
(1994) 05 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3862 of 1992

Amarjit Singh

APPELLANT

Vs

Gram Panchayat naulakha, Teh.Sirhind, District Patiala

RESPONDENT

Date of Decision : 05-05-1994

Acts Referred:

Citation : (1994) 2 CurLJ 665 : (1994) PLJ 475 : (1994) 3 RRR 155

Hon'ble Judges : V.K.Bali, J

Advocate : Rajinder Sharma, Advocate, Advocates for appearing Parties

Judgement

V.K. Bali, J. (Oral)

1. The prayer in this petition filed by Amarjit Singh and others is to quash order dated 24th October, 1991 passed by the Addl. director Panchayat, Punjab (Annexure 14) by which the appeal of the Gram Panchayat was allowed and it was held that the Panchayat was owner of the land in suit. In consequence of the order aforesaid, the petitioners were ordered to be dispossessed from the suit land.

2. Culled from the impugned order, as also the pleadings of the parties, briefly, the facts of the case reveal that Gopal Singh predecessor in interest of petitioners No. 1 to 3, who also happens to be the brother of petitioner No. 4 filed a suit for declaration to the effect that he was owner of the land described in the head note of the plaint. Inter alia, it was pleaded by him that he was in continuous possession of the land in dispute since 1934 and his possession was adverse, open, hostile and without interruption and as of right. It is, thus, by and large on the basis of the adverse possession that he claimed title to the property in dispute. The matter was contested by the Gram panchayat. However, no witness was examined by the Gram Panchayat and it is only on the statement of PW1, i.e. Pritam Singh, who is brother of Gopal Singh and on perusal of the Jamabandi for the year 1973-74 that the suit was decreed by Sub Judge 1st Class Bassi on 6th August, 1975. It is followed by decree sheet Annexure P2. In the year 1986, the Gram Panchayat filed application under Section 11 of the Punjab Village

Common Lands (Regulation) Act, 1961 (hereinafter to be referred to as the Act of 1961) for change of ownership of the land measuring 32K, the subjectmatter of the decree referred to above against successorsininterest of Gopal Singh and Pritam Singh. The application was contested by the petitioner and vide orders dated 10th September, 1986, the same was dismissed by the collector, Patiala. Aggrieved, the Gram panchayat filed an appeal which came ultimately before the Additional Director of Panchayats exercising the powers of the Commissioner and was allowed vide impugned orders which, as indicated in the earlier part of this order, have been challenged herein. It was observed by the Appellate Authority that as per the Jamabandi for the year 196364, 196869 and 197374, the Gram Panchayat was the owner of the land in dispute. In the jamabandi for the year 196364, the possession of the father of gopal Singh was recorded. However, the said possession was on account of his being a tenant (Chakotedar). In accordance with the entries of Jamabandi, it was further observed that he had taken this land on rent @Rs. 20/ per acre and was in possession of 24 Kanals at that time. The same entries were repeated for the jamabandi 196869. However, in the jamabandi for the year 197374, he was recorded in possession of 32 Kanals but the same was shown to be forcible. It was further observed that the Gram Panchayat was shown as owner of the land in dispute uptill now and the petitioner was in forcible occupation of the same. After so observing, the learned Addl. Director went on to hold that since the decree passed by the Sub Judge was obtained on the statement made by the representative of the Gram Panchayat through Sarpanch who had no valid resolution to defend the cause of the Gram Panchayat, the said decree could not be binding on the Gram Panchayat.

3. Learned counsel appearing for the petitioner vehemently contends that the view taken by the Addl. Director as expressed above while ignoring the Civil Court decree that came into being prior to introduction of Section 13B of the Act which was introduced by the Punjab Act of 1976 could not be ignored in the manner it had been done and the only mode of challenging the said decree and getting it set aside the decree on the basis of collusion, fraud and other known methods of setting aside the decree. For his aforesaid contention learned counsel relies upon a decision rendered by a Full Bench of this Court in Gram Panchayat Batholi Kalan v. Jagar Ram, 1991(1) RRR 368 (P&H): 1991 PLJ 41.

4. The judgment of the Full Bench, admittedly supports the contention of the learned counsel for the petitioners. The Full Bench in paragraph 7 observed as follows:

"Though there was no such provision in the Act as applicable to the State of Punjab but it is evident that the decree passed by the competent civil Courts between the parties could not be ignored by the authorities under the Act prior to the amendment of the Act by Punjab Act No. 19 of 1976. However, it may be made clear that the parties will always be at liberty to get those decrees set aside on the grounds of collusion, fraud etc., or otherwise, by a competent Court.

Unless the said decree passed by the Civil Courts are held to be collusive or obtained by fraud, by a competent Civil Court, the same could not be ignored by the authorities under the Act in view of the judgment rendered by the Division Bench in Bajinder Singhs case (supra) the correctness of which was not challenged before us."

In view of the authoritative pronouncement on the issue there is no choice but to accept this petition with the observations that it will be open for the Gram Panchayat to challenge the Civil Court decree on the ground of collusion, fraud or any other known mode of challenging the decree. At this state, Mr. Gurcharan Sing appearing for the Gram Panchayat rightly contends that the Gram Panchayat had been bonafidely litigating in a wrong forum and, therefore, the period spent in the litigation before the authorities concerned up to the date of decision given by this Court should be excluded from computing the period of limitation if the Gram Panchayat is to file a title suit. In the totality of the circumstances, the contention of the learned counsel for the Gram Panchayat as noticed above is accepted. This petition is allowed with the observations made above but there will be no order as to costs.