Act, seeking eviction of the supposed lessee who comes on the scene without a valid title under sub-rule (1) of rule 6."

In this background the Full Bench observed as under :

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"Compelled, in these circumstances, if the Panchayat had accepted advance rent in cash from the contesting respondents, that by itself would not take the contesting respondents out of the purview of sections 3,4 and 7 of the Act, for the leases in their favour had been determined in accordance with the terms of that lease, even though
C the lease was oral and not reduced to writing. The contesting respondents ceased to be entitled to get or hold the public premises after the efflux of on agricultural year from the payment of lease money last made for the purpose consciously to the Panchayat and to none other."

D Therefore, the Full Bench took the view that because some rent had been paid that would not make a tenant *ipso facto* a lessee. A particular method has been prescribed that how lease to be executed as per Rule 6. Therefore, in this view of the matter, we are of opinion that unless proper lease is granted in the manner provided in rule 6 of the Rules till that time simply because
E someone has paid rent that would not entitle him to claim as a tenant. In the absence of statutory provisions and rules thereunder, it is difficult to accept that since the rent had been deposited with the Gram Panchayat that would make them tenants. Thus, the conclusion drawn by the Commissioner, Firozepur Division and affirmed by the Division Bench of the High Caurt cannot be sustained. We are unable to understand the reasoning of the Division Bench
F to ignore the Full Bench judgment on the ground that in the aforesaid case the lease was granted year to year basis. The question is not the grant of lease on year to year basis. The question is whether the Gram Panchayat has recognized the contesting respondent as a tenant or not. Simply someone has paid or deposited the rent with the Gram Panchayat voluntarily after
G unauthorisedly occupying the Gram Panchayat land, he would not be deemed to be a tenant. This would be mockery of law. A lawful tenant is one who has been admitted as tenant after following due procedure of law. It is not one man show of the Sarpanch of the Gram Panchayat that he can surreptitiously take someone as a tenant without following the procedure under the rules, in case the Sarpanch or any Panch inducts someone as a
H tenant without following the procedure prescribed under the Rules then such

induction of the person will not be authorised or lawful and the Gram Panchayat will not be bound by that. In fact for lease of *Shamilat deh* land proper procedure has been prescribed that the land has to be auctioned and proper document has to be executed and it has to be authenticated. In the absence of the proper formalities being undertaken the voluntary deposit of the rent or even accepting the rent by the Gram Panchayat will not make that person a lawful tenant under the Gram Panchayat.

In this view of the matter, we are of opinion that the Full Bench judgment clearly held the field and rightly so in our opinion. Therefore, this appeal is allowed and the judgment and order dated 21.7.1998 passed by the Division Bench of the High Court of Punjab & Haryana in Civil Writ Petition No.11066 of 1998 is set aside and the order dated 13.2.1984 passed by the Commissioner, Firozepur Division is also set aside and the order dated 3.3.1983 passed by the Collector, Fazilka is affirmed.

In view of the aforesaid reasoning, the civil appeal No.434 of 2000 is allowed and the judgment order dated 21.7.1998 passed by the Division Bench of the High Court of Punjab & Haryana in Civil Writ Petition No.11059 of 1998 is set aside and order dated 13.2.1984 passed by the Commissioner, Firezepur Division is also set aside and the order dated 3.3.1983 passed by the Collector Fazilka is affirmed. No order as to costs.

However in case any crop of the respondent are standing in the field then the contesting respondents may be given time to harvest the crop and thereafter the Gram Panchayat may take the possession of the land in question.

V.S.S. Appeal allowed.