

(1998) 03 P&H CK 0180

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 432 of 1987

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APPELLANT

Vs

Sh. B.R. Anand, I.A.S., Collector and Others

RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

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

Citation : (1998) 119 PLR 495 : (1998) 2 RCR(Civil) 589

Hon'ble Judges : T.H.B. Chalapathi, J;H.S. Brar, J

Bench : Division Bench

Advocate : I.K. Mehta and K.K. Mehta, for the Appellant; H.S. Hooda, General and Varinder Singh, D.A.G. for Respondent Nos. 1 and 2 and D.V. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Brar, J.—As common question of law and fact is involved in L.P.A. Nos. 432, 895 to 924 of 1987, all these appeals are being decided by this common judgment. Facts, are being taken from L.P.A. No. 432 of 1987.

2. This is an appeal against the judgment of the learned single judge dated 31.7.1987 vide which the petition of the petitioner/appellant and 30 other petitions were dismissed and, consequently, the orders of ejectment passed by the Assistant Collector, First Grade, Kurukshetra, Annexure P-3 and Collector, Kurukshetra, Annexure F-14 were upheld.

3. It was contended by the learned counsel for the petitioner/appellant before the learned single judge that the appellant was not in un-authorised possession of the land in dispute belonging to the Gram Panchayat but he was, in fact, its lessee for more than sixteen years and that the entries in the jamabandi for the last many years, coupled with the receipt of rent deposited in the Bank, were enough to establish the relationship of the petitioner/appellant as lessee of the Gram Panchayat. Reliance was placed by the learned counsel on a Division Bench

judgment of this court in C.W.P. No. 1479 of 1979 (Dhara Singh v. The Collector, Kurukshetra, etc.,) delivered on 6th September, 1979, in which it was held that the petitioner/appellant being a tenant under the Panchayat was entitled to retain possession of the land in question till the panchayat by any positive evidence proved that he had ceased to be a tenant under it and thus had become an unauthorised or unlawful occupier of the Shamlat Land. According to the learned counsel no evidence had been brought by the Panchayat to establish that the petitioner/appellant had ceased to be a tenant under it and had become an unauthorised or unlawful occupier of the Shamlat land. In such a situation, the counsel pleaded before the learned Single Judge that following the Single Bench judgment in Atma Ram v. Joint Director, Panchayats, Punjab and Ors. 1986 P.L.J. 697, the matter should be remanded back for passing proper order on the basis of evidence led in the case. Learned counsel placed reliance on the Single Bench decision of this Court in Tale v. Gram Panchayat of Village Katwal (1974)76 P.L.R. 21 (F.B.), and the Full Bench decision of this court in Sarwan and Rati Ram v. The Joint Director, Panchayats Punjab (1985)88 P.L.R. 184 (F.B.), and then contended that if certain persons had been held as tenants-at-will and there is no evidence to prove that their tenancy at any time had been terminated by the Gram Panchayat they should be treated as occupants of land as tenants and their possession should not be treated as unauthorised. Learned counsel, therefore, pleaded before the learned Single judge that the petitioner/appellant, in the present case, was a gair marusi tenant within the meaning of Section 4(5) of the Punjab Tenancy Act and no order of ejectment could be passed against the petitioner/appellant.

4. The Advocate General, Haryana while refuting the contentions of the learned counsel for the petitioner/appellant argued before the learned Single Judge that the petitioner/appellant was not a lessee of the Gram Panchayat but was in unauthorised possession of the land in dispute for the last many years. Mere fact that some stray receipts were in possession of the petitioner/appellant with regard to the deposit of rent in the Bank and the Jamabandi entries for some years which had been managed, according to the learned counsel, could not entitle the petitioner/appellant to be treated as the lessee of the Gram Panchayat. Learned counsel further contended that from the orders of the Assistant Collector, dated 29.7.86 (Annexure P-3) and the Collector dated 23.12.86 (Annexure P.14), the following facts stood conclusively established against the petitioner:-

(1) The land in dispute was given to the petitioner on Patta for the year 1975 76 which term expired in June, 1976:

(2) On the expiry of the term, the Gram Panchayat never executed any second Patta in favour of the petitioner nor was any receipt of any amount of Patta issued in his favour ;

(3) Proceedings for ejectment of the petitioner could be initiated against him u/s 7(2) of the Punjab Village Common Lands Act as the provisions of the Punjab

Security of Land Tenures Act did not apply to the Panchayat lands which were excluded from its purview by Sub-section (1) of Section 21 of the Punjab Security of Land Tenures Act, 1953 ;

(4) The case of the petitioner was squarely covered against him by the judgment of the Supreme Court in Bachna's case (supra) - Annexure-R-3.

5. After hearing the learned counsel for the Parties and examining the pleadings and the documentary evidence on record, learned Single Judge held that the plea of the petitioner-appellant did not inspire confidence and was without any basis and further held that the judgment of the Supreme Court in Civil Appeal No. 3592 of 1986, The Gram Panchayat of village Bhagal v. Shri Bachna and Ors., squarely covered this case of the petitioner/appellant and, thus, dismissed the petition of the petitioner/appellant.

6. Learned counsel for the appellant has reiterated the arguments which he had advanced before the learned Single Judge and similar is the case of the learned counsel for the respondent, as he has also reiterated the same arguments which were advanced before the learned Single Judge.

7. In view of the authoritative pronouncement of the Supreme Court in Bachna and others case (supra), it is not possible for us to differ with the judgment of the Hon'ble Single Judge. The relevant extract from the judgment of Bachna and others (supra) is reproduced as under :-

"Respondent No. 1 Bachna was inducted as a tenant for a limited period of five years in 1963. Upon the expiry of the term of the tenancy he had no authority to continue in occupation of the common land belonging to the appellant/Gram Panchayat. He, upon the expiry of the five year term had thus become an unauthorised occupant. He could, therefore, be lawfully proceeded against under the provisions of Section 7 of the Punjab Village Common Lands Act, 1961 read with Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964. The protection of the Punjab Security of Land Tenures Act, 1953, will not be available to the appellant having regard to the provision contained in Section 21 which provides that nothing contained in the said Act shall affect any land held by a tenant or lessee under Government or local bodies in the State, or any unallotted evacuee land. The appellant-Panchayat is a local body. Under the circumstances, respondent No. 1 cannot claim protection under the Punjab Security of land Tenures Act. Respondent No. 1 has remained as an unauthorised occupant for nearly 18 years. He cannot be allowed to continue any longer. The appeal is, therefore, allowed. The order passed by the High Court is set aside and the order of eviction passed by the competent authority is restored."

8. After going through the judgment of the Supreme Court in Bachna and others case (supra) we have no alternative except to dismiss all these appeals.

9. In the end, learned counsel for the appellant, has faintly argued that in view of the judgment of the Supreme Court in Charan Singh, etc. Vs. State of Punjab

and others, etc., a direction may be issued to the respondents to regularise his possession.

10. We are afraid that the counsel for the appellant cannot take benefit of the above said authority. The facts of Charan Singh's case (supra) are entirely different from the facts of the case in hand. In Charan Singh's case (supra) the appellant was granted lease of Nazul of Government land as per policy of the State Government, Charan Singh had reclaimed the land and also had set up a tubewell there and was cultivating the land. In the case in hand, the land in dispute, which belonged to the Gram Panchayat was given to the appellant on patta for the year 1975-76 which term expired in June, 1976. On the expiry of the term, the Gram Panchayat never executed any second patta in favour of the appellant. The proceedings for ejectment of the appellant were initiated against him u/s 7(2) of the Punjab Village Common Lands Act as the provisions of Punjab Security of Lands Tenures Act did not apply to the Panchayat Lands which were excluded from its purview by Sub-section (1) of Section 21 of the Punjab Security of land Tenures Act, 1953.

11. Moreover, as has been discussed above, after taking into consideration the factual position, the Supreme Court on similar facts had decided a similar matter in Bachna and others" case (supra). We cannot go beyond the decision of the Supreme Court in Bachna and others" case (supra). The result, thus, remains the same and we dismiss all these appeals.