

(1984) 07 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1179 of 1982

Bagga Singh

APPELLANT

Vs

Commissioner, Ferozepur Division, Ferozepur and Another

RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 18, 8
Punjab Gram Panchayat (Common Purposes Land, Eviction and Rent Recovery) Act,
1976 — Section 23A, 3
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 2,
4, 5

Citation : AIR 1986 P&H 172

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Judgement

1. This judgment will dispose of 8 petitions, C.W.P. Nos. 1179 and 1231 to 1237 of 1982 which involve similar facts and common questions of law. For the purpose of this judgment facts of C.W.P. No. 1179 of 1982 have been noticed.

2. The Gram Panchayat Awa moved an application under Ss. 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for Short, called the Eviction Act) for the ejectment of the petitioners from the land in dispute measuring 3 Kanals comprised of Killa No. 15/2/2., rectangle No. 27 situate at village Awa with the allegation that the said land was reserved for a common purpose and its management vests in the Gram Panchayat and that the petitioners was in its unauthorised occupation. The petitioners controverted the claim and pleaded that the land belongs to the proprietary body of the village and he being on eof them was in its possession as its owner. In the alternative, he asserted ownership by adverse possession. The Collector after recording evidence of the parties ordered ejectment of the petitioners holding that the management and control of the land vests in the Panchayat the same having been reversed for common purposes under S. 18 of the East Punjab Holdings

(Consolidation and Prevention of Fragmentation) Act. 1948 (hereinafter referred to as the Consolidation Act). The finding of the Collector was affirmed on appeal by the commissioner vide orders annexure p3, dated January 19, 1982. It is this order which has been assailed though this petition under Art. 226 of the Constitution.

3. It is not disputed that by virtue of the provision of S. 3 of the Punjab Gram Panchayat (Common purposes land) Eviction and Rent Recovery, 1976 (for short, called the 1976 Act), common purposes land as defined in S. 2(a) shall be deemed to be public premises for the purposes of the Eviction Act. According to the said definition common purposes land means the land reserved for common purposes of the village under S. 18 of the Consolidation Act the management and control where of vests in the Gram Panchayat under S. 23A of the aforesaid Act. Though the authorities below have recorded a concurrent finding that the land in dispute was common purposes land but this finding is based on no evidence because the entries in the revenue record which have been relied upon do not show that the land in dispute was reserved for any common purpose. A list of the land reserved for common purposes under S. 8 of the consolidation Act has been attached by the petitioners as annexure P1/1. Against item NO. 18 it is stated that 80 Kanals of land has been reserved for passages to agricultural land. However no details of this land have been mentioned in this list. In the jamabandis, annexures R1 and R2 produced by respondent No. 3 the land is shown under cultivation of Gulab singh, co-sharer, till the year 1973. Thereafter, in the jamabandi for the year 1978-79, the land in annexure R3 is shown to be in the name of Bagga Singh petitioners. From the entries in the jamabandi it is clear that the land is being used for agricultural purpose and not for any common purpose. The list of the land reserved for common purposes, annexure p1/1 also does not show that the land in dispute was included in the reserved 50 Kanals area. However, the learned counsel for respondent Nos. 1 and 2 pointed out that the petitioners had admitted in para 3 of his petition that the land in dispute formed part of those 50 Kanals of land which was reserved for passages. No doubt, it is so stated but the petitioners has further stated that only two kanals of land out of those 50 kanals was utilised for passage and the remaining 48 kanals was left as Bachat land and entered in the jamabandi in the ownership of proprietary body of the village. This averment of the petitioners has not been denied in the written statement. The entries in the jamabandi also support the contention of the petitioners that the land in dispute was Bachat land and as such entered in the name of the proprietary body of the village. Consequently even if as stated in para 3 of the petition, the land in dispute was reserved for passage, if it was not so utilised, it became Bachat land. If it had been utilised for the purposes stated in entry No. 18 then it would have been shown as Rasta (passage) within the jamabandi. Thus, there was no evidence on the record before the authorities below to support the finding that the land in dispute was reserved for any common purpose.

4. For any land to be common purposes land under the 1976 Act, two conditions

have to be satisfied that it was reserved for common purpose under S. 18 and its management and control vests in the Gram Panchayat under S. 23A of the Consolidation Act. No doubt, the land in dispute is entered in the name of proprietary body of the village in the revenue record but this fact alone would not be sufficient to draw an inference that it was reserved for common purposes of the village. As discussed above, the list of the land reserved for common purposes of the village as well as the entered in the jamabandi clearly show that the land in dispute though initially reserved for common purposes of the village but was never utilised for any such purpose and was entered in the name of the proprietary body of the village being Bachat land which means the area left over unutilised. The Panchayat, therefore, was not entitled to manage and control the land in dispute and as such the authorities below had no jurisdiction to order ejectment of the petitioners under the Eviction Act.

5. For the reasons recorded above, these petitions are allowed with costs and the impugned order quashed.

6. Petitions allowed