

(2018) 07 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11849 Of 2015 (O&M)

Bhale Ram (Now Deceased) Through His Lr-Mahabir And
Another

APPELLANT

Vs

Director Panchayat, Haryana And Others

RESPONDENT

Date of Decision : 12-07-2018

Acts Referred:

Punjab Village Common Lands (Regulations), Act, 1961 — Section 2(g), 7, 7(1), 7(2)
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 12(4)

Citation : (2018) 3 RCR(Civ) 953

Hon'ble Judges : Mahesh Grover, J; Mahabir Singh Sindhu, J

Bench : Division Bench

Advocate : Dinesh Arora, Kirti Singh, Arun Jain, Manvir Singh Rana

Final Decision : Dismissed

Judgement

(1) Present writ petition has been filed by the petitioners under Articles 226/227 of the Constitution for issuance of a writ in the nature of certiorari for quashing of impugned order dated 05.08.2002 (Annexure P-11), passed by respondent No.2-Collector, Rohtak (for short 'Collector'), vide which, their appeal has been dismissed and order dated 07.05.2002 (Annexure P-10), passed by respondent No.3-Assistant Collector 1st Grade,

Rohtak (for short 'A.C. 1st Grade'), thereby issuing warrant of possession in favour of respondent No.4-Gram Panchayat, Bhaiyapur, Rohtak (for short 'Gram Panchayat'), has been affirmed.

Further challenge is to the memo dated 04.02.2015 (Annexure P-16), issued by respondent No.1-Director General, Development and Panchayat Department, Haryana (for short 'Director, Panchayat'), intimating petitioner No.1-Bhale Ram that his representation for purchase/exchange of land in lieu of the property in dispute has been rejected by the Gram Panchayat, vide Resolution No.1 dated 12.02.2014 (Annexure R-4/2).

(2) Following facts are established from the record of the case that the Gram Panchayat filed an application under Section 7 of the Punjab Village Common Lands (Regulations), Act, 1961 (for short 'the Act') for ejectment of the petitioners from the shamilat deh land comprised in Khewat No.164, Rect. No.33//25, 34//19, 20, 21 and 22, total measuring 40 Kanals, situated within the revenue estate of Village Bhaiyapur, Tehsil and District Rohtak being in illegal possession.

After hearing both sides and taking into consideration the material available on record, the A. C. 1st Grade, vide order dated 04.07.1983 (Annexure P-2), found that the land in dispute is shamilat deh and Gram Panchayat is the owner thereof and consequently, came to the conclusion that the petitioners are in illegal possession. The operative part of the same reads as under:-

" From the perusal of the case file and after hearing the arguments of the counsel for the parties, I consider that the land in question is shamlat deh and the Gram Panchayat is its owner. The houses constructed over it have no importance because the Gram Panchayat had never given the land in question on lease or allotted to the respondents, therefore, they are in illegal possession. "

The above order was challenged by the petitioners before the Civil Court, but the same was dismissed by learned trial Court on 06.11.1986. Aggrieved against the same, an appeal was preferred which was also dismissed by learned Additional District Judge on 14.01.1987. Ultimately, both the above orders were challenged before this Court in Civil Revision No.758 of 1987, but the petitioners remained unsuccessful as the revision was dismissed on 05.03.1987 and consequently, the order dated 04.07.1983, passed by A.C. 1st Grade, attained finality.

(3) It is contended on behalf of the petitioners that they are in continuous possession of the land in dispute for the last more than 40 years and have constructed their residential houses. It is further argued that the petitioners have already offered to exchange their land in lieu of the property in dispute and in the alternative, they are also ready to pay the price of the land along with composition fees in terms of Rule 12(4) of the Punjab Village Common Lands (Regulation) Rules, 1964 (applicable to Haryana) [for short 'the Rules'].

On the other hand, learned Counsel for the respondents have opposed the contention of the petitioners and submitted that eviction order dated 04.07.1983, passed by the A.C. 1st Grade, has attained finality and admittedly, the petitioners are in illegal possession of the Shamilat deh. Therefore, the present writ petition deserves to be dismissed.

Learned Senior Counsel appearing on behalf of the Gram Panchayat further submitted that representation of the petitioners for purchase/exchange of the land was considered, but the same was also rejected, vide Resolution No.1 dated 12.02.2014 (Annexure R-4/2). It is next submitted that the petitioners belong to a different village i.e. Makrauli Khurd and are not even the residents of Village Bhaiyapur, where the land in dispute is situated and thus cannot claim the

benefit of Rule 12(4) of the Rules.

(4) It is necessary to mention here that during the interregnum, the Gram Panchayat filed a petition for execution of order dated 04.07.1983 (Annexure P-2) and after hearing both the sides, A.C. 1st Grade, Rohtak, vide order dated 07.05.2002 (Annexure P-10), accepted the same and issued warrant of possession regarding the land in dispute. Aggrieved against the aforesaid order, an appeal was preferred by the petitioners, but the same was dismissed by the Collector, vide order dated 05.08.2002 (Annexure P-11). Ultimately, the petitioners filed CWP No.14423 of 2002 against both the above orders and the same was disposed off by this Court, vide order dated 07.09.2002 (Annexure P-12), with an observation that the petitioners may move an appropriate application in CWP No.4467 of 1988, but both the aforesaid orders i.e. 07.05.2002 and 05.08.2002 were not interfered by this Court and thus attained finality.

(5) It is also pertinent to mention here that some of the inhabitants of the Village filed CWP No.10349 of 2015 titled as 'Rajender Singh and others Vs. State of Haryana and others' for ejectment of the present petitioners from the land in dispute in view of the order dated 04.07.1983. passed by A. C. 1st Grade and the same was disposed off by this Court, vide order dated 21.05.2015, observing as under:-

" Without expressing any opinion as to the rights of the parties, the writ petition is disposed of by directing the Assistant Collector of Ist Grade, Rohtak, who in the absence of any legal impediment, shall enforce order dated 04.07.1983, after serving notices on the private respondents. The needful be done within three months from receipt of a certified copy of this order. "

(6) Now again, the petitioners have filed the present writ petition on 25.05.2015, challenging the orders dated 07.05.2002 and 05.08.2002 despite the fact that both these orders were impugned in the earlier round of litigation in CWP No.14423 of 2002, but the same were not interfered by this Court.

This Court, while issuing notice of motion on 29.05.2015, passed the following order:-

" We have heard counsel for the petitioner and issue notice of motion.

Mr. S.P.Chahar, Advocate accepts notice on behalf of Gram Panchayat and submits that the petitioners are in possession of a large parcel of land with only a small piece of land situated in rectangle No.34, killa No.19 measuring 4 kanals covered by the petitioners' houses. Be that as it may, we adjourn the hearing of writ petition to 11.08.2015.

In the meanwhile, the Gram Panchayat would be at liberty to take possession of land other than the land which is the site of the petitioners' houses. The BDPO, Rohtak, shall inspect the land and after identifying the land which is the site of the petitioners' houses, deliver possession of the other land to the Gram

Panchayat within 15 days from today. It is made clear that no other land occupied for any other agricultural or purpose subservient thereto, shall be left out of the land to be delivered to the Gram Panchayat."

(7) Paper-book (page 117) reveals that pursuant to the above orders, the possession of the land in dispute (except the area covered under the residential houses) has been handed over to the Gram Panchayat on 13.06.2015.

(8) Thereafter again on 30.05.2016, this Court passed the following order:-

" The matter was adjourned for today to explore the possibility of amicable settlement by way of exchange of land. The petitioners have offered that they are ready to give land to the Gram Panchayat out of khasra Nos.16 & 18 (owned by them) equivalent to the land under their possession in khasra Nos.19 & 20 (owned by the Gram Panchayat).

Sarpanch and other members of the Gram Panchayat are present. They seek more time to consider the above-stated offer.

List for further consideration on 20.07.2016.

Meanwhile, it is assured by learned counsel for the Gram Panchayat that egress and ingress of the petitioners' houses shall not be obstructed subject to the condition that the petitioners shall not raise any further construction and/or cause any hindrance to the development work being executed by the Gram Panchayat. "

(9) During the course of hearing, learned Counsel appearing on behalf of the Gram Panchayat, on instructions, stated that the offer of the petitioners for exchange of land or price in lieu of the land in dispute is not acceptable to the Gram Panchayat.

(10) The paper-book also reveals that despite the finality of the ejectment order dated 05.03.1987, the Gram Panchayat passed a Resolution No.1 dated 14.07.1987 (Annexure P-3) for seeking permission from the Director, Panchayat regarding sale of land in dispute for the reasons mentioned therein that the Panchayat has no source of income and the sale consideration will be utilized for completion of the school building as well as pavement of the streets. Consequently, the Director, Panchayat, vide memo dated 16.12.1987 (Annexure P-5), intimated the Deputy Commissioner to the effect that "the Government has desired that shamilat land measuring 81 Kanals 4 Marls, which is in the illegal possession of the landowners be sold to them after getting the price assessed by the Revenue Officer. Apart from the price, the composition fee be also charged in accordance with the Government Instructions."

(11) Pursuant to the above communication, the Deputy Commissioner, vide his letter dated 02.05.1988 (Annexure P-7), directed the Block Development and Panchayat Officer, Rohtak to take possession of the land in dispute and the Tehsildar, Rohtak was asked to visit the site personally and assess the market

value of the land on which the construction has been raised by the petitioners.

(12) It transpires that aggrieved against the Resolution dated 14.07.1987, letter dated 16.12.1987 as well as order dated 02.05.1988, mentioned above, some inhabitants of the Village filed CWP No.4467 of 1988 titled as 'Om Parkash and others Vs. Director of Panchayats, Haryana and others' in which the present petitioners were arrayed as respondent Nos.4 to 6 and the same was disposed off by a Division Bench of this Court, vide order dated 01.10.2013 (Annexure P-14) and the operative part of the same reads as follows:-

" Under the circumstances, we dispose of the writ petition and give liberty to respondents no.4 to 6 to move an application before the Gram Panchayat or to the Director Panchayats, Haryana to purchase the property in their possession as per law. If any such application is moved, the competent authority shall dispose of the same within two months from the date of its receipt as per law. "

(13) Pursuant to the above order, petitioner No.1-Bhale Ram made a representation dated 30.12.2013 (Annexure P-15) in terms of Rule 12(4) of the Rules to the Director, Panchayat and offered exchange of their agricultural land and in the alternative, agreed to bear the composition fee as may be assessed by the Revenue Authorities; but the same was rejected by the Gram Panchayat, vide Resolution No.1 dated 12.02.2014, which was communicated to the petitioners by the Director, Panchayat, vide impugned communication dated 04.02.2015 (Annexure P-16).

(14) The argument on behalf of the petitioners that they are in possession of the land in dispute for the last more than 40 years and have constructed their houses does not merit acceptance in view of the finding of facts, recorded by the A.C. 1st Grade, Rohtak, in the ejectment order dated 04.07.1983 that jamabandi for the year 1977-78 (Ex.D-3) nowhere discloses regarding the existence of constructed houses over the land in dispute; rather it reveals that the land in dispute is Gair Mumkin Johar, Barani Banjar and the houses have been constructed after the year 1977-1978 and this finding of fact recorded by A.C. 1st Grade has rightly been recorded on the basis of material available on record. Even otherwise as per the revenue record, the land in dispute is recorded as a Pond, therefore, this argument is unfounded and liable to be rejected.

(15) Still further, it is duly proved that the petitioners are the inhabitants of a different Village i.e. Makrauli Khurd, having their Ration Cards and Voter Identity Cards bearing addresses of that village; whereas the land in dispute is situated and vested in a different Gram Panchayat of Village Bhaiyapur. It needs to be mentioned here that as per the provisions of Rule 12(4) of the Rules, it is a pre-requisite that the benefit of said Rule is available to the inhabitants of the same very village and not to the person(s) belonging to the different village. Therefore, on this count also, the petitioners cannot take any benefit of Rule 12(4) of the Rules, otherwise, the purpose of the said Rule shall be rendered otiose.

(16) It is very disturbing that as per the revenue record, the land in dispute is a

Pond and the same has been encroached upon and illegally occupied by the petitioners and they were ordered to be ejected wayback in the year 1983 and the order of ejectment attained finality up to this Court in the year 1987, but still the petitioners are continuing to be in illegal possession on one pretext or the other. Strangely enough, despite the finality of the ejectment order, the Gram Panchayat, instead of pursuing the matter for recovery of the possession, passed the Resolution dated 14.07.1987 (P-3) in favour of the petitioners on flimsy grounds and the same was dealt with by the Director, Panchayat, vide letter dated 16.12.1987, in a most casual manner and without application of mind instead of directing the Authorities to take the matter to its logical end for recovery of possession of the land in dispute.

(17) The Ponds, in the Villages, are existing since time immemorial in the country and have a significant impact not only on the life of the human beings, but on the animals also. As per the definition clause contained under Section 2(g) of the Act, the pond(s) is/are falling within the purview of the shamilat deh and which reads as under:-

(g) "shamilat deh" includes -

(1) lands described in the revenue records as shamilat deh excluding abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds within abadi deh or gorah deh; and

(5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;

(18) Section 7(1) of the Act envisages that the A.C. 1st Grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or inhabitants of the village etc., after making such summary enquiry, eject any person who is in wrongful or unauthorized possession of the land or other immovable property being the shamilat deh of that village, which is vested in the Panchayat and will put the Panchayat in possession thereof.

Section 7(2) of the Act envisages that the A.C. 1st Grade shall by an order require any persons to pay a penalty, in respect of such land or other immovable property which was or has been in his wrongful or unauthorized possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum.

(19) It is a matter of record that lot of petitions are being filed before this Court pertaining to the matters falling within the purview of Section 7 of the Act and

which shows that the shamilat deh is a very soft target for greedy people in the rural area and the ponds are even most vulnerable area, being easily targeted by the unscrupulous persons which are being leveled either for agriculture purposes or houses. The obvious reason is that no-one is ready to protect the shamilat deh from the encroachers as the elected representatives of the Gram Panchayat are either privy or mute spectators of such rampant violations as after every five years, new elected representatives come and occupy the seats and in case any effort under Section 7 of the Act is made, then the same is given a twist, which may be suitable to the encroacher(s) as has happened in the present case. The matter(s) is/are compromised by the Gram Panchayat on one pretext or the other and a decent burial is given to the ejectment proceedings in favour of the illegal occupants. Worst scenario is that the State Apparatus is least bothered about the shamilat deh and would leave everything at the mercy of the Gram Panchayat just treating the same as no man's land. Time and again, repeated directions have been issued in pro bono cases also in such like matters, but the menace of unauthorized and illegal possession over the shamilat deh is growing day-by-day and that needs to be dealt with strictly; otherwise, in future, there will be no Ponds, water channels, reservoir and common area left for the rural inhabitants and animals as well as for ecological balance. Thus, there will be a total degradation of the environment for the coming generation for which we are under obligation in view of the mandate of Article 51A(g) of the Constitution.

(20) It deserves to be mentioned here that the Hon'ble Supreme Court has taken a very serious view of the matter in such like cases and reference can be made to a case titled as 'Jagpal Singh and others Versus State of Punjab and others', reported as (2011) 11 SCC 396 and Para Nos.15, 16, 17 and 18 of the same read as under:-

" 15. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

(21) The Hon'ble Supreme Court, in the above judgment, gave certain directions in para 22 and the relevant part of the same reads as under:-

" Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession."

(22) In view of the facts and circumstances, discussed hereinabove, this Court does not find any merit in the present petition and the same is hereby dismissed.

(23) The petitioners are directed to hand over the vacant possession of the land in dispute to the Gram Panchayat within a period of six months from the date of receipt of certified copy of this order, failing which, the respondent-Gram Panchayat would be at liberty to seek the police help for peaceful possession and thereafter, the land in dispute be restored as a Pond and the same be developed and maintained properly for ecological balance as well as and for the protection of the environment. Compliance report be submitted to this Court on or before 28.02.2019.