
(2008) 03 P&H CK 0126
In the Punjab And Haryana At Chandigarh

Dharam Pal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (2008) 152 PLR 32 : (2008) 3 RCR(Civil) 778

Hon'ble Judges : K.S. Garewal, J;Daya Chaudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Garewal, J.—This judgment shall dispose of the present as well as two connected writ petitions (C.W.P. Nos. 3998 and 3999 of 2008) which arise on the basis of similar facts and raise the same grounds of challenge.

2. On February 4, 1952 land was allotted to the predecessors of the petitioners for a period of 20 years. After the period expired order of ejectment of the petitioners were passed on April 25, 1972.

3. The orders were challenged and the matter was concluded by the Supreme Court" on April 11, 1974. The appeals filed by the petitioners were allowed but the dispute only got lengthened.

4. The Supreme Court was impressed by the petitioners" argument that the provisions of East Punjab Utilization Act, 1949 had not been correctly observed and the matter was required to be re-examined by the Collector. Therefore, the Supreme Court required the Collector to go into the following questions:

(a) Was the possession of any of the lands in dispute taken by the State, under the Utilization of Lands Act, 1949 and Pattas duly executed u/s 5 of the Act in favour of the alleged lessee"

(b) Were any proceedings for awarding compensation u/s 4 of the Act taken in respect of the land alleged to have been leased, and if so, on what basis were

the persons dispossessed compensated? In other words, are there grounds to believe that the persons to whom the lands were directed to be handed over were no longer owners?

(c) If no legally valid leases were executed in favour of the alleged lessees, what could be their legal status and rights by reason of long possession?

(d) What was the nature of the claims to any land put forward by the Gaon Panchayat?

(e) Is this a case in which the Collector can interfere or pass any order under any provision of law or should the matter be left to be decided between the alleged lessees, the alleged private owners, and the Panchayat by such other legal proceedings as may be open to them for the purposes of getting their claims adjudicated upon.

Resultantly, the appeals were allowed on April 11, 1974 and the order of the Collector passed on April 25, 1972 was quashed, the petitioners were saved from dispossession. Supreme Court also directed that no action be taken against the lessees (petitioners) until it was decided that their possession was still governed by the provisions of the East Punjab Utilization Act, 1949. The private respondents instituted proceedings u/s 7. The Collector passed the order on July 29, 1994 and dispossessed of the petitioners.

5. In revision filed by the petitioners before the Commissioner, the Collector's order was set aside and matter was remanded back for fresh decision on the specific issues framed by the Commissioner, after giving opportunities to the parties to lead evidence. It will be seen that issues framed were similar to the questions that had been raised by the Supreme Court in 1974.

6. According to the learned Counsel for the petitioners the findings of the Collector recorded in his order dated September 15, 2003 were not correct. It may be mentioned that this order had been upheld in appeal before the Commissioner on June 17, 2005 and before the Financial Commissioner on September 11, 2007.

7. After the decision of the Financial Commissioner, the petitioners filed a review petition on September 30, 2007 in which notice was issued but stay of dispossession was declined by the Financial Commissioner. Therefore, the petitioners filed C.W.P. No. 109 of 2008 before this Court which was disposed of on January 8, 2008 with a direction to the Collector to decide the petitioners' representation dated November 26, 2007 within one month. The petitioners again filed C.W.P. 2360 of 2008 before this Court praying for stay of dispossession till the decision of the review application. The review application was dismissed on February 28, 2008 which rendered the petition infructuous.

8. This petition was filed on March 13, 2008 to challenge the Collector's order dated September 15, 2003 and all further orders passed in appeal/revision/review.

9. Before we proceed to decide these petitions it would be appropriate to revisit the provisions of East Punjab Utilization of Lands Act, 1949. This will help us to determine if the provisions had been complied with. Section 2(f) defines "owners" as the person having proprietary right in the land and includes an allottee, a usufructuary mortgagee or a lessee. Section 2(h) defines "tenant" as the person to whom land had been leased by the Collector.

10. u/s 3 of the Collector may issue notice to the "owner" of any land which had not been cultivated for the last six or more harvests to show cause within 30 days why land had not been cultivated and in case Collector found the explanation to be unsatisfactory he may take possession of the land forthwith.

11. u/s 4 after possession of the land has been taken, compensation is required to be paid in accordance with Section 23(1) of the Land Acquisition Act, 1894.

12. Where the Collector takes possession of the land u/s 3, he may lease it to any person on such term and conditions as he may deem fit for the purpose of growing food and fodder crops. This is provided by Section 5 and it contains a proviso that the period of lease shall not be less than 7 years or more than 20 years. It is under this provision that land was leased to the petitioners' predecessors-in-interest.

13. If the person to whom land had been leased commits a breach to term and conditions of the lease, the Collector is empowered to determine the lease and take possession of the land u/s 6.

14. Where land had been taken possession by the Collector u/s 3, on expiry of the lease this land is to be released to the owner. The Collector may pass an order u/s 7 by specifying the person to whom possession of the land shall be given.

15. The private respondents in this petition are the owners whose lands were taken possession by the Collector u/s 3. The petitioners are the tenants or lessees to whom land was leased u/s 5 for 20 years.

16. It is clear as day light as on completion of 20 years the petitioner had to leave land for being given back to the owners. The land was leased in 1952. The lease came to an end in 1972 but in 1974 petitioners managed to get a fresh lease of life as it were, and the litigation started again. In 2008, the petitioners have finally reached the end of the road.

17. Counsel for the respondents argued that the land in question had been leased to the petitioners under the provisions of East Punjab Utilisation of Lands Act, 1949. Reference has been made to report 14 dated September 13, 1952 entered in the Roznamcha to the effect that 240 acres of land in Bal Rangarhian has been taken into possession by the Deputy Commissioner. Under Report 15 possession of said area of 240 acres had been handed over for 20 years from Khariff 1952 to Rabi 1973.

18. On behalf of the petitioners it was argued that many provisions of the East Punjab Utilization of Lands Act had been violated, there was no proof of any notice to the owners of the land who had not cultivated it for 6 or more harvests. No proof of compensation being paid to the owners of the land under the Land Acquisition Act. Therefore, the lease in favour of the petitioners was not under the East Punjab Utilization Act, 1949 at all. We are unable to agree with this argument because the rapats 14 and 15 dated September 13, 1952 in the roznamcha clearly established that 240 acres was taken into possession by the Deputy Commissioner and given on lease for 20 years. The petitioners' rights came into existence on September 13, 1952. The lease was to come to an end after the Rabi harvest of 1973. Therefore, the questions whether the land had or had not been harvested for 6 or more harvests, whether the landowners had or had not been paid any compensation would not at all make any difference to the status of the petitioners which was based on the terms and conditions of the lease that was only for 20 years.

19. The petitioners had all the opportunities available to them. In the first instance the Collector had decided the application u/s 7 on July 29, 1994. This order was set aside by the Commissioner on January 19, 1995. The matter was remanded back for fresh decision on the issues framed by the Collector after giving opportunities to the parties to lead evidence.

The issues before the Collector were verbatim identical to the points of law that had been raised by the Supreme Court in the judgment dated April 11, 1974. Three additional issues were also framed regarding the claim of the respondents (before the Collector who are petitioners before us) that they had become owners by adverse possession, the land was allotted to the respondents who were ex-servicemen under the Government policy and they were not liable to be ejected.

20. Before the Collector, the present petitioners got many opportunities to lead evidence but they failed to do so. The evidence was closed but the High Court on June 3, 2003 gave the present petitioners one more opportunity for leading evidence. In spite of specific directions to obtain summons to serve the Resettlement Commissioner, Ministry of Defence and Deputy Secretary, Development Department, Haryana on their own responsibility, the present petitioners failed to take summons and lead evidence of these witnesses. Consequently, the Collector closed the evidence and proceeded to record findings on various issues.

21. Under issue 1 it was held that the petitioners before the collector (now respondents) were owners of the land in question and the lease period had expired. The land had been taken by the Collector under East Punjab Utilisation of Lands Act from the landowners and given on lease for 20 years. The period of lease expired after Rabi 1972 (sic). The present petitioners had been unable to show under which provision of law they were cultivating the land. They were unable to lead evidence. Therefore, issue I was decided in favour of the

landowners and it was held that possession of the land in dispute had been taken by the State under East Punjab Utilisation of Lands Act and pattas had been duly executed u/s 5 of the Act in favour of the present petitioners.

22. In respect of issue 2 evidence was to be led by the present petitioners but they led no evidence. In respect of issue 3 it was the same position, no evidence was led. Issues 4 and 6 were also decided against the present petitioners. Under issue 5 it was held "that Section 7 of the East Punjab Utilization of Lands Act empowered the Collector to return the land to the owners after taking possession from the lessees. Issues 7 and 8 were also decided against the present petitioners.

23. We have gone through the order of the Collector as well as of the orders of the Commissioner and Financial Commissioner and find that the petitioners were lessees on the land for a period of 20 years under East Punjab Utilisation of Lands Act. The petitioners had failed to show that this was not so and that they were in possession under some other law, which did not entitle the Collector to dispossess them. On behalf of the petitioners an argument was raised that there was no proof of payment of compensation to the owners under the Land Acquisition Act, therefore, it could not be said that the Collector was entitled to take the possession back. There is no force in this argument as compensation was a question between the owners and the State. Proof of payment of compensation would not change the status of the petitioners who remained lessees for 20 years, and after the expiry of 20 years, they were liable to surrender the possession u/s 7 of the East Punjab Utilization of Lands Act.

We find no merit in these petitions and the same are hereby dismissed.