

Before G. C. Mital and K. S. Bhalla, JJ.

SITTAL DASS and another,—Petitioners.  
*versus*  
 FINANCIAL COMMISSIONER, HARYANA and others,—Respondents.

Civil Writ Petition No. 4226 of 1983.

September 14, 1988.

*Punjab Land Revenue Act (XVII of 1887)—S. 34—Evidence Act (I of 1872)—S. 116—Dholi for religious purposes—Dholidar executing lease deed for 99 years—Mutation of lease sanctioned—Order correcting mutation passed—Validity of such order—Tenant estopped from denying title of his landlord.*

Heid, that the sale, mortgage or any other alienation of Dohli tenure is void *ab-initio*. The perpetual lease of 99 years was clearly void and the mutation on its basis could not be sanctioned. The Financial Commissioner was right in setting aside that mutation and as a consequence, a new Jamabandi which came into game on the basis of mutation. We are not in agreement with the observations made in *Baba Badri Dass's case* that *Sewa Ram's case* does not express the correct view, nor we agree that the observations made in *Dharma's case (supra)* are obiter. Rather the observations made in *Baba Badhri Dass's case* regarding the aforesaid two Division Bench judgments are obiter because the point involved was entirely different. There the Dholidar had inducted a tenant and when he took out proceedings to eject the tenant, an objection was raised on behalf of the tenant that such proceedings could not be initiated. It is a settled rule that if a person, whether holding title as a whole or in part or without title, lets out or leases out the property to another person, the tenant or the lessee cannot deny the title of the landlord as he is debarred from doing so under Section 116 of the Evidence Act.

(Para 6).

*Petition under Articles 226/227 of the Constitution of India praying that :—*

- (i) the records of the case may kindly be summoned ;
- (ii) a writ of Certiorari quashing the impugned orders of respondents Nos. 1 and 2, dated 6th August, 1982 and 7th October, 1980 (Annexures P-7 and P-6 respectively) be issued ;
- (iii) any other writ, direction or order as this Hon'ble Court may deem just and proper in the circumstances of the case be also issued ;

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- (iv) notice of motion to the respondents as required under Article 226(4) of the Constitution of India may kindly be dispensed with ;
- (v) filing of certified copies of the annexures may also kindly be dispensed with ; and
- (vi) costs of the writ petition be also awarded to the petitioners.

It is further respectfully prayed that operation of the impugned order of respondent No. 1, dated 6th August, 1982 may kindly be stayed till the final disposal of the writ petition.

Ram Rang, Advocate, for the petitioners.

#### JUDGMENT

*Gokal Chand Mital, J.*

(1) Sital Dass is a Dohlidar of land measuring 12 Kanals 19 Marlas as detailed in the writ petition. Sital Dass had inherited this Dohli tenure from his ancestors. The Dohli tenure was created in favour of the ancestors of Sital Dass by the villagers for Dharamarth, i.e., for religious purposes free of rent or compensation so that the person in whose favour such a religious tenure is created, may carry out the religious purposes out of the income of the land. This tenure is a peculiar tenure known in the erstwhile South East Punjab which now falls in the State of Haryana. The leading judgment in this behalf is *Sewa Ram v. Udegir* (1), by Shadi Lal Chief Justice and Harrison J.

(2) Sital Dass on 4th June, 1974, gave the Dohli tenure land by a registered deed of lease for 99 years to Yad Ram and mutation in this regard was sanctioned on 29th July, 1974.

(3) The land covered by the Dohli tenure was considered by the Gram Panchayat, Nuh to have vested in it as part of the Shamilat Deh. The Gram Panchayat on 23rd March, 1979 applied for ejectment of Sital Dass and Yad Ram on the ground that the land was Shamilat Deh; it was given to Sital Dass by way of Dohli tenure for religious purposes; he without permission of the Panchayat, gave the same on long lease to Yad Ram and that the

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(1) A.I.R. 1922 Lahore 126.

religious purposes were not being carried out. The petitioners contested and denied if the land was **Shamilat Deh**. The Assistant Collector,—*vide* order Annexure P-3, dated 17th July, 1979, came to the conclusion that Sital Dass had not been living in the village for long and was not serving the public for which the Dohli tenure was created. It was also held that the Dohli tenure cannot be transferred and the lease created in favour of Yad Ram was unauthorised, as a consequence, his possession was also unauthorised. They had also claimed ownership rights under section 4(3)(ii) of the Village Common Lands (Regulation) Act, 1961, (hereinafter called the Act) but they were not afforded the benefit under this provision as it was found that Sital Dass had not fulfilled the purpose of the Dohli tenure. As a result, the order of their ejectment was passed. They went up in appeal and the Collector,—*vide* order Annexure P.4 dated 21st November, 1979 held that the land vested in the Gram Panchayat; the lease created by Sital Dass was void and came to the conclusion that no condition or purpose of Dohli was mentioned in the revenue records and it cannot be said that the Dohli tenure stood terminated on account of Sital Dass's not performing the religious purposes. The appeal was allowed and after setting aside the order of the Assistant Collector, the Panchayat was advised to get the decision from the Civil Court as to whether the Dohli tenure terminates when the Dohlidar gives the land on a long term of lease as this was a matter which cannot be decided under the Act.

(4) When the Panchayat came to know that mutation in regard to 99 years lease has been sanctioned in favour of the lessee, it filed an application for review before the Collector, Gurgaon, against the order of Assistant Collector, 2nd Grade, Nuh, by which mutation No. 220 was sanctioned in favour of Yad Ram regarding lease for 99 years. The learned Commissioner issued notice of the application to both and after hearing them came to the conclusion that the mutation was sanctioned without notice to the Panchayat and since it was held in *Dharma v. Smt. Harbi* (2), that a lease by a Dohlidar is void; the mutation was clearly wrong and the matter deserved to be reviewed. As a result, he entertained the review application and submitted the case with a recommendation for acceptance of the review application to the Minancial Commissioner,—*vide* his order dated 7th October, 1980, Annexure P.6. The Financial Commissioner, after hearing both the sides, passed order

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Annexure P-7 dated 6th August, 1982. On consideration of the matter, he concluded that the Revenue Officer was in error in sanctioning the mutation in regard to a void lease and such a mistake could be corrected. He accepted the recommendation of the Collector and set aside mutation No. 220 attested on 29th July, 1974 and returned the case to the Collector for carrying out the necessary changes in the Jamabandi as well. This petition has been directed by Sital Dass and Yad Ram against the orders Annexures P-6 and P-7.

(5) Although several points have been raised in the writ petition but we find that the dispute is in a narrow compass as we are called upon to see the validity of the order passed by the Financial Commissioner ordering the cancellation of mutation which has been sanctioned on the basis of 99 years lease created by the first petitioner in favour of the second petitioner. While issuing notice of motion, the Motion Bench had noticed that a Division Bench in *Baba Badri Dass v. Shri Dharma* (3), had doubted the correctness of another Division Bench in *Sewa Ram's case* (*supra*) and ultimately admitted the writ petition to a Division Bench and that is how it has been placed before us.

(6) After hearing the learned counsel for the parties and on consideration of the matter, we are of the view that *Sewa Ram's case* (*supra*) is correctly decided. The principles laid down in the aforesaid judgment were followed in another Division Bench judgment of this Court in *Dharma v. Smt. Harbai* (4). This Division Bench had followed the observations made by the learned Single Judge in *Tirkha v. Dwarka Parshad* (5), who in turn had followed *Sewa Ram's case* (*supra*). We are of the opinion that all these three cases are correctly decided and lay down unequivocally that the sale, mortgage or any other alienation of Dohli tenure is void *ab initio*. We are not in agreement with the observations made in *Baba Badri Dass's case* (*supra*) that *Sewa Ram's case* (*supra*) does not express the correct view, nor we agree that the observations made in *Dharma's case* (*supra*) are obiter. Rather the observations made in *Baba Badri Dass's case* (*supra*) regarding the aforesaid two Division Bench judgments are obiter because the point involved was entirely different. There the Dohlidar had inducted a tenant and when he took out proceedings to eject the tenant, an objection was raised on behalf of the tenant that such proceedings could not be initiated.

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(3) 1981 P.L.J. 447.

(4) 1976 P.L.J. 617.

(5) 1972 P.L.J. 614.

It is a settled rule that if a person, whether holding title as a whole or in part or without title, lets out or leases out the property to another person, the tenant or the lessee cannot deny the title of the landlord as he is debarred from doing so under section 116 of the Evidence Act. It was held that the relationship of landlord and tenant stood between the parties and ejectment proceedings were competent. Since on facts that was a different case, the matter does not deserve to be referred to a larger bench and we proceed to decide the case on the peculiar facts before us. If necessary, in some suitable case, the matter would be referred to a Full Bench.

(7) The Gram Panchayat claims that Dohli tenure came to an end long before as the Dohlidar did not carry out the religious purposes of the Dohli tenure whereas the claim of the Dohlidar is that his right to occupy and continue as Dohlidar cannot be disputed by the Panchayat in view of section 4(3)(i) of the Act. Before the authorities below the petitioners had referred to section 4(3)(ii) but the rights of a Dohlidar are embodied in section 4(3)(i) of the Act. The facts for deciding the matter have not been placed on the record either under section 4(3)(i) or 4(3)(ii) because the jurisdiction in which the ejectment matter was decided, was limited and the Collector,—*vide* Annexure P-4 has left this matter open to be gone into in the Civil Court. Therefore, as and when the petitioners like to establish their rights on the basis of Dohli tenure under section 4(3)(i) or 4(3)(ii) or the Panchayat may seek declaration from a Civil Court that Sital Dass did not possess Dohli rights when the Act came into force, or did not mature his title to continue in occupation under section 4(3)(ii), the matter would be gone into and decided there. Here we are deciding only in regard to the legality or propriety of orders Annexures P-6 and P-7 which have been impugned in the writ petition.

(8) As is held in (1) *Tirkha's case*, (2) *Dharma's case*, and (3) *Sewa Ram's case (supra)*, the perpetual lease of 99 years was clearly void and the mutation on its basis could not be sanctioned. The Financial Commissioner was right in setting aside that mutation and as a consequence, the new Jamabandi which came into being on the basis of the mutation.

(9) For the reasons recorded above, the writ petition is dismissed with no orders as to costs, with a direction as contained in order Annexure P-4 and the direction given by us above that any of the parties may get their rights settled about the title/right in the property one way or the other before a Civil Court.

S.C.K.