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*Before H.S. Brar, K.S. Kumaran, and Swatanter Kumar, JJ*

ROSHAN @ ROSHAN LAL AND OTHERS,—*Petitioners*

*versus*

THE SECRETARY, GOVERNMENT OF HARYANA,  
DEVELOPMENT AND PANCHAYAT DEPARTMENT  
AND OTHERS,—*Respondents*

CWP 14902 of 1992

The 5th August, 1998

*Constitution of India, 1950—Arts. 226/227—Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961)—S.7—On expiry of tenancy tenant becomes unauthorised occupant of land—He can be lawfully proceeded against under provisions of S.7 of the Act read with Rule 19 of Punjab Village Common Land Regulations Rules, 1964—No action on part of landlord is required like serving of notice to quit under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972.*

*(Om Parkash v. the Assistant Collector, 1st Grade, Narnaul and others (D.B.) CWP No. 17276 of 1991 decided on 1st April, 1992, over-ruled)*

*Held*, that Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964 define unauthorised occupation of Shamlat Deh. Ultimately, it was held in *Jaimal and others v. The Commissioner, Ambala Division and others*, 1969 PLJ 378 that in case of tenancy for a fixed term, the tenancy stands automatically determined by efflux of time and no action on the part of the landlord by way of notice to quit or the like is necessary. It becomes the duty of the tenant to hand over the possession of the demised premises immediately, as enjoined in Section 108 (q) of the Transfer of Property Act. Moreover, the matter has been clinched by the Supreme Court in *Gram Panchayat of Village Bhagal v. Bachna and others*, 1987 PLJ 656. In that case, the Supreme Court has held that upon the expiry of term of the tenancy the tenant had no authority to continue in occupation of the common land belonging to the Gram Panchayat. Upon the expiry of the period of tenancy the tenant become an unauthorised occupant of the land. He could, therefore, be lawfully proceeded against under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act,

1961 read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964.

(Para 5)

R.S. Kundu, Advocate, *for the Petitioners.*

P.K. Mutneja, addl. A.G., Haryana, *for Respondents nos. 1 to 3.*

R.K. Handa, Advocate with Miss Inderjit Kaur, advocate and Sanjiv Sharma, Advocates, *for Respondent no. 4.*

### JUDGMENT

*Harphul Singh Brar, J.*

(1) Full Bench was constituted by the Hon'ble Chief Justice on a reference made by the learned Single Judge of this Court, as according to the learned Judge, the decision recorded in C.W.P. No. 17276 of 1991 *Om Parkash v. The Assistant Collector, 1st Grade, Narnaul and others* (1), does not appear to be laying down correct law; as according to the learned Single Judge the observations made in a Division Bench Judgment of this Court in *Jaimal and others v. The Commissioner, Ambala Division and others*, are in direct conflict with the judgment in *Om Parkash's case* (supra).

(2) In our view it shall be advisable to reproduce the reference made by the learned Judge which reads as under :—

“Petitioners Roshan Lal and others through present writ filed by them under Articles 226/227 of the Constitution of India seek a writ in the nature of certiorari so as to quash order passed by the Assistant Collector and the Collector, Karnal, *vide* which they have been evicted from the land in dispute under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961.

One of the points raised in the writ petition is that a lessee whose lease period has already expired and who is in possession, can be ejected from the land in accordance with law i.e either by filing a suit or under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act. For the aforesaid stand, reliance has been placed upon a Division Bench judgment of this Court in Civil Writ Petition No. 17276 of 1991 *“Om Parkash v. The*

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*Assistant Collector, Ist Grade, Narnaul and others*", decided on 1st April, 1992. I was one of the members of the Bench in the Civil Writ Petition aforesaid. While dealing with the matter aforesaid, the Court held" present is a case of a lessee whose lease has already expired and is in possession. He can be ejected from the land in accordance with law either by filing a suit or under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act. The observations made above are in direct conflict with a Division Bench Judgment of this Court in "*Jaimal and others v. The Commissioner, Ambala Division and others*" 1969 Punjab Law Journal 378. While deciding *Jaimal's case* (supra), the Court took into consideration Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964. Rule 19 which defines unauthorised occupation of Shamlat Deh reads thus :—

"19. Unauthorised occupation of Shamlat Deh—For purposes of Section 7 of the Act, a person shall be deemed to be in unauthorised occupation of any land in Shamlat Deh—

- (a) Where he has, whether before or after the commencement of the Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant by the Panchayat; or
- (b) Where he being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf, therein contained, ceased whether before or after the commencement of the Act, to be entitled to occupy or hold such land in Shamlat Deh; or
- (c) Where any person authorised to occupy any land in Shamlat Deh has, whether before or after the commencement of the Act—
  - (i) sublet in contravention of the terms of allotment, lease or grant, without the permission of the Panchayat or of any other authority competent to permit such sub-letting the whole or any part of such land in Shamlat Deh; or

- (ii) otherwise acted in contravention of any of the terms express or implied, under which he is authorised to occupy such land in Shamlat Deh.

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

The vires of Rule 19 were also upheld in Jaimal’s case (supra). In a recent decision recorded in “*The Gram Panchayat of village Bhagal v. Bachna and others* (2)”, the Supreme Court has held that upon expiry of term of tenancy, the person in occupation of the land had no authority to continue in occupation of the common land belonging to the Gram Panchayat. He, upon the expiry of five years term had thus become an unauthorised occupant. A Single Bench of this Court in “*Fatia v. Shri B.R. Anand, IAS, Collector and others*” (3), followed the judgment given by the Supreme Court in *Gram Panchayat’s* case (supra). Neither Rule 19 nor the judgments that have been referred to above were noticed by us while deciding Civil Writ Petition No. 17276 of 1991 *Om Parkash v. The Assistant Collector Ist Grade, Narnaul and others* (supra). The papers of this case be placed before the Hon’ble Chief Justice for constituting a Larger Bench as the decision recorded in Civil Writ Petition No. 17276 of 1991 does not appear to be laying correct law. The petitioners who are in possession and have obtained stay do not deserve to remain in occupation of the land any more without atleast paying some amount for use and occupation. It is admitted position that for

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(2) 1987 P.L.J. 656

(3) 1988 P.L.J. 96

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the kind of land which is in their occupation, Gram Panchayat can earn minimum of Rs. 4500 per Acre per year. It is, thus, ordered that the petitioners would pay to the Gram Panchayat at the rate of Rs. 4500 per Acre per year from the date when the Assistant Collector passed orders of eviction against them. If they do not pay this amount within a period of one month from today, it shall be open to the Gram Panchayat to execute the order of eviction passed against them."

(3) One of the points raised in the present writ petition, before the learned Single Judge was that a lessee whose lease had already expired and who is in possession can be ejected from the land in accordance with law i.e. either by filing a suit or under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act.

(4) For the aforesaid proposition raised by the writ petitioner a Division Bench of this Court in *Om Parkash's* case (supra) held as under :—

"Present is a case of lessee whose lease had already expired and is in possession. He can be ejected from the land in accordance with law by filing a suit or under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act".

(5) As has been discussed in the reference itself the above said judgment of this Court is in direct conflict with a Division Bench Judgment of this Court in *Jaimal's* case (supra) wherein vires of Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter called 'the Rules') were upheld. (Rule 19 of the Rules defines unauthorised occupation of Shamlat Deh. Ultimately, it was held in *Jaimal's* case (supra) that in case of tenancy for a fixed term, the tenancy stands automatically determined by efflux of time and no action on the part of the landlord by way of notice to quit or the like is necessary. It becomes the duty of the tenant to hand over the possession of the demised premises immediately, as enjoined in Section 108 (q) of the Transfer of Property Act. Moreover, the matter has been clinched by the Supreme Court in *Gram Panchayat of Village Bhagal's* case (supra).

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In that case, the Supreme Court has held that upon the expiry of term of the tenancy the tenant had no authority to continue in occupation of the common land belonging to the Gram Panchayat. Upon the expiry of the period of tenancy the tenant becomes an unauthorised occupant of the land. He could, therefore, be lawfully proceeded against under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964. The relevant portion of the judgment of the Hon'ble Supreme Court is reproduced as under :—

“Respondent No. 1 Bachan, was inducted as a tenant for a limited period of five years in 1963. Upon the expiry of the term of the tenancy he had no authority to continue in occupation of the common land belonging to the appellant Gram Panchayat. He, upon the expiry of the five years term had thus become an unauthorised occupant. He could, therefore, be lawfully proceeded against under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964.”

(6) In view of the judgment of the Supreme Court, we hold that a Division Bench of this Court in *Om Parkash v. The Assistant Collector Ist Grade, Narnaul and others* (CWP No. 17276 of 1991), does not lay down good law and is, thus, over-ruled impliedly.

(7) This reference, thus, stands answered accordingly.

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**R.N.R.**

*Before H.S. Brar, K.S. Kumaran & Swatanter Kumar, JJ*

RAM CHANDER MORYA,—*Petitioner*

*versus*

THE STATE OF HARYANA & OTHERS,—*Respondents*

CWP 3353 of 1993

5th August, 1998

*Industrial Disputes Act, 1947—S. 10(1)—Limitation Act, 1963—Arts. 113 & 137—Declining of reference by appropriate Government on ground of delay & laches—S. 10(1) prescribing no period of limitation—Period of limitation prescribed in the*