
(2004) 10 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3907 of 1983

Baij Nath and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Citation : (2005) 139 PLR 303 : (2005) 1 RCR(Civil) 805

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : G.S. Jaswal, for the Appellant; Raghubir Chaudhary, D.A.G. for Respondent Nos. 1 to 4, V.K. Jain and R.P. Bhasin, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, J.—Mr. Jaswai at the very start states that Baij Nath and Sheo Singh petitioners No.1 and 3 respectively have already died, whereas Sadhu Singh petitioner No. 2 is alive and he is pursuing the present petition in his representative capacity,

2. Sheo Singh (since deceased) alongwith one Tejpal Singh had filed a suit in their individual capacity and also on behalf of all the proprietors under Order 1 Rule 8 CPC against respondent No. 5 Gram Panchayat Kalsana, Tehsil Thanesar, District Kurukshetra on 24.8.1954 for permanent injunction, asserting therein that some land (suit land) had become shamlat deh due to river action and the plaintiffs, who were the land owners in the village and were in possession of the same, were apprehending that the gram panchayat would interfere with their possession over the said land, for which it should be restrained.

3. Respondent No. 5 while defending its case asserted that the land was shamlat deh and it vested into the Gram Panchayat u/s 3 of the Punjab Act 1954. The other objection raised by the Gram Panchayat was that the suit for injunction was not competent as the civil court was barred from taking cognizance.

4. The main issues inter alia framed by the Court were as to whether the land in

dispute has become shamlat due to river action and therefore the provision of Punjab Act 1 of 1954 do not apply to the same? and whether the civil court has the jurisdiction to try the suit or not?

5. The learned Sub Judge, 1st Class, Karnal vide order dated 17.10.1955 returned the finding in favour of the plaintiff, observing that the suit land had become shamlat deh due to river action and the provisions of Punjab Act 1 of 1954 are not applicable to the same and that the civil court had the jurisdiction to determine the title with regard to the immovable property as it is not barred by the provision of the Punjab Act 1 of 1954.

6. Sarpanch of the Village thereafter moved an application to the Patwari on 11.12.1975 regarding sanctioning of mutation of the shamlat land in favour of the Panchayat. When the mutation was presented in the General Public meeting, Sadhu Singh etc. objected to it, asserting that mutation No. 3941 already stood sanctioned on the basis of civil court judgment. Since the mutation turned out to be disputed one", it was placed before the Assistant Collector 1st Grade for decision. The subject matter was "disputed mutation No. 461 Head Bast No. 216 of village Kalsana". Vide Annexure P3 he came to the conclusion that the land in dispute does not fall within the definition of river action, the civil court had no jurisdiction to decide (be mutation matter after the same fell under the Punjab Village Common Lands (Regulation) Act (for short the Act) and for this reason, the civil court judgment dated 17.10.1955 on the basis of which mutation No. 4617 was sanctioned, had no effect. The land in dispute belongs to the Panchayat and the mutation No. 4617 was declared to be final and complete in all respects. The petitioners thereafter filed an appeal before the Collector and the same was also dismissed vide order dated 23.6.1981 (Annexure F4). The revision filed by the petitioners before the Commissioner also met the same fate vide order dated 24.7.1982 (Annexure P5). Still aggrieved, the petitioner knocked at the doors of the Financial Commissioner by filing a revision, which was also dismissed in limine vide order dated 18.1.1983, (Annexure P6). Hence this petition for quashing of all the four orders viz. Annexures P3 to P6.

7. I have heard Mr. G.S.Jaswal, Advocate, for petitioners, Mr. Raghubir Chaudhary, Senior D.A.G., Maryana for respondents No.1 to 4 and Mr. V.K. Jain, Sr. Advocate assisted by Mr. R.P. Bhasin, Advocate for respondent No. 5/Gram Panchayat. The entire record available on the file has also been perused.

8. Learned counsel for the petitioner has attacked the impugned orders on the ground firstly that in 1955 the civil court had passed a decree in favour of the village proprietors, holding that the land in dispute being subject to river action could not vest in the panchayat and earlier mutation No. 3941 has been attested on the basis of this court decree. The civil court decree cannot be ignored and the land in question would not form part of shamlat deh. The Revenue Officer had no jurisdiction to enter another mutation relating to the same matter and, therefore, the decision in favour of the Panchayat is not sustainable and the mutation, which is attested in favour of the panchayat deserves to be cancelled.

9. The learned counsel for the respondents while refuting the submissions made on behalf of counsel for the petitioners has submitted that there is no illegality in the orders of the revenue authorities and the same deserve to be upheld as the trial court decision was without jurisdiction and cannot be a bar on revenue authorities attesting the mutation in favour of the panchayat.

10. After heaving learned counsel for the parties, in my view the present writ petition deserves to be allowed.

11. The Punjab Village Common Lands (Regulation) Act came into force on 4.5.1961. In the instant case, the decree of civil court in favour of the petitioners is dated 27.10.1995. In other words, the decree is much prior to the coming into force of 1961 Act. Such a decree holds good and cannot be ignored. In a similar situation, the legal position was elaborately discussed in a case captioned "Gram Panchayat Darbi v. Narender Singh and Ors.",! 2003 (1) P.L.J. 550. This is the latest view and is a clincher wherein it is observed that decree passed prior to 4.5.1961 cannot be held to be illegal or void on the ground of Section 13-A of 1961 Act. I very respectfully agree with the above view.

12. Let us examine it from another angle. In the matter of mutations, the relevant and crucial provision is contained in Section 36 of the Punjab Land Revenue Act, 1887, which deals with the disputed mutations and reads as under:-

" Determination of Disputes.- (1) If during the making revisions of preparation of any record or in the course of any enquiry under this Chapter a dispute arises as to any matter of which an enquiry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion, or on the application of any party interested but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter.

(2) If in any such dispute the Revenue Officer is unable to satisfy him as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall by order direct that person be put in possession thereof, any that entry in accordance with that order be made in the record or register.

(3) A direction of a Revenue Officer under sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction".

13. It is manifestly clear that the determination of disputed mutation is subject to decree by the civil court. The jurisdiction of civil court is, thus, permanent even in mutations.

14. Apart from above legal position vis-a-vis a civil court qua mutation, the civil court's verdict has to be respected and obeyed. The execution of civil court verdicts are asserted to be ignored under Sections 13-A of 1961 Act, but the same is not applicable prior to 4.5.1961.

15. As a sequel to the aforesaid discussion, the net result is that the writ petition stands allowed and the impugned orders Annexures P3 to P6 passed by respondents No. 1 to 4 at different stages are hereby quashed. Parties to bear their own costs.