
(1991) 03 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 908 of 1987

Chuhar Singh (Deceased) Through L.Rs. and Another	APPELLANT
Vs	
Punjab State and Others	RESPONDENT

Date of Decision : 15-03-1991

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7, 7(2)

Citation : (1992) 101 PLR 93

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : G.S. Sandhu, for the Appellant; K.S. Grewal, for the Respondent No. 3 and S.S. Saron, A.A.G. for the Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—Common questions of law and facts are involved in civil writ petition Nos. 908 and 909 of 1987 and as such, are being disposed of by this judgment. Reference to the relevant facts has been made from civil writ petition No, 908 of 1987,

2. Facts First:-

Gram Panchayat, Nalini, respondent No. 3, filed a petition u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act") against the petitioners on the ground that the disputed land is Shamilat deh and is owned by it and they are in illegal possession. of the same. The petitioner infer alia plead that they had purchased the land in lieu of which the disputed land was allotted in consolidation from Daya Ram and Inder Singh sons of Krishna along with their share in the" Shamilat deh on February 10, 1920; they were the khewat dars of the village and were in possession of the land prior to January 26, 1950. In support of their claim, they produced Sajra Nasab Malkan and jamabandis for the years 1947-48, 1951-52, 1955-56, 1959-60, 1969-70, 1.979-80" and misal haqiat 1959-60. The Collector relying upon this material evidence came to the

con-elusion that the petitioners were in possession of the disputed land prior to January 26, 1950. Resultantly, the petition, was dismissed vide order dated May 21, 1982. Panchayat did not assail the order. The Social Education and Panchayat Officer (for short "the Panchayat Officer") preferred a time-barred appeal before respondent No. 2 against order of the Collector dated May 21, 1982. Objections to the maintainability-of the appeal at the instance of the Panchayat Officer and belated filing of the appeal were disposed of with the following observations:-

"The present appeal has also not been filed by any Panch or Sarpanch. The appeal has been filed by the S.E.P.O. Moreover, in this case, the appeal was filed on 8.4.1983 and the respondent appeared in the court on 16.12.1983. The point of limitation should have been raised at that time but he has raised this point on 19.9.1986 after the expiry of about two years nine months. At this stage, it is not in the interest of justice to dismiss this appeal on this ground. The Gram Panchayats are Public institutions and their property is the property of the public. In the circumstances of the present case, have no hesitation to condone the delay which has taken place in the present case. Delay is condoned".

A bare reading of these observations indicates that respondent No. 2 did not appreciate the scops and ambit of objections raised before him.

3. Appeal is not a common law right. It is a creature of a statute. The Act is a complete Code providing for summary remedy against the persons who are in illegal possession of Shamilat deh land. It also provides for the authorities who can initiate the proceedings under the Act.

4. Section 7 of the Act-as applicable in the State of Punjab provides that an application can be moved by a Panchayat or by an officer duly authorised in this behalf by the State Government by a general or special order for putting the Panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or has deemed to have vested in the Panchayat under the Act. The proceedings can be initiated either by the Panchayat or by the officer specially authorised by the State Government in this behalf. The proceedings were initiated by the Panchayat. The Collector after recording evidence of the parties found that the petitioners were in continuous possession of the disputed land for 12 years to the commencement of the Act and that their right to occupy the land is protected u/s 4 (3) (ii) of the Act. An appeal was competent against this order under sub-section (2) of Section 7. The Panchayat did not file any appeal. The Panchayat Officer filed the appeal on behalf of the panchayat. The objection regarding the maintainability of the appeal at the instance of the Panchayat Officer was raised in view of the provisions of clause (i) of Section 7 of the Act. The provisions postulates that an application could only be filed by the Panchayat or by an officer duly authorised in this behalf by the State Government. There is no proof that the Panchayat Officer" was duly authorised by the State Government to file the application u/s 7 or was authorised to file the appeal under sub-section (2) of section 7 of the Act. In the absence of any general or special authorisation by the State Government, the

Panchayat Officer was not authorised to file the appeal. The Collector passed the order dated May 21, 1982, in the presence of the counsel for the Panchayat. The appeal was preferred on April 8, 1983 without certified copies of the order appealed against. The appeal was not filed by an authorised person and thus was not maintainable. Apart from this, respondent No. 2 did not appreciate that the petitioners were the khewat dars in the village. The disputed land was shown to be in the cultivating possession of the petitioners. The entries in the khasra girdawaris to the effect that the disputed land was banjar qadim does not disprove the petitioners' case that they were in possession of the land. Entries in the khasra girdawaris cannot be preferred over the entries in the records of rights. In the records of rights, commencing from 1947 onwards, the petitioners are recorded as in cultivating possession. These entries have to be preferred over the entries in the khasra girdawaris. The view taken by respondent No. 2 that since in the khasra girdawaris the land was described as banjar qadim, the petitioners will not be deemed to be in possession of the same, is unsustainable in law. The petitioners' possession stands established from the unimpeachable evidence in the form of records of rights. The order of respondent No. 2 cannot be sustained from any angle.

5. For the reasons recorded above, the writ petition succeeds; the appellate order of respondent No. 2, dated November 28, 1986 is quashed and the resultant effect is that the order of Collector dated May 21, 1982 stands restored. No order as to costs.