
(2004) 10 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 705 of 1986

Amar Singh (Died) and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (2005) 139 PLR 570 : (2005) 1 RCR(Civil) 399

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; Yogesh Kumar Dahiya, A.A.G. for Respondent Nos. 1 and 2 and Balbir Singh, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, J.—Amar Singh, petitioners died during pendency of the present writ petition. His seven legal heirs were brought on record vide order dated 25.4.1994, who have now stepped into the shoes of Amar Singh.

2. The petitioners are seeking a writ in the nature of certiorari quashing the impugned judgment (Annexure P3) dated 2.9.1985 passed by the Joint Director Panchayat, Punjab (exercising the powers of Commissioner), vide which it has been observed that the land in dispute vests in Gram Panchayat Bhullarheri, Tehsil Malerkotla, District Sangrur and Amar Singh (since deceased) had absolutely no claim over this land.

3. Amar Singh filed an application u/s 11(i) of the Punjab Village Common Lands (Regulation) Act (in short "the Act") in July, 1982 before the Collector Sangrur, asserting therein that he was owner in possession of the land measuring 11 bighas 14 biswas in khasra No. 694 and respondent-Gram Panchayat had no concern and that all the previous litigation u/s 7 of the Act and in the civil court were illegal, void and without jurisdiction. Respondent No. 3-Gram Panchayat filed an application in the Court of Assistant Collector, Grade-I in 1996 u/s 7(1) of

the Act for the eviction of Amar Singh from the aforesaid land. The Assistant Collector had accepted the petition of Gram Panchayat on 30.3.1996 and passed eviction orders. Amar Singh thereafter filed an appeal before Collector Sangrur, which was dismissed on 18.1.1998. He then filed a second appeal before the Commissioner, Patiala on 27.2.1968. The Commissioner while dismissing the appeal on 15.4.1969 observed that Amar Singh had admittedly been cultivating the land as a lessee of the Gram Panchayat. The period of lease in his favour had expired and the Gram Panchayat had decided to lease out the land to the highest bidder, who happened to be a person other than Amar Singh. Under those circumstances, the Gram Panchayat was entitled to get the land vacated u/s 7 of the Act. The objection of the petitioner was that the land was not shamlat deh and it did not vest in the Gram Panchayat. The petitioner, thus, filed a petition u/s 11 of the Act, asserting therein that the consolidation took place in the year 1957 and the land in dispute was left out as Bachat land and the mutation was sanctioned as Mushtarka Malkan Va Hakdaran Deh Hasab Rasad Khewat and after that vide mutation No. 1453, the aforesaid land alongwith the other lands was sanctioned in favour of the Gram Panchayat, which is against law. It was then asserted that even before consolidation the petitioner was owner in possession of the suit land and was cultivating the same and the gram panchayat wanted to get back the possession from him. The Collector accepted the claim of the petitioner vide order dated 12.12.1983 (Annexure P2). However, the learned Commissioner vide impugned order dated 19.11.1985 Annexure P3, accepted the appeal of the Gram Panchayat. Hence this petition.

4. I have heard Mr. D.D.Bansal, Advocate, for the petitioner, Mr. Yogesh Kumar Dahiya, A.A.G., Punjab for respondents No. 1 and 2 and Mr. Balbir Singh, Advocate for respondent No. 3, With their assistance, I have gone through the entire record on file minutely.

5. Mr. Bansal contends that Amar Singh was owner in possession of the land in dispute since, 1953 and after the consolidation proceedings took place in the year 1957, this land was left out as Bachat land by the consolidation authorities and the same was termed as Mushtarka Malkan Va Hakdaran Deh Hasab Rasad Khewat. He then contends that respondent No. 3 had never come into possession of the land in dispute. May be by virtue of mutation No. 1453, the land in dispute along with the other land was mutated in favour of the Gram Panehayat, but by no stretch of imagination it could be said that the said land falls within the definition of Shamlat deh, as per Section 2(g) of the Act. He then contends that only that land can be treated in the name of Gram Panehayat, which falls under the definition of Shamlet deh. Dwelling upon his arguments, the learned counsel contends that all the proceedings initiated by the respondents for ejectment of the petitioner in the year 1966 were without any reasons, much less cogent reasons and even if the appeal ultimately filed by the petitioner before the Commissioner Patiala was dismissed, it would not have any adverse effect as the Commissioner Patiala had over looked the aspect that the land in dispute does not fall under the definition of Shamlat deh. He then contends that the Punjab

Village Common Lands (Regulation) Act was amended by the Act 1966 by virtue of Section 11 of the Act, the powers of Civil Court as to whether a certain land is a panehayat land or not, were taken away and given to the Collector. For this reason, the order of learned Sub Judge, 1st Class, Dhuri rejecting claim of the petitioner with regard to the land in dispute and the order of Additional District Judge, Sangrur with regard to rejection of the claim of the petitioner would be without jurisdiction. For this very reason, the petitioner filed an application u/s 11 of the Act, which was decided in his favour by the Collector vide Annexure P2. The learned counsel submits that respondent No. 2 while deciding the appeal filed by respondent No. 3 has mainly relied upon the order passed by the Courts below and has overlooked the order passed by the Collector. Mere mutation does not confer any title on any of the parties and respondent No. 2 did not take into consideration the fact that the land in dispute is in ownership of the petitioner and he is in possession thereof as Mushtarka Malkan Va Hakdaran Deh Hasab Rasao Khewat. In the absence of a specific finding to the effect that the land in dispute falls under the definition of Shamlat deh, it cannot vest with the gram panehayat and as such the petitioner could not be ejected from the same.

6. In support of his contentions, the learned counsel relies upon a judgment of this Court rendered in *Amal Kumar and Ors. v. Bhupinder Singh and Ors.* 1976 P.L.J. 26 and *Atma Ram v. Joint Director Panchayats, Punjab and Ors.*, 1986 P.L.J. 697.

7. Refuting, the arguments of learned counsel for the petitioners, Mr. Dahiya, learned A.A.G., Punjab contends that there is no ambiguity in the impugned order passed by the Joint Director Panchayats as it is a speaking order, which does not suffer from any infirmity on any count. He then contends that the land stands mutated in favour of the gram panehayat vide mutation No. 1453 of May, 1964 and even in all subsequent jamabandies in the ownership column and for this reason, Amar Singh had no claim over it and the order passed by the Collector (Annexure P2) was beyond jurisdiction, which was rightly set-aside by the Joint Director, Panehayat.

8. Learned counsel for respondent No. 3 has toed the stand taken by the learned State counsel.

9. After giving my thoughtful considerations to the respective submissions made by either side and going through the available record. I am of the view that the present petition deserves to be allowed.

10. The main controversy is as to whether respondent No. 2 was justified in ordering ejectment of the petitioner from the land in dispute inspite of the fact that it was a Bachat land of the petitioner and he was in possession of the same since the consolidation proceedings which took place in the year 1957. The second point which needs adjudication is as to whether mutation would confer title in favour of respondent No. 3-Gram Panchayat in view or the fact that no intimation with regard to mutation No. 1453 being entered in favour of

respondent No. 3 was given to the petitioner.

11. The Bachat land literally means that it is an excess area over and above the consolidation pool. It is the property of proprietary body and not of any particular individual. Legally it cannot be said to be a Shamlat deh. "Shamlat deh" is defined in 1961 Act. No one could give an extended meaning to Shamlat deh. The consolidation took place in the year 1957 whereas the Act is of the year 1961. Obviously, it was not the intention of the Legislature to treat "Bachat land" as Shamlat deh otherwise the definition in 1961 Act would have covered the Bachat land also as Shamlat deh. The proceedings of eviction could not have been taken on this score at all.

12. May be that mutation No. 1453 is entered in the name of Gram Panchayat respondent No. 3, it would not confer any title in favour of the Gram Panchayat. The real relation of the petitioner with the land cannot be obviously affected in any manner on account of the mutation. No presumption of truth can be attached to these entries as these can be rebutted by any other evidence.

13. Even otherwise, there cannot be any dispute about law on the point that a positive finding had to be recorded that the disputed land is Shamlat deh and vested in the Panchayat, which matter has to be decided on the basis of oral as well as documentary evidence. The petitioner has adduced cogent evidence in his favour before the Collector by producing jamabandi for the years 1961-62, 1967-68, 1977-78 and other relevant documents. In the jamabandies for the years 1957-58 and 1961-62, the land in dispute is entered to be the ownership of Mushtarka Mallcan Va Hakdaran Deh Hasab Rasad Khewat. The other contention on raised by the learned counsel for the petitioner was that the land in dispute was being cultivated by the petitioner even before and after consolidation proceedings and was left out as bachat land of the petitioner, which cannot vest with the panchayat inspite of mutation No. 1453 through which the ownership has been changed, whereas it is not clear as to on the basis of which order the same has been done.

14. The next contention of the learned counsel for the petitioner was that even after the mutation, the possession of the petitioner was continuing without any interruption. The learned Collector agreed with the learned counsel for the petitioner and accepted all his pleas. The impugned order of Joint Director sans discussion on this aspect and he seems to have been moving in circles without deciding the main issue on the basis of evidence on record. Thus, in my considered view, the impugned order dated 19.11.1985 (Annexure P3) passed by the Joint Director Panchayats, Punjab (exercising the powers of Commissioner) deserves to be quashed.

15. As a sequel to the aforesaid discussion, the instant petition is accepted and the above impugned order Annexure P3 is hereby quashed. However, the parties shall bear their own costs.