

(2010) 12 P&H CK 0651
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8622 of 2008

Balwant Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 3, 4, 5

Citation : (2011) 162 PLR 322

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—This order shall dispose of Civil Writ Petition Nos. 8622, 6793, 9787 and 9803 of 2008, as they involve adjudication of similar questions of fact and law. For the sake of convenience facts have been taken from Civil Writ Petition No. 8622 of 2008.

2. The Petitioners pray for issuance of a writ in the nature of certiorari for setting aside orders dated 28.10.2005 and 01.08.2006, passed by the Collector, Sub Division, Samana and the Deputy Commissioner, Patiala, Exercising the powers of Commissioner, ordering their ejection, under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the Act).

3. The State of Punjab, through the Divisional Forest Officer, Patiala, filed a petition under Sections 4 and 5 of the Act for eviction of the Petitioners by pleading that the Petitioners are in unauthorised occupation of forest land without any lease or license.

4. In response, the Petitioners pleaded that the land in dispute does not belong to the Forest Department. The Collector, Sub Division, Samana, has held in a case decided in favour of the Petitioners predecessors that the land in dispute does not belong to the Forest Department. The eviction proceedings are,

therefore, barred by resjudicata.

5. Vide order dated 28.10.2005, the Collector, Sub Division, Samana, rejected the pleas raised by the Petitioners and ordered their ejectment. Aggrieved by this order, the Petitioners filed an appeal, which was dismissed by the Deputy Commissioner, Patiala, exercising powers of the Commissioner under the Act. The Petitioners, in Civil Writ Petition Nos. 6793 of 2008 and 9787 of 2008, filed writ petitions against these orders. The Petitioners prayed that as their applications for allotment of land are pending before the Government, the writ petitions should be dismissed as withdrawn. The writ petitions were dismissed as withdrawn with liberty to impugn orders of ejectment in case the land is not allotted.

6. Counsel for the Petitioners submits that in view of the order dated 28.09.1981, passed by the Collector, Sub Division, Samana, holding that the Forest Department has failed to prove its ownership, the present application is barred by resjudicata. It is further submitted that the Petitioners are in occupation of the land in dispute for the last more than 30 years. The land in dispute was left over after construction of the Bhakra Main Line Canal and as the Government has framed a policy for transfer of this land, the Petitioners cannot be ejected. Counsel for the Petitioners further submits that as the matter, regarding allotment of the land to the Petitioners, is still pending before the Government, a direction should be issued to the Government to consider the Petitioners request for allotment of this land. It is further argued that as the Petitioners are not "unauthorised occupants" as defined u/s 3 of the Act, the orders of ejectment are illegal and void and should be set aside.

7. Counsel for the State of Punjab, on the other hand, submits that the land in dispute vests in the Forest Department. The order dated 28.09.1981 does not pertain to the Petitioners or the Forest Department and, therefore, does not operate as resjudicata. It is further argued that as proceedings under the Act are summary in nature, there is no question of resjudicata. It is further submitted that in the order dated 28.09.1981, the Collector did not hold that the land does not belong to the Forest Department but dismissed the application by holding that relevant documents to establish that the land was entrusted to the Forest Department have not been produced. It is further submitted that as the Forest-Department has established that the land in dispute was transferred to the Forest Department in the year 1971, and as the Petitioners are neither lessees nor tenants of the Forest Department or the Irrigation Department, the orders directing their ejectment should be affirmed.

8. I have heard counsel for the parties, and perused the impugned orders.

9. As is apparent from the pleadings in the writ petition, and findings recorded in the impugned orders, the Petitioners have failed to adduce any evidence to establish a semblance of a legal right, to retain possession. The Petitioners have failed to refer to any lease deed, rent note, rent receipts or entries in the

revenue record that could even prima-facie establish that they are tenants/ licensee or have a right to remain in possession. In the absence of any such evidence or material, the Petitioners have been rightly held to be unauthorised occupants of forest land. At this stage, it would be appropriate to reproduce an extract from the order passed by the Collector:

I have gone through the file carefully and find that as per document Ex.P-1 to P/5 clearly establish the ownership of the provincial Govt. and in Col No. 5 of the jamabandi relating to the cultivation, it is mentioned that the Respondent is in unauthorised possession of same. The Respondent has not been able to show any grant, lease or licence of the Govt. in his favour. Further the orders passed earlier do not hold good in view of the rulings 2001 ACJ 457 SC and 1995 (2) CCC 662 (SC) and 1998 (1) PLJ 240 DB. A trespasser or person in unauthorised possession can not retain the possession of the Public Premises and his eviction is to be ordered in due course of law i.e. under this Act. The Respondent has not been able to make out any case, as to how he is entitled to retain the possession of the above said public premises. As the public premises as mentioned above is property of provincial Govt. The Respondent is not entitled to retain its possession any more and his eviction is liable to be ordered.

On one hand, the executive authorities keep removing the same encroachments made on public land passage, roads etc. and whereas in this case, the Respondents have occupied the public premises/land of the Govt. spread over many acres worth lacs of rupees without any reason i.e. without any grant, lease or agreement and are not paying anything to the owner/Govt. The Respondents have failed to prove as to how they come into the possession and are entitled to retain the possession of the above said public premises. Rather they are liable to pay to the Govt the damages for period for which they continued occupying the said land/public premises unauthorised. I, therefore, hold that the land described in the head note of this order is public premises and the Respondent is not entitled to remain in its possession and he is liable to be evicted therefrom.

10. An argument that an order dated 28.09.1981, passed by the Collector holding that the Forest Department has failed to establish its ownership operates as resjudicata, merits rejection. Proceedings under the Act are summary in nature and do not operate as resjudicata particularly with respect to finding relating to question of title. It would, however, be necessary to point out that vide notification dated 24.06.1958, all strips of Government waste lands, demarcated by boundary pillars whether under tree growth or not on either side of or adjacent to canals including new canals, feeders, distributries, minors and escapes etc. were declared as second class forests. Even otherwise, the Petitioners have not denied that the land does not belong to the State of Punjab. In the absence of any legal right to remain in possession of the land in dispute, the Petitioners are not entitled to any relief. The Petitioners' prayer that as their applications for allotment of the land are pending before the State Government, the ejectment orders should be kept in abeyance cannot be accepted. The

Petitioners have failed to refer to any policy framed by the State Government that empowers any department of the State of Punjab to transfer forest land much less to unauthorised occupants.

11. In view of what has been stated hereinabove, the writ petitions are dismissed with no order as to costs.