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**(1986) 12 P&H CK 0035**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 4295 of 1979

Bhag Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

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**Date of Decision :** 09-12-1986

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1986) 12 P&H CK 0035

**Hon'ble Judges :** M.R. Agnihotri, J

**Bench :** Single Bench

**Advocate :** R.S. Mittal and Mr. N.K. Khosla, for the Appellant; H.S. Nagra for A.G. Punjab and Mr. Puran Chand, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.R. Agnihotri, J.—This judgment will dispose of five writ petitions Nos. 4295 of 1979, and 315, 316, 306 and 307 of 1980. Since common questions of fact as also of law are involved in all these cases, it is agreed between the parties that all these writ petitions should be decided by one and the same judgment.

2. Briefly narrating the factual position from Civil Writ Petition No. 4295 of 1979, the Petitioners claim to be the owners of certain land situated in the revenue estate of village Ganeshpur, Tehsil and District Patiala. According to their allegations, they have been in possession of the suit land for the last more than fifteen years. On 26th February, 1976, apprehending threat to their peaceful enjoyment of the land and interference in their possession, the Petitioners filed a suit in the Court of Subordinate Judge Ist Class, Patiala, against the Gram Panchayat and Gram Sabha of village Ganeshpur. It was a suit for declaration in which prayer for permanent injunction for restraining the Defendants from interfering in their possession of the land in dispute was also made. The Gram Panchayat contested the suit by taking the stand that the Plaintiffs were not the owners of the land in dispute and were not entitled to the relief prayed for. However, the learned Subordinate Judge Ist Class, Patiala, after considering the

long continuous possession of the Plaintiffs and an earlier judgment of the Civil Court, decreed the suit of the Plaintiffs (including the present Petitioners) for declaration that they had become the owners in possession of the land in dispute and also granted permanent injunction restraining the Defendant Gram Panchayat from interfering in their possession of the land in dispute. The date of the said judgment (Annexure P-1) and of the decree (Annexure P-2) of the learned Subordinate Judge is 17th April, 1976, which would be relevant and of significance for the purposes of decision of the present writ petition.

3. The judgment and decree of the learned Subordinate Judge became final between the parties and binding on them in the sense that the same were not challenged by way of appeal, etc. In the meantime, the Punjab Village Common Lands (Regulation) Act, 1961 (Punjab Act 18 of 1961) was amended by the Punjab Legislature by an amending Act (Punjab Act No. 19 of 1976). The amending Act, that is. the Punjab Village Common Lands (Regulation) (Amendment) Act, 1976, received the assent of the President of India on the 15th April, 1976, which assent was published in the Punjab Gazette (Extraordinary), Legislative Supplement, Part 1, dated 27th April. 1976. By virtue of Section 7 of the amending Act, Section 13 of the principal Act of 1961 was substituted to read as under:

13. Bar of jurisdiction of civil courts.-No civil court shall have jurisdiction-

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not shamlat deh vested or deemed to have been vested in a Panchayat under this Act ; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.

4. After the amending Act came into force it appears that it was for the first time on 12th September, 1979, that an application (Annexure P-3) was submitted by the Gram Panchayat, Ganeshpur, Tehsil and District Patiala, to the Collector, Patiala, for putting the Panchayat in possession of the land in dispute which, according to the Panchayat, came to be vested in it. It was inter alia prayed in the application that the present Petitioners, Bhag Singh and others, who were unauthorised occupants of the land in dispute should be dispossessed and be ordered to pay to the Panchayat lease money at the prevailing rates for the years they have been cultivating the land. It was on receipt of this application that the impugned notice dated 7th November, 1979 (Annexure P-4), was issued by the Collector, Patiala, to two of the Petitioners. Through the impugned notice, the Petitioners were required to present themselves in the Court of the Collector, Patiala, on 17th November, 1979, and to explain as to why they should not be ejected from the land in dispute. It is against this notice that the Petitioners have approached this Court on 26th November, 1979, by way of this writ petition

under Articles 226 and 227 of the Constitution of India.

5. The writ petition has been contested by the State of Punjab, through the Deputy Director, Panchayats, the Collector (District Development and Panchayat Officer), Patiala, and the Gram Panchayat, Ganeshpur, through its Administrator.

6. Though Mr. R. S. Mittal, learned Senior Advocate, appearing on behalf of the Petitioners, has vehemently challenged the constitutionality of certain provisions of the amending Act (Punjab Act No. 19 of 1976), as also the legality of the impugned notice, Annexure P-4, yet, after hearing the learned Counsel for the parties at length, I feel that all these writ petitions deserves to be allowed and the impugned notice deserves to be struck down on a very short and different ground.

7. According to Mr. Mittal, Sections 7 and 8 of the amending Act (Punjab Act No. 19 of 1976) have the effect of taking away the jurisdiction of Civil Courts by substituting the existing Section 13 and by inserting Section 13-B in the Act. According to the learned Counsel, these provisions have not only neutralised and nullified the effect of Civil Court decrees but have also ousted the jurisdiction of Civil Courts for all times to come thereby taking away judicial functions entrusted to the law Courts by the Constitution. In support of his proposition, he has placed firm reliance on a Division Bench judgment of this Court reported as *Bajender Singh v. The Assistant Collector Ist Grade, Ghula, District Kurukshetra and Ors.* (1983) 85 P. L. R. 528, in which the identical amendments made to the same Act, that is, the Punjab Village Common Lands (Regulation) Act, 1961, in its application to the State of Haryana, were struck down so far as their retrospectivity was concerned.

8. On the other hand, Mr Puran Chand, learned Counsel appearing on behalf of the Respondents, has vehemently argued that the Civil Court decree was wholly without jurisdiction and collusive in nature. He has further stressed that the amending Act (Punjab Act No. 19 of 1976) by adding Section 13-B has provided for overriding effect to the amended provisions of the Act which, in turn, have the effect of invalidating and nullifying the decrees of the Courts if they have held anything contrary to the provisions of the Act itself. In support of his propositions, the learned Counsel has placed reliance on a Single Bench decision of this Court in *Bara Singh v. State of Punjab* 1978 P. L. J 69, and a Division Bench judgment in *Gram Sabha Balad Kalan v. Sarwan Singh* 1981 P. L. J. 311. The learned Counsel has also taken an objection to the maintainability of the writ petition on the ground that it is wholly premature as the same has been filed only against the show-cause notice issued by the Collector to the Petitioners.

9. The Punjab Village Common Lands (Regulation) (Amendment) Act, 1976, which has been earlier referred to as the amending Act, does not by itself provide any date of commencement of the Act. All what has been provided in Section 1, Sub-section (2) of the amending Act is that "it shall come into force at once." As already noticed earlier, the amending Act (Punjab Act No. 19 of 1976)

received the assent of the President of India on the 15th April, 1976, but the same was published in the Punjab Gazette (Extraordinary), Legislative Supplement, Part I, dated 27th April, 1976. In this situation, the words "at once" used in the commencement clause of the amending Act would relate to 27th April, 1976, when the assent was published in the Punjab Gazette and not to 15th April, 1976, when the amending Act received the assent of the President of India. For coming to this conclusion, reference is required to be made to Section 3 of the Punjab General Clauses Act, 1898, which reads as under:

3. Coming into operation of enactments.-Where any Punjab Act is not expressed to come into operation on a particular day, then-

(a) in the case of a Punjab Act made before the commencement of the Constitution, it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor-General, or His Majesty, as the case may require, is first published in the Official Gazette and if it is an Act of the Governor on the day on which it is first published as an Act in the Official Gazette ; and

(b) in the case of a Punjab Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the Official Gazette, and in every such Act the date of the first publication thereof shall be printed either above or below the title of the Act and shall form part of every such Act.

It would be interesting to note that Section 3 of the Punjab General Clauses Act, 1898 (Punjab Act 1 of 1898) which applies to the interpretation of the amending Act of 1976, like any other Punjab Act, is quite the opposite of Section 5 of the General Clauses Act, 1897 (No. X of 1897) which applies to the interpretation of the Central Act enacted by the the Central Legislature as well as the Parliament. Section 5 of the General Clauses Act, 1897, provides as under:

5. Coming into operation of enactments.-(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,-

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General ; and

(b) in the case of an Act of Parliament, of the President.

(2) .....(Repealed).

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day proceeding its commencement.

From a comparison of the aforesaid two provisions, one contained in the Punjab General Clauses Act, 1898, and the other in the General Clauses Act, 1897, the

obvious conclusion is that whereas a Central Act comes into operation immediately on the date it receives the assent of the President of India, a Punjab Act, on the other hand, comes into operation only when such assent of a Punjab Act is first published in the Official Gazette.

10. Applying the aforesaid statutory provisions to the amending Act (Punjab Act No. 19 of 1978(sic)) for the purposes of the present case, Sections 7 and 8 of the amending Act, which provide for nullifying the effect of Civil Court decrees comes into force on 27th April, 1976, when it was first published in the Punjab Gazette (Extraordinary) and not on 15th April, 1976(sic), when the assent was given. Since the judgment and decree of the Civil Court in the present case is of 17th April, 1976, that is, earlier to 27th April, 1976, in point of time, its effect has not been nullified by the amending Act, which is only prospective in nature. The amending Act does not in any way provide that it would also invalidate the Civil Court decrees granted earlier to its commencement as was the case under the Haryana Act which was the subject-matter in the Division Bench judgment in Bajinder Singh's case (supra). As a result thereof, even if the provisions of Sections 7 and 8 of the amending Act of 1976 are not declared unconstitutional following the judgment in Bajinder Singh's case (supra), the decree of the Civil Court still holds goods as it is of a date earlier to the commencement of the amending Act and has become final between the parties, having not been challenged in appeal etc. To this extent, the impugned notice dated 7th November, 1979 (Annexure P-4). is without jurisdiction and is liable to be struck down by issuing a writ of certiorary.

11. The other argument of Mr. Puran Chand, learned Counsel for the Respondents, is that the writ petition is not maintainable as it has been filed only against the show-cause notice issued to the Petitioners. This argument is not tenable in view of the settled proposition of law that a citizen can approach the High Court under Articles 226 and 227 of the Constitution the moment he apprehends threat or injury to his right and he need not wait for the axe to fall. Since the impugned notice seeks to dispossess the Petitioners from the land in dispute over which they have got a long continuous possession, they are certainly entitled to invoke the writ jurisdiction of this Court. Hence, the objection is devoid of force.

12. Since in all the other four connected writ petitions (C.W.P. Nos. 315, 316, 306 and 307 of 1980) the dates of judgments and decrees of Civil Court are earlier to 27th April, 1976, that is, in C.W.P. Nos. 315, 316 and 306 of 1980, it is 17th April, 1976, and in C.W.P. No. 307 of 1980. it is 16th February, 1976, all these writ petitions also deserve to be allowed and the impugned notices are liable to be quashed.

13. In the result, all the five writ petitions succeeds and are allowed. The impugned notices issued by Respondent No, 2 are hereby quashed. Any proceedings already taken or under contemplation in pursuance of the impugned notices are also quashed being without jurisdiction. No costs.