

(2003) 04 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 32632 of 2002 and Civil Writ Petition No. 10321 of 1992

Bachna and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2, 7(2)

Citation : (2003) 135 PLR 208 : (2004) 1 RCR(Civil) 82

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : V.B. Aggarwal, for the Appellant; Amol Rattan Singh, A.A.G. and R.S. Manhas, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This judgment shall dispose of Civil Misc. Application No. 32632 of 2002 as well as the main writ petition.

2. The petitioner have filed the instant writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus declaring the amended provisions of Section 2(g)(4)(b), proviso to Section 13(B) and Section (7) of the Punjab Village Common Lands (Regulation) Haryana Amendment Act. 1992 (Haryana Act No. 9 of 1992). amendment of which has been made vide notification dated 11.2.1992, as ultra vires and unconstitutional and further to declare that the amended provisions have no adverse effect on the rights of the petitioners and further for issuance of a writ in the nature of mandamus directing the Assistant Collector. 1st Grade Kuruk-shetra (respondent No. 2) and Gram Panchayat, village Sunarian (respondent No. 3) not to dispossess the petitioners from the land in question.

3. In the petition, the petitioners have averred that they are the residents of village Sunarian. Tehsil Thanesar. Distt. Kurukshetra. During the consolidation of

Holdings in village Sunarina, a big chunk of land, including the land in question (which is nearly 47 acres of land), was reserved as Charand for grazing of cattle by the inhabitants of the village. It has been recorded as "Charand" in the revenue record. This "Charand" was in fact a forest, which was used for grazing of cattle. The Gram Panchayat, Sunarian (respondent No. 3) had leased out this land to the petitioners. The petitioners had made the disputed land of "Charand" cultivable by spending a huge amount. They have been recorded as "Gair Marusi" in the revenue record i.e. jamabandi for the year 1989-90. In the column of ownership, the word "Panchayat Deh" has been mentioned. It has been further averred that the Sarpanch of the Gram Panchayat was inimical towards them, therefore, the Gram Panchayat has instituted an ejectment application against them u/s 7(2) of the Punjab Village Common Lands (Regularisation) Act, 1961 (hereinafter referred to as "the Act") in the Court of Asstt. Collector, 1st Grade, Kurukshetra. It has been further pleaded that since they are in possession of the disputed land, as "Gair Marusi" therefore, their possession can not be termed as unauthorised and illegal. Therefore, the provisions of the Act have no application to them and the initiation of proceedings against them u/s 7(2) of the Act by the Gram Panchayat is without jurisdiction and are liable to be quashed. It has been further averred that the land in dispute being a part of the Charand is Shamlat Deh, therefore, the provisions of the Act do not apply to the present case and the petitioners at the most can be ejected from the land in dispute under the provisions of Punjab Security of Land Tenure Act, 1953. The petitioners further pleaded that the land in dispute has been described as "Panchayat Deh" in the revenue record, therefore, it does not fall under the Shamlat land, as defined under the Act and provisions of the Act are not applicable. As such, their ejectment cannot be ordered u/s 7(2) of the Act by the Assistant Collector, 1st Grade. The petitioners have also challenged the vires of Section 7 of the Act which empower the Asstt. Collector, 1st Grade to impose penalty on the illegal occupant of the Shamlat Deh while ordering the ejectment, as well as the provisions of Section 13(B) of the Act. which provides that before challenging the order of ejectment passed by the Asstt. Collector 1st Grade, the person in unauthorised occupation is required to deposit the amount of penalty imposed upon him.

4. The aforesaid writ petition was listed for motion hearing for the first time before a Division Bench of this Court on 6.8.1992. On that date the writ petition was admitted on the statement of the counsel for the petitioner that the controversy in the writ petition is squarely covered by the controversy in C.W.P. No. 5781 of 1991, which already stood admitted: and it was ordered to be heard with C.W.P. No. 5781 and dispossession of the petitioners was stayed.

5. It is pertinent to mention here that the controversy in C.W.P. No. 5781 of 1991 is entirely different. In that writ petition the order passed by the Collector, Kurukshetra vide which the petitioner in that case was ordered to be ejected from the land belonging to Gram Panchayat was challenged inter alia on the ground of res judicata. In that case, the constitutional vires of the amended

provisions of Act No. 9 of 1992 were not challenged at all.

6. Pursuant to the notice issued, separate written statements were filed by respondent No. 1 as well as respondent No. 3. In its written statement the respondent No. 3-Gram Panchayat disclosed in the preliminary objection that the petitioners had filed a civil suit before coming to this Court and the said civil suit was dismissed as withdrawn simplicitor on 22.7.1992 without taking any liberty to file the present writ petition. Therefore, the writ petition is not maintainable. It has been further pleaded that the petitioners are not in any way affected by the amendment made vide Haryana Act No. 9 of 1992 as in the writ petition. They admitted that the land in dispute belongs to the Gram Panchayat and the same was reserved for "Charand" in the consolidation for the common use. It has been further pleaded that the petitioners got the aforesaid writ petition admitted by mentioning the No. of a writ petition which has nothing to do with the controversy in this writ petition and obtained the order of stay of their dispossession. It has been further plead that there is no substance in the writ petition as the disputed land is admittedly a Charand land and such land falls under the definition of "Shamlat Deh". It has been further pleaded that the petitioners took the land in dispute on lease from the Gram Panchayat and they did not vacate the same after the expiry of the lease period. Thereafter they are in unauthorised and illegal occupation of the same. Therefore, they can only be ejected under the provisions of Act and in this regard the respondent-Gram Panchayat has already initiated the proceedings for ejectment of the petitioners u/s 7(2) of the Act.

7. On 23.10.2002, the petitioners filed Civil Misc. Application No. 32632 of 2002 under Order 6 Rule 17 read with Section 151 of the CPC for amendment of the writ petition. By the proposed amendment, the petitioners want to challenge the order dated 31.7.93 passed by the Assistant Collector, 1st Grade, Thanesar vide which they were ordered to be ejected from the land in dispute u/s 7(2) of the Act. Admittedly, against the aforesaid order passed by the Assistant Collector, 1st Grade, a remedy of appeal has been provided under the Act, which is to be filed within 30 days from the date of the order, but no such appeal was filed against the said order. The petitioners wants to challenge the aforesaid order on the ground that the provisions of the Act are not applicable to the land in dispute which is Panchayat Deh. According to them there is a difference between the Panchayat Deh and Shamlat Deh. The provisions of the Act are applicable only to the land which is Shamlat Deh. therefore, the order dated 31.7.1993 passed by Assistant Collector, 1st Grade, Thanesar is wholly without jurisdiction and the same is liable to be quashed.

8. The aforesaid application filed by the petitioners has been opposed by respondent No. 3. In reply to the said application, it has been submitted that the petitioners cannot be allowed to amend the petition at the belated stage. The period of the limitation for filing the appeal has already been expired. But, against the order passed by the Assistant Collector 1st Grade, no appeal was

filed. Now at this stage, without availing the alternative remedy, the petitioners cannot be allowed to challenge that order straightaway in the writ petition.

9. I have heard the arguments of the learned counsel for the parties on the aforesaid Civil Misc. Application as well as the main case and have perused the record of the case.

10. I am of the opinion that the petitioners cannot be allowed to amend the petition at this belated stage to challenge the order dated 31.7.1993 passed by the Assistant Collector, 1st Grade. Admittedly against the order of ejectment passed by the Assistant Collector, 1st Grade, u/s 7(2) of the Act, the remedy of appeal has been provided u/s 13(B) of the Act which is required to be filed within a period of 30 days from the date of passing of the order. The petitioner did not avail the said alternative remedy. Now, they cannot be permitted to challenge the said order directly in the writ petition after a period of about 10 years.

11. The learned counsel for the petitioners submitted that the petitioners did not challenge the aforesaid order passed by the Assistant Collector, 1st Grade as the matter was pending before this Court in which dispossession of the petitioners was stayed, and the learned Assistant Collector, 1st Grade has passed the order of ejectment against them subject to the decision of this writ petition. I have perused the order dated 31.7.1993 passed by the Assistant Collector, 1st Grade which has been annexed with the application for amendment of the writ petition. I do not find any such observations in that order only it has been mentioned that the Gram Panchayat can obtain the possession of the land in question after decision regarding stay in the aforesaid writ petition. Therefore, there is nothing in the said order which debarred the petitioners from challenging the said order in appeal before the appropriate authority. Vide the said order, a penalty has also been imposed on the petitioners at the rate of Rs. 10,000/- per hectare per year. Before filing the appeal, the petitioners are required to deposit the said amount of penalty. The petitioners want to avoid to make that payment. Therefore, keeping in view all these factors, the petitioners cannot be allowed to amend the writ petition at this stage to challenge the validity of the order dated 31.7.1993 passed by the Assistant Collector 1st Grade, Thanesar. Hence, Civil Misc. Application No. 32632 of 2002 filed by the petitioner is dismissed.

12. I also find no force in the writ petition filed by the petitioners. In the petition, the petitioners themselves have admitted that the land in dispute is a part of the Charand land which was reserved in the consolidation for common purposes of the village. It is also undisputed that in the revenue record the land has been described as "Charand" under the ownership of the Panchayat Deh much prior to the amendment made in the Act vide Haryana Act No. 9 of 1992. Therefore, the amendment made vide this amended Act under the definition of Section 2(g)(4), (6). Proviso to Section 13(B) and Section (7) of the Act has nothing to do with the controversy involved in the present writ petition. The challenged of the petitioners to the aforesaid amended provisions is totally misconceived. The only contention of the learned counsel for the petitioners in this writ petition is that

the land in dispute has been recorded in the revenue record under the ownership of Panchayat Deh. According to the learned counsel there is difference between the Panchayat Deh, then the provisions of the Act are not applicable, which only apply with regard to the Shamlat Deh. Therefore, the ejectment application filed by the respondent-Gram Panchayat against them u/s 7(2) of the Act is wholly illegal and without jurisdiction. He submitted that the petitioners can only be ejected by the Gram Panchayat by filing the eviction petition under the provisions of the Public Premises and Land (Eviction & Rent Recover) Act, 1973. In support of his contention, the learned counsel for the petitioners relied upon the decision given by this Court in Smt. Shakun-tla Devi v. State of Hayana and Ors. C.W.P. No. 16900 of 1992, decided on November 23, 2002.

13. On the contrary the learned counsel for the respondent-Gram Panchayat submitted that the land in dispute is Charand land which was reserved for common purposes of the village in the consolidation. Such land clearly falls within the definition of Shamlat Deh as defined in Section 2(g)(1) of the Act which provide that Shamlat Deh includes the land described in the revenue record as Shamlat Deh or Charand" excluding abadi deh. Once the land has been described as "Charand" in the revenue record, the same falls within the definition of Shamlat Deh and the provisions of the Act became applicable. In support of his contention, the learned counsel for the respondent-Gram Panchayat relied upon the decision of the Hon''ble Supreme Court in Shish Ram and Ors. v. State of Haryana and Ors. 2000(2) P.L.J. 72.

14. After considering the respective contentions raised by the learned counsel for the parties. I am of the opinion that the land in dispute, which has been recorded as "Cha-rand" in the revenue record, falls under the definition of Shamlat Deh as defined u/s 2(g) (1) of the Act. Therefore, the provisions of the Act are applicable on such land. In Shish Ram's case (supra), the Hon''ble Supreme Court has held that the "Charand" land reserved for grazing of cattle falls within the definition of Shamlat Deh as defined in Section 2(f) of the Act and no distinction can be made between Charand and Shamlat Deh. The plea of the proprietors that the Charand land could not vest in the Gram Panchayat under the Act was rejected and it was held that even the Gram Panchayat can lease out the Charand land for cultivation.

15. In view of the aforesaid decision of the Apex Court, I am of the opinion that the petitioners, who are in illegal occupation of the land in dispute, can be ejected u/s 7(2) of the Act by the Assistant Collector 1st Grade. They had taken the land in dispute on lease from the Gram Panchayat. Their lease period had already expired. After the expiry of their lease period, they did not hand over the possession of the land in dispute to the respondent-Gram Panchayat. It is well settled that the possession of a lessee of the Gram Panchayat after the expiry of the lease period shall be deemed to be unauthorised and illegal in view of Rule 19 of the Punjab Village Common Lands (Regulation) Rules. 1964. and he is liable to be evicted u/s 7(2) of the Act. In this regard, the reference an be made to the decision of Hon''ble Supreme Court in Gurnam Singh and Others Vs. Sub-

Divisional Officer (Civil) Kaithal and Others, and the decisions of this Court in Hussan Lal Vs. Krishna Devi, Roshan alias Roshan Lal and Ors. (1998)120 P.I .R. 651 (F.B.): Baldev Singh Vs. State of Punjab and Others, : Mam Deen v. State of Haryana and Ors. (2001)127 P.L.R. 563.

16. In such situation the petitioners are also not entitled to any protection under the provisions of the Punjab Security of Land Tenures Act, 1953. The decision cited by the learned counsel for the petitioners in Shakuntla Devi's case (supra) is not applicable in the facts and circumstances of the present case.

17. Recently a Full Bench of this Court in Jai Singh and Others Vs. State of Haryana, C.W.P. No. 5877 of 1992. decided on March 13, 2003, has held that the land earmarked in the consolidation for any common purposes of the village in a consolidation scheme prepared u/s 14 read with Rules 5 and 7 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, whether utilised or not, shall vest in the Gram Panchayat under the provisions of the Act. The validity of Section 7 and Proviso to Sub-section (1) of Section 13-B as substituted by the Haryana Act No. 9 of 1992, have been upheld.

18. In view of the aforesaid discussion. I find no merit in the present writ petition and the same is dismissed with costs which are assessed to Rs. 25,000/-.