
(2013) 07 P&H CK 0864
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1062 of 1988 (O and M)

Amar Singh (dead) through his LRs. Smt. Surjit Kaur and Others APPELLANT

Vs

The Joint Director, Panchayats and Others RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 4 PLR 709

Hon'ble Judges : Jasbir Singh, J;G.S. Sandhawalia, J

Bench : Division Bench

Advocate : Sarjit Singh and Mr. Jagdev Singh, for the Appellant; Rajender Goel, Addl A.G., Punjab for the Respondent Nos. 1 and 2 and Mr. G.S. Punia, Advocate for the Respondent No. 3-Gram Panchayat, for the Respondent

Judgement

Jasbir Singh, J.—Petitioners, by filing this petition, have laid challenge to an order dated 18.07.1983 vide which on application filed by respondent No. 3, Gram Panchayat, Amar Singh and Jaswant Singh were ordered to be ejected from the land measuring 95 kanals 14 marlas. They have also laid challenge to order dated 29.08.1986, dismissing their appeal filed against the above order. Gram Panchayat, respondent No. 3 filed an application against the petitioners on 03.09.1981 seeking their ejectment, stating that they were in possession of the land unauthorizedly of which Gram Panchayat is the owner.

2. After notice, reply was filed. The petitioners herein contended that they were the right holders, co-sharers in the shamilat deh land of the village. It was further stated that their forefathers were in possession of the land in dispute before 26.01.1950 and the petitioners are continuing in possession thereafter. It was further stated that the land in their possession is not more than their share in the shamilat deh land in the village.

3. Parties were given opportunity to lead evidence. Qua the evidence led by the petitioners (respondents in that application), the trial Court has noted as under:

The counsel for the respondent in his evidence got recorded the statement of Halqa Patwari of Mulpur who produced copy of Jamabandi for 1954-55 Exh. R1, Jamabandi 1956-57 Exh. R2, 1968-69 Exh. R3, 1973-74 Exh. R4, 1978-79 Exh. R5, copy of Khasra Girdawari for the year 1951-52 to 1954-55 Exh. R6, 1958-59 to 1962-63 Exh. R7, 1979-80 to 1981-82 Exh. R8 and got recorded statement of Sh. Ajaib Singh (Record Keeper Revenue) of office of Sub-Divisional Officer (C) Bassi Pathana who in his statement produced copy of Misal Haqiat Consolidation 1956-57 Exh. R9, copy of intkal No. 257 Exh. R10, copy of Sajra Nasal Exh. R11, copy of Kursi Nama Sajra Nasab and Haqook Malkan village Sheikhpur Exh. R12, copy of Statement Malkan Kafiati Dehi Exh. R 13, statement of witness Walaiti Ram S/o Kunu Ram Chokidar resident of village Sheikhpur and Statement of Shri Amar Singh respondent were got recorded and closed the evidence.

4. The Gram Panchayat has not produced the entire record but had brought on record only copy of jamabandi for the year 1978-79 (Exhibit A1).

5. Arguments were addressed by the counsel for the petitioners to show that they were not in unauthorized occupation of the land in dispute and that they are cultivating the same as owners as per their share in shamilat deh land of the village, details of the same are mentioned by counsel for petitioners at page Nos. 4 & 5 of the paperbook.

6. The Collector/Trial Court, while passing order dated 18.07.1983, without referring to any of the documents and contentions raised by the counsel for the petitioners, after noting in detail the abovesaid facts, only observed as under:

The land in dispute is not in the ownership of the Gram Panchayat u/s 2(g) of the Act. Attention of the court was drawn to the decision of the Punjab and Haryana High Court in Garhi Brahamina and others v. Puran reported in PLJ 1976 page 472 and it was finally submitted that it has been proved through record that the Gram Panchayat has no right to file this application against the respondents. Therefore, the application of the applicant be consigned to record.

7. It was, indeed, plea of the petitioners that they were owners as per their share and land in their possession is less than their share of the land in the shamilat deh was not considered. It was not opined as to how and on what basis the Gram Panchayat was declared as owner of the land in dispute.

8. The petitioners went in appeal and filed written arguments before the lower appellate Court. In their written arguments, the petitioners have referred to detailed facts as to since from which year they were in possession of the land in dispute before filing of the application. Their stand that they were in cultivating possession of the land in dispute was also rejected and the appellate Court below dismissed their appeal vide order dated 29.08.1986. Relevant portion of the order reads thus:

5. I have gone through the written arguments given by the parties and record of

the lower court. The first contention raised by the learned counsel for the appellants that the land is in their possession from prior to 26.1.1950 and that the land is not in excess of their share in shamilat land. This contention has no force. According to the jamabandi 1954- 55 the land has been described as shamilat land and Anokh Singh has been shown as "Hisedar" of this land. After this is the consolidation operation had taken place in the village and jamabandi 1968-69 was prepared. From this jamabandi onward the land has been shown as owned by the Gram Panchayat and Amar Singh etc. present appellants have been shown as "chakotedar" @ Rs. 12/- per kila. The entry of chakotedar continue upto jamabandi 1973-74. In the jamabandi for the year 1978-79 they have been described as "bila Lagan unauthorised occupants" which shows that the appellants had taken this land on lease from the Gram Panchayat but after the expiry of the lease period they had not surrendered the possession of the land in dispute to Gram Panchayat. The appellants have not been able to prove their possession prior to 26.1.1950. They have also failed to connect the present land with the land in their possession prior to consolidation operations. The present land has not been allotted to them in lieu of the land in their possession before consolidation. The present land has been allotted to the Gram Panchayat in lieu of the land owned by it before consolidation. The appellants had also failed to prove that they are in possession of this land as co-sharers and the land in their possession is not in excess of their share in shamilat land. The possession of the appellants on the land in dispute is from 1968-69 and that too upto jamabandi 1973-74 as chakotedar and thereafter as illegal occupants.

6. According to the revenue record the land is owned by the Gram Panchayat the present appellants had failed to produce even an iota of evidence to show that the title of this land is in dispute. Therefore, it is not correct to say that the title of this land should have been firstly decided by the lower court.

9. The lower appellate Court dug out a new ground in favour of the Gram Panchayat to say that the petitioner had taken the land on lease in the year 1968-69 and they continued as such till 1973-74. However, when seeking ejectment, this plea was not taken by the Gram Panchayat when application u/s 5A of the Punjab Village Common Lands (Regulation) Act, 1961 was filed. Furthermore, neither before the Collector nor before the appellate authority, such a plea was raised. No evidence was laid in that regard, even the lease resister was not produced in Court. In fact, in this petition, specific ground was taken by the petitioner No. (vii) that they had not taken the land on lease. No reply was filed to the written statement. It was only stated that in the jamabandi for the year 1973-74, the petitioners were only shown as tenants in the land in dispute.

10. When passing quasi-judicial orders, affecting valuable rights of the parties, it is incumbent for the quasi-judicial authorities to apply their minds to the facts of the case. The authorities are to look into the evidence, the issues that are framed and thereafter, form an opinion.

11. In the present case, specific plea was taken by the petitioners that they were

owners in possession of the shamilat deh land as per their share. Ample evidence was led in this regard. However, neither the Collector nor the appellate authority had discussed the evidence produced by them. The order was passed, presuming the Gram Panchayat as owner and that the petitioners were in unauthorized occupation of the Gram Panchayat's land. Documents on record were not referred, the provisions of the law under which the Gram Panchayat had become owner were not discussed. The authorities are supposed to discuss in detail the pros and cons of the case and then give a crisp and clear finding regarding dispute between the parties. This was not done in the present case. In view of the above, we allow the writ petition, remit the matter to the Collector, Rural Development, Panchayats, Patiala for fresh decision within a period of 3 months after receipt of a certified copy of the order. He is further directed to discuss the entire evidence and then form an opinion, as per the arguments to be raised by both the parties.