
(2006) 03 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4909 of 2006

Chandu Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Panchayati Raj Act, 1994 — Section 175, 177, 177(2)

Citation : (2006) 143 PLR 534 : (2006) 2 RCR(Civil) 780

Hon'ble Judges : Tej Pratap Singh Mann, J; M.M. Kumar, J

Bench : Division Bench

Advocate : Arvind Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—Challenge in this petition filed under Article 226 is to the order dated 3.1.2006 (Annexure P-8) passed by the Deputy Commissioner, Rewari and order dated 14.3.2006 (Annexure P-11) passed by the appellate authority holding that the petitioner is found to be in unauthorized possession of passage in khasra No. 120 and Assistant Collector 1st Grade, Rewari had ordered his eviction vide his Order dated 17.10.1995. The petitioner has been disqualified for the position of a Sarpanch by invoking the provisions of Section 175(n) of the Haryana Panchayati Raj Act, 1994 (for brevity "the Act") and the post of Sarpanch has been declared vacant.

2. Brief facts of the case necessary for disposal of the instant petition are that on 3.4.2005, the petitioner was elected as Sarpanch in the general elections against a post meant for reserved category. One Chandgi Ram filed a complaint u/s 175(n) of the Act against the petitioner alleging that the petitioner is in unauthorized possession of khasra No. 120 which is gair mumkin rasta. He further alleged that the petitioner has constructed his house on the same despite the fact that an order of eviction dated 17.10.1995 has been passed by the Assistant Collector, 1st Grade, Rewari which has . attained finality. The petitioner

contested the claim. He asserted that the order dated 17.10.1995 with regard to his eviction was executable and he was not in unauthorized possession of any portion of the rasta. He pleaded that the application was filed due to party-faction and that the petitioner had moved an application before the Tehsildar, Rewari for demarcation of khasra No. 120. He also pleaded that in a family settlement the house has fallen to the share of his son Rajinder and in that regard reliance was placed on the family settlement. A copy of the complaint and the reply have been placed on record as Annexure P.1 and P.2. After examining the rival contentions, the Deputy Commissioner came to the conclusion in his order dated 3.1.2006 that the petitioner is in unauthorized possession of the Panchayat land and held as under:

After hearing both the parties and after perusal of the file I have reached to the conclusion that Shri Chandu Lal, Sarpanch Gram Panachayat Gokalpur Khubhawas has been found to be in unauthorized possession of rasta in Khasra No. 120 and Assistant Collector 1st Class Rewari vide his order dated 17.10.1995 ordered eviction against the sarpanch. According to Section 175(n) of Haryana Panchayati Raj Act, 1994 the unauthorized possession over gram panchayat land is disqualification from the post of Sarpanch. Therefore, according to the Haryana Panchayati Raj Act, 1994 Section 177 Shri Chandu Lal Sarpanch gram panchayat Khumbhawas is disqualified from holding the post of Sarpanch and the post of sarpanch is hereby declared vacant. In order to fill the vacancy of sarpanch necessary action in accordance with the rules may be done. The copy of the order is sent to the State Election Commissioner, Haryana, Chandigarh, District Development and Panchayat Officer Rewari and BDPO Rewari.

3. The order of the Deputy Commissioner was challenged by the petitioner in an appeal filed u/s 177(2) of the Act and the same has also been dismissed on 14.3.2006. It has been reiterated by respondent No. 1, which is the appellate authority, that the latest spot inspection and enquiry by the revenue officer in June, 2005 have found that the petitioner continues to be in unauthorized occupation of the Panchayat land and the report relied upon by the petitioner submitted by the retired Kanungo has been rejected as the report submitted by the superior revenue authorities have been given credence.

4. We have heard Mr. Arvind Singh, learned Counsel for the petitioner who has submitted that the demarcation report dated 19.12.2005 on which reliance has been placed by the petitioner could not have been discarded as the same has been prepared with complete details and thorough investigation. He has claimed that the aforementioned report by the Ex-Kanungo is a genuine report and has been prepared in an impartial manner and all the persons present on the spot were satisfied. The learned Counsel has then argued that in any case the house in question has fallen to the share of his son Rajinder in a family settlement. In this regard, reliance has been placed on the copy of the ration card which is undated (Annexure P.3).

5. We have thoughtfully considered the submissions made by the learned

Counsel and are of the view that the writ petition is liable to be dismissed. According to Section 175(n) of the Act no person could continue as a Sarpanch or Ranch of Gram Panchayat who has been in unauthorized possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parshad. It has been categorically held by the Deputy Commissioner while dealing with the complaint filed by one Chandgi Ram that the petitioner continues to be in illegal occupation of rasta comprised in khasra No. 120 and has built his house on the same. There are further findings that the order passed by the Assistant collector 1st Grade, Rewari on 17.10.1995 had ordered eviction of the petitioner but he continues to occupy the rasta. The view taken by the Deputy Commissioner cannot be considered to be without any basis or arbitrary. The enquiry has been held by the Sub-Divisional Officer, Rewari and the petitioner has been found to be in unauthorized possession of rasta shar-e-am. Another enquiry was also undertaken by the City Magistrate, Rewari who in his report had written that the petitioner is in unauthorized possession of the rasta shar-e-am. The appellate authority, namely respondent No. 1, while dismissing the appeal of the petitioner has found that in the spot inspection and the inquiries held by revenue officers in June, 2005 have found that the petitioner continued to be in unauthorized possession of the Panchayat land. The report submitted by the petitioner (Annexure P.6) has not been accepted for the reason that it did not inspire confidence in comparison of the reports submitted by the Sub Divisional Officer and the City Magistrate, Rewari. It is well settled that in certiorari jurisdiction the action of the respondents could be set aside only if the findings are based on no evidence or the findings are such that no reasonable man in the facts and circumstances of the case would record such a finding. We find that the findings are not laconic but are based on evidence. Apart from the complaint, there are two reports on which reliance has been placed by the authorities. Therefore, we do not find any legal lacuna in the findings recorded by the Deputy Commissioner in the order dated 3.1.2006 (Annexure P.8) and that of the appellate order dated 14.3.2006 (Annexure P.11).

6. The argument of the learned Counsel that the house has been given in the family settlement to his son Rajinder is an argument of frustration and imagination. There is not even an iota of evidence on record to show that there is some family settlement and the house has fallen to the share of the son of the petitioner apart from the fact that during the life-time of the petitioner no partition could be claimed by his son. It is further appropriate to mention that had there been any such family settlement then it was bound to have reference in the revenue record. The absence of production of revenue record further strengthens the finding that in fact no family settlement has been arrived at. Therefore, there is no substance in the argument raised and we have no hesitation to reject the same.

7. For the reasons mentioned above, this petition fails and the same is dismissed. However, there shall be no order as to costs.