

5. The said circumstances indeed are liable to be taken into consideration while considering the case and in case these are taken into consideration, no prejudice would be caused to either of the parties. The fact that respondent No.4 Dharam Pal has been involved in criminal cases and his acquittal in the same is also a circumstance which is liable to be taken into consideration by the authorities. In **Jog Dhian's case (supra)** this Court observed that it may be true that once an accused is acquitted on a criminal charge framed against him even though by giving benefit of doubt he is presumed to be innocent. But at the same time, such a person cannot command respect from the public as surely, the people cannot have much confidence and rely upon a person, who, even though, might have been acquitted but who has been tried for murder and remained in custody, either in judicial or police. There is no dispute to the said proposition. However, the facts and circumstances of each case on which the trial is based and an order of acquittal has been passed are to be taken into account and it cannot be said that merely because an accused who has been tried in a criminal case and thereafter acquitted is yet to carry the stigma of his being tried in a criminal case. These are circumstances which would require consideration by the authorities after examining the facts and circumstances of the case. The circumstances leading to acquittal and whether the same would yet entail a stigma are to be considered in each case on the basis of material on record. An authority which is conferred with a statutory discretionary power is required to take into consideration all the attending facts and circumstances of the case which are necessary and relevant in the decision making process. Besides, it is to act reasonably and fairly. In **Jog Dhian's case (supra)** the contender for the post of Lambardar had been acquitted of a murder charge by giving him benefit of doubt, besides, he had remained in judicial and police custody. Therefore, what is really relevant is the conduct of the candidate for the post of Lambardar who has been tried in a criminal case.

6. In the circumstances, there is no error in the order dated 26.5.2009 (Annexure-P.3) passed by the Financial Commissioner (respondent No.1) in remanding the matter for reconsideration of the entire facts and circumstances.

7. Consequently, there is no merit in this petition and the same is dismissed.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: S.S. Saron, J.

Civil Writ Petition No. 20563 of 2008

Decided on: 20.07.2009

Jaleb Khan and others

Petitioners

Versus

Commissioner, Gurgaon Division, Gurgaon and others

Respondents

For the Petitioners: Mr. Sachin Mittal, Advocate.

**Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961),
Section 7 – Indian Evidence Act, 1872 (1 of 1872), Section 116 -- Gair**

Marusi tenants – Eviction -- Predecessor-in-interest of the petitioner entered as 'Gair Marusi' in the column of cultivation cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) -- Nothing has been shown that the petitioners had acquired ownership rights by way of adverse possession -- Petitioner and their predecessor-in-interest came in possession of the land as lessees -- Therefore, being lessees they are estopped from denying the title and claim of the lessor in view of the principle of estoppel as provided under Section 116 of the Evidence Act, 1872 – Eviction order, upheld.

After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. The Gram Panchayat, Agon (respondent No.3) filed a petition under Section 7 of the Act seeking eviction of the petitioners. As per Jamabandis for the years 1962-63, 1967-68 and 1997-98 (Annexures-P.7, P.8 and P.9) respectively the ownership of the land in question is recorded in the name of Gram Panchayat. In the column of cultivation Kallu son of Kale Khan son of Chhota Khan is recorded as 'Gair Marusi' in the three afore-referred Jamabandis. Therefore, the predecessor-in-interest of the petitioners having been recorded as 'Gair Marusi' he cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) as contended by the learned counsel for the petitioners. The fact that the petitioners acquired rights of ownership being an occupancy tenant is clearly misconceived.

The contention that in view of the order dated 25.1.1996 (Annexure-P.6) whereby the earlier application under Section 7 of the Act has been dismissed and the said order operates as res judicata is also devoid of merit. A perusal of the order dated 25.1.1996 shows that the petition filed by the Gram Panchayat, Agon under Section 7 of the Act was dismissed in default. The order records, the case called. The applicant, respondent and their counsel were not present. It appears that applicant, respondent and their counsel did not want to pursue with the case. Therefore, the file was ordered to be consigned to record room for non-prosecution. There is no specific order dismissing the petition but the file was ordered to be consigned to the record room for non-prosecution but the intent is that it was dismissed for non-prosecution. Therefore, nothing was decided in the previous litigation which would operate as res judicata between the parties. It is not shown by the learned counsel for the petitioners that the filing of subsequent petition is, in any manner, barred.

The contention that the land is in two portions; one measuring 48 Kanals 5 Marlas which is on 'Chakota' and the other measuring 8 Kanals which is in possession of their ancestors since 1962 is also devoid of merit. In all the Jamabandis as referred to above, as already noticed, Kallu the predecessor-in-interest was recorded as 'Gair Marusi' and, therefore, the petitioners can not deny the right of ownership of the Gram Panchayat. Nothing has been shown that the petitioners had acquired ownership rights by way of adverse possession or that their possession over the land is since the time of consolidation which is duly reflected in the revenue records. The petitioner and their predecessor-in-interest came in possession of the land as lessees. Therefore, being lessees they are estopped from denying the title and claim of the lessor in view of the principle of estoppel as provided under Section 116 of the Evidence Act, 1872.

(Para 4-6)

JUDGMENT

S.S. SARON, J.-- The petitioners aggrieved against the order dated 18.10.2007 (Annexure-P.5) passed by the Commissioner, Gurgaon Division, Gurgaon (respondent No.1) and the order dated 27.12.2006 (Annexure-P.3) passed by the District Collector, Mewat/Nuh have filed the present petition

under Articles 226/227 of the Constitution of India seeking quashing of the said orders.

2. The Gram Panchayat, Agon (respondent No.3) filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable in Haryana) ('Act' – for short) seeking eviction of the land measuring 136 Kanals 5 Marlas as detailed in the order dated 11.8.2004 (Annexure-P.1) passed by the Assistant Collector Ist Grade, Ferozepur Zhirka. It was alleged that the petitioners and their predecessor-in-interest were in unauthorized possession of the said land after expiry of the lease. The application of the Gram Panchayat (respondent No.3) was dismissed by the Assistant Collector Ist Grade, Ferozepur Zhirka vide order dated 31.8.2004. It was observed on the basis of evidence and statements recorded that the petitioners had proved from the revenue record that they were in cultivation Billa Lagan. Therefore, it was observed that the land does not fall under Section 7(2) of the Act. The Gram Panchayat, Agon aggrieved against the said order filed an appeal (Annexure-P.1) before the Collector, Gurgaon. The District Collector, Mewat/Nuh vide order dated 27.12.2006 (Annexure-P.3) accepted the appeal and set aside the order dated 31.8.2004 (Annexure-P.1). It was observed that the land in dispute was the property of Gram Panchayat, Agon on which the petitioners were in illegal possession. Besides, the Gram Panchayat (respondent No.3) had leased out the disputed land and Kallu, father of the petitioners had taken the land on 'Patta' from the Gram Panchayat (respondent No.3) from the year 1960-61. The petitioners aggrieved against the order dated 27.12.2006 (Annexure-P.3) passed by the District Collector, Mewat/Nuh preferred a revision (Annexure-P.4) before the Commissioner, Gurgaon Division, Gurgaon which has been dismissed vide impugned order dated 18.10.2007 (Annexure-P.5). From the copies of the Jamabandis available on the file it was observed that the land in dispute was the property of the Gram Panchayat (respondent No.3).

3. Learned counsel for the petitioners has submitted that the Gram Panchayat (respondent No.3) had earlier filed an application dated 5.11.1992 against the petitioners seeking possession of the land in question under Section 7 of the Act which was rejected vide order dated 25.1.1996 (Annexure-P.6). Therefore, the second present application was not maintainable being barred by the principle of res judicata. It is also submitted that the land in dispute was partitioned in two shares out of which land measuring 48 Kanals 5 Marlas is under cultivation on 'Chakota' by the petitioners and the rate of 'Chakota' has never been increased. The petitioners thus have tenancy right. Besides, another portion of the land measuring 8 Kanals is in possession of the petitioners through their ancestors since 1962 till date and thus they have acquired ownership rights by way of adverse possession. The possession of the petitioners on the both the said portions of land is since the time of the consolidation and is duly reflected in the revenue records which has not been taken into consideration. It is submitted that qua the land on 'Chakota', the petitioners had acquired the right of ownership being occupancy tenants and regarding the other portion they had acquired ownership rights being in adverse possession. The stand of the Gram Panchayat that the land was being leased out on yearly basis is in fact contrary to the fact that the land is in possession of the petitioners from the date of consolidation. A reference has

been made to the Jamabandis for the years 1962-63 (Annexure-P.7), 1967-68 (Annexure-P.8) and 1997-98 (Annexure-P.9).

4. After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. The Gram Panchayat, Agon (respondent No.3) filed a petition under Section 7 of the Act seeking eviction of the petitioners. As per Jamabandis for the years 1962-63, 1967-68 and 1997-98 (Annexures-P.7, P.8 and P.9) respectively the ownership of the land in question is recorded in the name of Gram Panchayat. In the column of cultivation Kallu son of Kale Khan son of Chhota Khan is recorded as 'Gain Marusi' in the three afore-referred Jamabandis. Therefore, the predecessor-in-interest of the petitioners having been recorded as 'Gair Marusi' he cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) as contended by the learned counsel for the petitioners. The fact that the petitioners acquired rights of ownership being an occupancy tenant is clearly misconceived.

5. The contention that in view of the order dated 25.1.1996 (Annexure-P.6) whereby the earlier application under Section 7 of the Act has been dismissed and the said order operates as res judicata is also devoid of merit. A perusal of the order dated 25.1.1996 shows that the petition filed by the Gram Panchayat, Agon under Section 7 of the Act was dismissed in default. The order records, the case called. The applicant, respondent and their counsel were not present. It appears that applicant, respondent and their counsel did not want to pursue with the case. Therefore, the file was ordered to be consigned to record room for non-prosecution. There is no specific order dismissing the petition but the file was ordered to be consigned to the record room for non-prosecution but the intent is that it was dismissed for non-prosecution. Therefore, nothing was decided in the previous litigation which would operate as res judicata between the parties. It is not shown by the learned counsel for the petitioners that the filing of subsequent petition is, in any manner, barred.

6. The contention that the land is in two portions; one measuring 48 Kanals 5 Marlas which is on 'Chakota' and the other measuring 8 Kanals which is in possession of their ancestors since 1962 is also devoid of merit. In all the Jamabandis as referred to above, as already noticed, Kallu the predecessor-in-interest was recorded as 'Gair Marusi' and, therefore, the petitioners can not deny the right of ownership of the Gram Panchayat. Nothing has been shown that the petitioners had acquired ownership rights by way of adverse possession or that their possession over the land is since the time of consolidation which is duly reflected in the revenue records. The petitioner and their predecessor-in-interest came in possession of the land as lessees. Therefore, being lessees they are estopped from denying the title and claim of the lessor in view of the principle of estoppel as provided under Section 116 of the Evidence Act, 1872.

7. In the circumstances, there is no merit in this petition and the same is accordingly dismissed.

Petition dismissed.
