
(2010) 05 P&H CK 0123
In the Punjab And Haryana At Chandigarh

Bant Singh and Others	Vs	APPELLANT
The Joint Director, Panchayat and Others		RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7

Citation : (2010) 2 ILR (P&H) 357 : (2010) 3 RCR(Civil) 724

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The compendium of the facts, culminating in the commencement, relevant for disposal of the present writ petition filed by petitioners-Bant Singh and others, for quashing the impugned orders (Annexures P-3 and P-4) and emanating from the record, is that originally the respondent-Gram Panchayat, Hussainpura (for brevity "the Gram Panchayat") filed a petition (Annexure P-1) for ejectment of the petitioners from the land in question before the District Development and Panchayat Officer, exercising the powers of Collector, invoking the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as "the Act"). The Gram Panchayat claimed that although it (Gram Panchayat) is the owner but the petitioners have taken the illegal possession of the land in dispute.

2. In the wake of notice, the petitioners appeared and filed reply (Annexure P-2) to the application claiming themselves to be the owners and in continuous possession of the land in dispute for a period of more than twelve years preceding to the commencement of the Act, without payment of rent. The petitioners claimed that they are still in possession and their possession is protected u/s 4 of the Act. Some of the petitioners, being non-proprietors in the village, were stated to have constructed their residential houses on the land in dispute. The similar application filed by the Gram Panchayat against them was stated to have earlier been dismissed by the Collector vide order dated

31.03.1986. Therefore, the second petition was not maintainable.

3. The case set-up by the petitioners in brief, insofar as relevant, was that the land in dispute does not fall within the ambit of Shamlat Deh and, thus, the present application (Annexure P-1) was not maintainable. It will not be out of place to mention here that the petitioners have stoutly denied all other allegations and prayed for dismissal of the application preferred by the Gram Panchayat u/s 7 of the Act.

4. The District Development and Panchayat Officer, exercising the powers of Collector, allowed the application of the Gram Panchayat and ordered the eviction of the petitioners vide impugned order dated 01.07.1986 (Annexure P-3).

5. Aggrieved by the order (Annexure P-3), the petitioners filed the appeal, which was also dismissed by the Joint Director, Panchayat Punjab, exercising the powers of the Commissioner vide impugned order dated 04.09.1987 (Annexure P-4).

6. The petitioners still did not feel satisfied with the impugned orders (Annexures P-3 and P-4) and filed the present writ petition, mainly, on the grounds that they are owner in possession of the land in dispute, which does not fall within the definition of Shamlat Deh u/s 2(g) of the Act and the petition (Annexure P-1) u/s 7 of the Act was not maintainable. According to the petitioners, the authorities below fell in error in ejecting them from the suit land without any basis.

7. The Gram Panchayat contested the writ petition, filed reply stoutly denying the allegations contained in it, reiterated the pleadings mentioned in application (Annexure P-1) and prayed for dismissal of the writ petition. That is how I am seized of the matter.

8. Assailing the impugned orders, learned Counsel has contended with some amount of vehemence that the petitioners in their reply (Annexure P-2) has strongly pleaded, prima facie proved their ownership and raised the question of title. But the Collector ordered the eviction without deciding the question of title and, thus, the impugned orders are bad in law and contrary to the provisions of Section 7 of the Act. The argument further proceeds that even the impugned orders have been passed without application of mind and deserve to be set aside. He prayed for acceptance of the writ petition. In support of his arguments, learned Counsel has placed reliance upon a Division Bench judgment of this Court in case titled as Tara Chand and Fateh Singh v. Gram Panchayat and Gram Sabha of Village Atil and Ors. 1979 P.L.J. 5.

9. Hailing the impugned orders, on the other hand, learned Counsel for the respondents argued that the impugned orders were rightly passed by the authorities below and no interference is warranted in this regard.

10. Having heard the learned Counsel for the parties, having gone through the record of the case and the legal provisions with their valuable assistance and after considering the entire matter deeply, to my mind, as the impugned orders

cannot legally be sustained, therefore, the writ petition deserves to be accepted, for the reasons mentioned here-in-below.

11. It is not a matter of dispute that the petitioners claimed in reply (Annexure P-2) before the Collector that they are owner in possession of the land in dispute; some of the petitioners, who are non-proprietors in the village, have constructed their residential houses on it; their possession is protected u/s 4 of the Act and the land does not fall within the definition of Shamlat Deh u/s 2(g) of the Act. On the other hand, the Gram Panchayat claimed ownership of the land in question.

12. Not only that, the bare perusal of the record would reveal that the civil suit No. 50 dated 06.02.1985 for permanent injunction filed by the petitioners, was dismissed by the Sub-Judge Ist Class, Malerkotla vide judgment/decreed dated 12.03.1987, mainly, on the ground that the civil court has got no jurisdiction to adjudicate upon any question of title whether such property is Shamlat Deh or not. The lower appellate court disposed of Civil Appeal No. 38 of 1987 against the aforesaid judgment/decreed, titled as Babu Singh and Ors. v. Gram Panchayat village Hussainpura and Ors. vide order dated 21.09.1992 in the following manner:

Present: Sh. R.K. Jain, counsel for the appellants.

Sh. DPS Nandpuri, counsel for the respondents.

Sh. R.K. Jain, counsel for the appellants and Sh. DPS Nandpuri, counsel for the respondents have made statement that regarding this very suit property between the same parties Civil Writ Petition No. 177 of 1988 is pending in the Hon''ble High Court and that writ was filed by present appellants. They have stated that any decision of the Hon''ble High Court in the above said writ petition shall be binding upon the parties and in accordance with that judgment of the Hon''ble High Court, this appeal shall be considered as disposed of and therefore, present appeal be consigned to records as disposed of.

In view of this statement of the counsel for the parties, the parties shall be bound by the decision of Hon''ble High Court and this appeal shall be considered as disposed of in accordance with that decision. This appeal be consigned to as disposed of.

13. Meaning thereby, the question of title is clearly involved in this case. Above being the position on record, now the core question that arises for determination in this petition is, that at what stage and which authority will decide the question of title of the land in dispute between the parties.

14. As indicated earlier, the Gram Panchayat filed the ejectment petition (Annexure P-1) invoking the provisions of Section 7 of the Act, which postulates that the Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance

with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village, which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

15. Proviso to Sub-section (1) of this Section further posits that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the samilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim u/s 11 and till the question is so determined, the application shall remain pending.

16. A combined reading of Section 7 of the Act would reveal that it was incumbent upon and the statutory/mandatory duty of the Collector was to first decide the question of title and without deciding the question of title, at the first instance, the Collector was not legally competent to order the ejectment of the petitioners.

17. An identical question came to be disposed of by a Division Bench of this Court in Tara Chand and Fateh Singh's case (supra). Having interpreted the similar provisions of the Act, as applicable to Haryana, it was, inter alia, ruled as under:

The Assistant Collector 1st Grade conducting proceedings u/s 13-B is a Tribunal of wider jurisdiction as compared with the same officer u/s 7. The latter is a Tribunal of comparatively limited jurisdiction. The Tribunal of limited jurisdiction cannot oust the jurisdiction of a Tribunal with wider jurisdiction even if both the Tribunals are manned by the same person. The separate statutory provisions are made for achieving the interest of justice and the parties cannot be denied their right to have their claims adjudicated from the proper forum by the officers manning such Tribunals, by adopting short-cut methods of summary enquiry. In the case in hand, the Assistant Collector 1st Grade, Sonapat, while passing orders Annexure P-2 to the petition u/s 7 for the eviction of the petitioners from the land in dispute, travelled beyond the scope of his jurisdiction under that Section to determine the question of title which was raised before him. When the question of title was raised by the petitioners, the appropriate procedure to be adopted by him should have been either to convert himself into a Tribunal u/s 13-B of the Act and proceed in accordance with the procedure laid down for determination of the title or ask the petitioners raising the question of title to move appropriate petitions before him u/s 13-B. He could keep the proceedings u/s 7 in abeyance till the final determination of the question raised before him u/s 13-B. Such a procedure is to further the purpose of the amendment of the Act by avoiding unnecessary delay in the proceedings as has been occasioned in the case in hand. He could not opt for an easier course for the sake of convenience to try the case in a summary manner. The rights of the petitioners have been

prejudiced by denial to try their case u/s 13-B in accordance with the provisions of CPC and this has resulted in failure of justice.

18. The same view was reiterated by this Court in *Sewa Ram and Kanwar Bhan v. Gram Panchayat Village Shergarh Tapu and Ors.* in CWP No. 3776 of 1989 decided on 03.11.2009.

19. As is evident from the record, the petitioners have specifically raised deep questions of title in their reply (Annexure P-2) and prima facie case was made out in support thereof, but the Collector ordered their ejectment in a routine manner, without deciding the question of title and hence, failed in his statutory duty in this relevant connection. Even, the revenue record Annexures P-5 to P-7 depicted the possession of the petitioners over the land in dispute. Once, it is proved that the petitioners have raised and prima facie proved such valid and legitimate question of title, in that eventuality, the Collector ought to have stayed his hand as regard to ejectment petition was concerned at that stage and it was incumbent upon him to decide the question of title, at the first instance, as per Section 7 of the Act before passing the order of ejectment against the petitioners. The legislative intent and mandate underlying the proviso to Sub-section (1) of Section 7 of the Act, to avoid unscrupulous ejectments, is clear and implicit in this respect, which admittedly, the Collector has omitted to follow. Meaning thereby, the Collector has failed to perform his statutory duty and illegally passed the impugned order (Annexure P-3) and the appellate court has also dismissed the appeal in a mechanical manner inculcating and perpetuating the injustice to the petitioners vide order Annexure P-4, which cannot legally be sustained, under such circumstances.

20. There is another aspect of the matter which can be viewed from a different angle. What to talk of deciding the question of title as envisaged u/s 7 of the Act, even the Collector did not afford adequate opportunity to the petitioners, closed their evidence and decided such an important matter vide impugned cryptic order (Annexure P-3) having only observed as under:

After hearing the arguments of the counsel for the applicant and after examining the record on the file I have come to the conclusion that the owner of the land in dispute is Gram Panchayat. The possession of the respondents on the land is illegal which may immediately be got removed. The application of the applicant is allowed.

21. The same very mistake was repeated by the Commissioner while passing the impugned order (Annexure P-4). It means, the impugned orders (Annexures P-3 and P-4) passed by the Collector and the Commissioner are the non-speaking orders and lacks application of mind in this regard. The Collector ought to have discussed the evidence on record and was legally required to record valid reasons for arriving at a right conclusion in order to decide the real controversy between the parties in the right perspective. Such statutory authorities should act independently instead of acting as a representative of the State/Gram Panchayat.

It is now well-recognized principle of law that every action of such authority must be informed by reasons. The order must be fair, clear, reasonable and in the interest of fair play. Every order must be confined and structured by rational and relevant material on record, which is totally missing in this case. Hence, the impugned orders cannot be maintained on that count as well. Therefore, the contrary arguments of the learned Counsel for the respondents "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances. The law laid down in the aforesaid judgments "mutatis-mutandis" is applicable and the complete answer to the problem in hand. That being so, the matter deserves to be remanded for fresh decision on the question of title by the Collector, in the obtaining circumstances of the case.

22. In the light of aforesaid reasons, thus seen from any angle and without commenting further anything on merits, lest it may prejudice the case of either side during the adjudication of question of title between the parties, this writ petition is hereby accepted. The impugned orders (Annexures P-3 and P-4) are set aside. The matter is remitted back to the Collector for its fresh decision on the question of title, after affording adequate opportunity to the parties to lead their respective evidence, in accordance with law and then to pass appropriate order, as warranted by the situation. However, it is made clear that nothing observed in this judgment would reflect, in any manner, on merits of the main case, because the same has been so recorded for a limited purpose of deciding the instant writ petition.

23. The parties are directed to appear before the Collector on 21.07.2010.