
(1965) 11 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 39 of 1965

Bhartu and Another

APPELLANT

Vs

Maman Singh

RESPONDENT

Date of Decision : 24-11-1965

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 6(5)(1)

Citation : (1965) 11 P&H CK 0045

Hon'ble Judges : P.C. Pandit, J; Mehar Singh, J

Bench : Division Bench

Advocate : Surinder Sarup, for the Appellant; H.L. Sarin, Advocate, with Miss Asha Kohli and Mr. A.L. Bahri, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—There were three candidates, namely, Maman Singh, Bhartu and Suraj Bhan, for the election to the office of Sarpanch of Gram Panchayat of Village Barota, in District Rohtak. Maman Singh secured the largest number of votes and was, consequently, declared elected. Bhartu filed an election petition challenging his election on the ground that since he was a tenant of this Gram Panchayat with respect to the land comprised in khasra No. 2962 situate in village Barota, he was disqualified to seek election. His election was, therefore, liable to be set aside, because of the improper acceptance of his nomination paper. The Prescribed Authority, who tried this petition, came to the conclusion that Maman Singh was cultivating this land as a tenant and, therefore, not entitled to stand for election. His nomination paper had, consequently, been improperly accepted. As a result, he set aside the election of Maman Singh and ordered re-election.

This order was challenged by Maman Singh by means of a writ petition. The same came up before Khanna J., who held that though Maman Singh was in occupation of the land belonging to the Panchayat without payment of rent, yet he was neither a tenant nor a lessee of the said Gram Panchayat and, therefore,

he was not in any way disqualified from standing for election to the office of Sarpanch. The finding of the Prescribed Authority that Maman Singh was a tenant of the Gram Panchayat was, according to the learned Judge, based on no evidence. He, consequently, accepted the writ petition and quashed the said order. Against this decision, the present appeal has been filed both by Bhartu and Suraj Bhan under Clause 10 of the Letters Patent.

2. Learned counsel for the appellants has submitted that the question whether Maman Singh was a tenant of the Gram Panchayat was essentially one of fact. After discussing the entire evidence, the Prescribed Authority had come to a decision that he was a tenant. This finding of fact, based on evidence as it was, could not be set aside in proceedings under Article 226 of the Constitution. He also contended that it would be quite an anomalous position that a person, who had taken illegal possession of the land belonging to the Gram Panchayat and was not paying any rent for it, should not be disqualified, while a tenant of the Gram Panchayat was not eligible to stand for election.

3. Section 6 (5) (1) of the Punjab Gram Panchayat Act, 1952, says that no person who is not a member of the Sabha and who is a tenant or lessee holding a tenancy or lease under the Gram Sabha or is in arrears of rent of any lease or tenancy held under the Gram Sabha, or is a contractor of the Gram Sabha, shall be entitled to stand for election as, or continue to be a Sarpanch or Panch. A bare reading of these provisions would show that in order to attract the disqualification mentioned therein, a person has to be proved to be a tenant or lessee under the Gram Sabha. It is true that in the present case the Prescribed Authority had held Maman Singh to be a tenant of the Gram Panchayat. It is also true that a finding of fact given by the Prescribed Authority cannot be interfered with by this Court under Article 226 of the Constitution, unless the case was covered by the rule laid down in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, where it was observed-

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued, if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

In the present, case the learned Single Judge has held that this finding of fact given by the Prescribed Authority was based on no evidence. Learned counsel for the appellants has admitted before us that the only evidence on which this finding could be based was the jamabandi of 1960-61 wherein khasra No. 2962 was shown to be in occupation of Maman Singh, respondent, as a tenant-at-will under the Gram Panchayat and the entry in the column of rent was "bila lahan bawaja kabza sabka" that is, without payment on rent of account on previous possession. "Tenant", according to section 4(5) of the Punjab Tenancy Act, 1887, means a person who holds land under another person, and is, or but for a special

contract would be, liable to pay rent for that land to that other person. "Rent" in sub-section (3) of this very section means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him. There is nothing on the record to show that the non-payment of rent by Maman Singh was on account of any special contract. As a matter of fact, the reason given in the jamabandi entry for his non-payment was that it was on account of his previous possession of this land, which was originally a part of shamilat deh. The appellants cannot derive any benefit from the fact that Maman Singh Was entered as a tenant-at-will under the Gram Panchayat in the cultivator's column, because as held by Bhide J. in *Sher v. Phuman* s it was well-known that when a person other than the real owner was found to be in possession of the land belonging to somebody else, the Revenue Officers frequently entered that person as a tenant-at-will under the owner. Maman Singh was, admittedly, not paying any rent to the Gram Panchayat and, besides, there is nothing on the record to show that the Gram Panchayat ever asserted fiat he was soluble being their tenant. This jamabandi entry, therefore, is of no help to the appellants in proving that Maman Singh was a tenant of the Gram Panchayat. Under these circumstances, it has been rightly found by the learned Single Judge that there was no evidence on the record to show that Maman Singh was a tenant of the Gram Panchayat. Section 6(5) (1) is quite clear that the disqualification attaches only to a tenant or a lessee of the Gram Panchayat. If no provision has been made for cases of the present type, this Court can not help the appellants and it is for the Legislature to make a suitable law in this behalf, if they so desire.

4. The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.

Mehar Singh, J.

I agree.