
(2008) 07 P&H CK 0067
In the Punjab And Haryana At Chandigarh

Gram Panchayat	Vs	APPELLANT
Choe Reclamation Society and Others		RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

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

Citation : (2008) 151 PLR 784 : (2008) 4 RCR(Civil) 144

Hon'ble Judges : Vijender Jain, C.J.;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vijender Jain, C.J.—The present Letters Patent Appeal has been filed challenging the order dated 5.11.2001 passed by the learned single Judge vide which appellate order dated 12.8.1992 (Annexure P-8) passed by the learned Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (for short the 1961 Act) has been set aside and the order dated 31.3.1989 (Annexure P-2) passed by the Collector (DDPO) Ropar, vide which he dismissed the petition of the appellant-Gram Panchayat u/s 7 of the 1961 Act for ejectment of respondent-society, has been restored.

2. Facts in brief are that Gram Panchayat Mullanpur Garibdass, Tehsil Kharar, District Ropar (appellant-Panchayat) claimed itself to be the owner of land measuring 2295 bighas-15 biswas, which was/is in joint possession of Choe Reclamation Society, Anjuman Choe, Mullanpur Garibdass (for short the respondent-society). Appellant-Panchayat filed a petition u/s 7 of the 1961 Act before the Collector (District Development and Panchayat Officer) Ropar on 5.11.1981 claiming that it is entitled to get possession of the land in dispute described in the petition from the respondent-Society with an allegation that the respondent-Society is in wrongful and unauthorized possession of the land in dispute belonging to the Appellant-Panchayat. It was stated that in column 4 of the jamabandi for the year 1966-67 land in dispute is described as "shamlat deh? which vests in the gram panchayat u/s 4(1) of the 1961 Act and

respondent-Society is liable to be dispossessed of the land in dispute. The stand of the respondent-Society (a registered society & a representative body of the proprietors of the village) was that the land in dispute is in its possession for the last more than 33 years without payment of any rent or any other payment and as such it has become owner by way of adverse possession. It was claimed that once land in dispute was mutated as shamlat deh with possession of the proprietors of the village and also described as subject to river action, such mutation having been effected on 5.4.1965 it stood excluded from the definition of "shamlat deh" as given in Section 2(g) of the 1961 Act and thus revested in favour of the proprietors in possession i.e. Respondent-Society. Appellant-Panchayat before the Collector and during the pendency of the ejectment proceedings had filed an application in the year 1988 that it has taken over possession of the property in dispute through S.E.P.O., Kharar and the property was auctioned and the money in lieu of the same was received by it. Application was objected to by the respondent-Society stating that in CWP No. 2543 of 1983 orders had been issued by the High Court restraining the B.D.P.O., from auctioning the land in question. The Collector while taking into consideration mutation dated 5.4.1965 and the fact that the land in dispute was revested in the proprietors of the Village u/s 3(2) of the 1961 Act held that the land in dispute vests in the respondent-Society and no action u/s 7 of the 1961 Act is warranted against the respondent-Society. Thus, the petition was dismissed vide order dated 31.3.1989 (Annexure P-2).

3. The Appellant-Panchayat filed an appeal before the Additional Director, Panchayats, Punjab exercising the powers of Commissioner under the 1961 Act. The appeal was allowed vide order dated 12.8.1992 (Annexure P-8) with the observation that the Collector had no jurisdiction to go into the question as to whether the land had revested in the proprietors in view of provisions of Section 3(2) of the 1961 Act and further that the land is not covered under any river action and there is only a rain fed channel and as such it cannot be called burdgi baramadgi. It further held that when the Appellant-Panchayat had moved an application stating that it has taken over possession, petition u/s 7 of the 1961 Act ought to have been withdrawn by the Collector.

4. Respondent-Society filed C.W.P. No. 5270 of 1994 pleading that the findings about land being not subject to river action or burdgi baramadgi is wrong as in the revenue record, specially mutation sanctioned on 5.4.1965, the word baramadgi and gair mumkin nadi had been written. Jamabandi for the year 1944-45 was also relied upon including definition of "river" in Webster's Dictionary. Reliance was also placed on Punjab State v. Gram Panchayat Mallah 1978 P.L.J. 138. It was further stated that Receiver had been appointed only for one year by the D.D.P.O., and that too without any legal authority and in terms of Section 99(2) of the Punjab Gram Panchayat Act, 1952. He was in any case restrained from auctioning the land by the High Court. Gram Panchayat never came in possession of the land and if any money was received by the Appellant-Panchayat from the Receiver on account of lease given by him that cannot be

termed to mean that Panchayat had taken over the possession of the land in dispute. Shamlat Deh is in possession of proprietors as the entry in this regard in the revenue record is "Makbuja malkan hasab rasad khewat or. hasab rasad zare khewat" and thus it does not vest in the gram panchayat. For this, reliance was placed on Gram Panchayat/Gram Sabha Ugane v. State of Punjab 1997(2) P.L.J. 31 , Rawat Vs. State of Haryana and Others, , Om Parkash Vs. The Assistant Collector Ist Grade and Others, . It was further stated that mutation was sanctioned on 5.4.1965 in compliance with the mandatory provisions of Sections 3(2) of the 1961 Act on the basis of which land vested in the proprietors and the proprietors cannot be subsequently divested of it by mere omission of Clause (1) of Section 2(g) inserted by way of amendment in the Act in the year 1976, as the amendment does not become effective retrospectively. Reliance was placed on International Pharmaceuticals Vs. Union of India, , State of Haryana and Anr. v. Inderjit 1998(2) P.L.J. 436 and Mithilesh Kumar and Another Vs. Prem Behari Khare, . The findings of the Commissioner were challenged by arguing that there is no truth in the plea of Panchayat that it had been auctioning the land and crediting the income in Panchayat fund since no evidence had been led to that effect. Effect to entry in column No. 4 of jamabandi i.e. "Makbuja malkan hasab rasad zare khewat" was not discussed by the Commissioner at all. The Commissioner did not consider that the land described as "Banjar Kadeem" is not used for common purposes of village community, also does not vest with the gram panchayat. Reliance was placed on Tara Chand and Anr. v. Punjab State and Anr. 1971 P.L.J. 808. There was no allegation in the petition that u/s 7 of the 1961 Act that the land was used for common purposes. Reliance was placed on Gram Panchayat Salina v. Nahar Singh and Ors. 1982 P.L.J. 261. The effect of long possession of the proprietors from the period before 26.1.1950 was also not taken into consideration by the learned Commissioner. For this reliance was placed on Surjan Singh v. Gram Panchayat Village Mandhar, Tehsil Sirpind (1995)111 PL.R. 841. It was further stated that while deciding petition u/s 7 of the 1961 Act, the Collector has to decide the question of title, if it is raised by the respondent and by doing so he did not commit any illegality in view of the law laid down in the case of Tara Chand and Fateh Chand v. Gram Panchayat and Gram Sabha Atali 1979 P.L.J. 1.

5. The writ petition was contested by the Appellant-Panchayat. It claimed that respondent-Society had no legal right to maintain the writ petition since it has failed to show that it has been formed by the proprietors of the village. It was further averred that the learned Commissioner had rightly observed that the Collector was not required to go into the question of title and further as by way of amendment brought in 1961 Act in the year 1976, the land stood vested in the Gram Panchayat, and thus, the order of Commissioner deserved to be upheld and the writ petition dismissed.

6. The learned single Judge considered the question as to whether the Collector while deciding the petition u/s 7 of the 1961 Act, moved by the Appellant-Panchayat for putting it into possession of shamlat deh, can go into the question

of title while exercising the power u/s 11 of the 1961 Act. Placing reliance on Sections 7 and 11 of the 1961 Act, the learned single Judge has held that remedy provided under the Act is an exclusive remedy and issue to be determined under these sections is whether a person in occupation of panchayat land is an unauthorized occupant or the title of the land in dispute vests in the Panchayat or not. The respondent-Society in their written statement to the petition u/s 7 of the 1961 Act had raised a question of title, firstly, on the ground that vide mutation sanctioned in favour of the proprietors on 5.4.1965, the land in dispute had re-vested in proprietors; secondly, that the proprietors were in possession of the land in dispute much prior to 26.1.1950 as the same vested in them because of being subject to river action; thirdly, they had become owners on the basis of adverse possession. Therefore, once the society had raised the question of title, Collector with a view to determine as to whether society is in unauthorized possession of the property in dispute or not, was rightly required to go into the question of title and decide the same first. In support, reliance was placed on Gram Panchayat Deh Mauza Garhi Brhamana v. Kesho Narain and Ors. 1964 P.L.J. 22, Sunder Singh v. State of Punjab 1973 P.L.J. 701, Tara Chand and Fateh Singh v. Gram Panchayat and Gram Sabha of Village Atil and Ors. 1979 P.L.J. 1, Santa Singh v. Assistant Collector, Ist Grade, Kurukshetra 1984 P.L.J. 396 and Amarjit Singh v. State of Punjab (1988)94 P.L.R. 450 : 1988 P.L.J. 469, wherein it is consistently held that the question as to title raised in the written statement has to be decided first and till the decision of question of title, petition u/s 7 of the 1961 Act shall remain in abeyance. Learned Single Judge further observed that Section 7 of the 1961 Act was amended by way of insertion of a provision, namely Punjab Act No. 25 of 1993 under which it was mandatory for the Collector to call upon the party to raise question of title u/s 11 of the Act, if the same is taken in the proceedings taken u/s 7 of the 1961 Act. In the present case, the Collector had already decided the issue in 1989. It was thus held that the Collector did not commit any illegality in going into the question of title and decided the same on the basis of documentary as well as oral evidence. Thus, the Commissioner was not correct in law in holding that the Collector was not supposed to go into the question of title while deciding the petition u/s 7 of the 1961 Act and, therefore, he had no jurisdiction to decide the same.

7. In regard to the finding that the land is not burdgi baramadgi, it was observed that no evidence in this regard had been discussed by the learned Commissioner whereas jamabandis as well as oral evidence brought on record showed that the land was subject to river action. No evidence was pointed out by the learned Commissioner to show that the river in question was a rain fed channel. Thus, the finding not based on evidence could not be sustained and as such the order of Commissioner was held to be not sustainable and hence quashed.

8. On the question of possession of land by Panchayat during the pendency of the petition u/s 7 of the 1961 Act and the finding of the learned Commissioner in this regard that in view of possession having been taken by the Panchayat, the Collector should have dismissed the-petition as withdrawn, it was held that such

finding was based on presumption. The application in question contained only averment that possession has been taken over through S.E.P.O., Kharar, who has further auctioned the land and the auction money had been received by the Panchayat. There was no prayer in it that the petition u/s 7 of the 1961 Act be dismissed as withdrawn. Moreso, when it was opposed by the other side that mere appointment of a Receiver does not mean taking over the possession and the action of the Receiver had, in any case, been challenged in the High Court by way of writ petition in which stay was granted. Thus, the Collector did not commit any illegality in proceeding with the petition u/s 7 of the 1961 Act. Otherwise also, it was not the case before the learned Commissioner that the learned Collector had travelled beyond the matter which he was seized of and thus, the observation made in this regard by the learned Commissioner were held to be uncalled for.

9. With regard to the objection of maintainability it was observed that it was too late in the day to contend that the respondent-Society is not competent to maintain the writ petition. Society being aggrieved of the order of the Commissioner has rightly filed the writ petition. It was brought on record that the society is in possession on behalf of the proprietors in view of jamabandis, copy of the judgment of the civil court and oral evidence etc. Evidence brought on record especially the jamabandis from the year 1945-46 onwards and the mutation dated 5.4.1965 on behalf of the respondent-society also proved that proprietors are in possession of the property in dispute. Evidence had also been brought on record to show that the respondent-society was registered on 7.2.1939, being a body of proprietors of the village, to maintain and manage on behalf of the proprietors of the village. The learned single judge further held that the petition u/s 7 of the 1961 Act could have been filed against the proprietors and not the society, which was working in managerial capacity only and as such the petition u/s 7 of the 1961 Act was not maintainable in view of *Profulla Chornoe Requitte and Ors. v. Satya Chornoc Requitte* and thus the writ petition was allowed and the order of the Collector was restored.

10. In the backdrop of the aforesaid facts, the Appellant-Panchayat has filed the present appeal.

11. We have heard learned Counsel for the parties and perused the record.

12. The first contention raised by Mr. J.R. Mittal, learned Senior Advocate is that the Collector could not have decided the application filed by the appellants u/s 7 of the 1961 Act seeking to evict the respondent-Society till the question of title u/s 11 was decided in view of the proviso added to Section 7 of the 1961 Act, which mandates that the petition for ejectment u/s 7 has to be kept pending till the respondent-Society had made an application u/s 11 and the title so determined, and if no such application is filed it shall be presumed that there is no question of title involved. It was further contended that no such application u/s 11 of the Act had been moved by the respondent-Society and therefore, the judgment passed by the learned single Judge deserves to be set aside.

13. On the other hand it has been argued by the counsel for the respondent-Society that the reliance on proviso to Section 7, which mandates the filing of an application u/s 11 of the Act for determination of the title is wholly misconceived since the said proviso (reproduced in the order passed by the learned Single Judge) was inserted by an amendment in the year 1993, whereas the application u/s 7 of the 1961 Act had been moved in the year 1981 and decided on 31.3.1989. Further, prior to the amendment, the powers of the Collector under Sections 7 and 11 (both sections reproduced by the learned Single Judge) were co-extensive and in the event of question of title being raised by the respondents, the Collector was required to first decide the issue of title after affording due opportunity to the respective parties to adduce evidence and thereafter proceed to deal with the ejectment petition.

14. After perusing the record and pleadings and considering the rival submissions, we are in agreement with the argument raised by the learned Counsel for the respondent-Society. The proviso to Section 7 mandating the filing of a separate application u/s 11 of the Act for determination of the title and in its absence, the presumption of no question regarding title was inserted in 1993 and hence is not applicable to the facts of the present case. Further, a perusal of the order dated 31.3.1989 (Annexure P-2) passed by the Collector shows that sufficient opportunity had been granted to both the parties to lead their respective evidence and which in fact was led. On consideration of the evidence produced on record and the raised rival contentions, the learned Collector had recorded a finding that the title of the land had re-vested in the proprietors as per mutation order No. 2901 dated Section 4.196S because the land came under exception No. (i) of Section 2(g) of Act as it was subject to river action and these orders had become final and irrevocable. Therefore, after deciding the question of title, the Collector had considered and dismissed the ejectment petition moved by the Gram Panchayat u/s 7 of the 1961 Act. Thus, it can be seen that the learned Collector had not proceeded in a summary manner and instead had decided the issue like a court.

15. Keeping in view the settled proposition of law referred to by the learned Counsel for the parties and already relied upon by the learned Single Judge in its order, wherein it has been held that the question as to title raised in the written statement has to be decided first and till then, the ejectment petition u/s 7 of 1961 Act shall remain in abeyance, we find nothing wrong with the approach adopted by the Collector and by the learned Single Judge.

16. The next contention raised by the learned Counsel for the appellant-panchayat was that the respondent-society had no locus to claim title to the land. On the other hand, learned Counsel for the respondent-Society contended that this issue was never raised by the appellant-panchayat before the authorities below and, therefore, cannot be permitted to be taken up in Letters Patent Appeal. He further contended that the documentary evidence had been placed on record regarding the formation, registration and bye-laws of the

respondent-society, which was registered on 7.2.1939. The same was formed by the proprietors of the village, in whom the land in dispute vested for last more than 33 years, to manage and control the land in dispute.

17. We find that the arguments raised by learned Counsel for the respondent is liable to be accepted. It has been proved on record that the land in dispute vested in the proprietors and was in their cultivatory possession. As the proprietors themselves had formed the respondent-society for proper management and protection from nadi, the land in dispute, since 1939, therefore, the society was in possession on behalf of the proprietors. It is because of this reason, the appellant-panchayat itself had filed a petition for ejectment u/s 7 of 1961 Act impleading the respondent-society instead of individual proprietors. We further find that this issue was never raised in the pleadings before the authorities below and the litigation between the appellant-panchayat and the respondent-society on the land in dispute has carried on for over two decades. Therefore, the contention, raised by appellants, of locus standi of the respondent-society to claim title is devoid of merit.

18. The next contention of learned Counsel for the appellant is that when the application had been filed by the appellant-panchayat stating that the possession of the land in dispute had been taken by it through S.E.P.O, Kharar during the pendency of the petition u/s 7 of the 1961 Act, the learned Collector, as such, should have dismissed the petition as infructuous.

19. On the other hand, learned Counsel for the respondent-society has argued that in fact, possession had never been taken and whatever steps regarding the same had been taken by the appellant-panchayat, were illegal and further no prayer was ever made for dismissing the ejectment petition as infructuous.

20. It is not in dispute that when the efforts were made to take possession of the land in dispute through S.E.P.O, Kharar, such action was challenged by the respondent-society by filing writ petition in this Court and stay was granted in favour of the society, meaning thereby the land remained in possession of the respondent-society. It is further not understood as to how the panchayat could take possession of the land from the respondent-society without recourse to any legal proceedings, which were never disclosed by the panchayat or the S.E.P.O/ Sarpanch, at any stage. The S.E.P.O. Kharar never appeared before the Collector despite opportunities given to depose and produce evidence to show possession having been taken by the appellant-panchayat. Moreover, the cause of action or position had to be seen on the date of filing of the petition u/s 7 of 1961 Act, when admittedly the land in dispute was in possession of respondent-society, though was claimed to be unauthorized by the appellant-panchayat. It is also not disputed that there was no prayer on the part of the appellant-panchayat for dismissal of the ejectment petition as infructuous. Since the respondent-society had raised the issue of its ownership of the land in dispute in their written statement, the Collector could not dismiss the petition as infructuous as he had to record a finding as to who was the owner of the land in dispute, which could

be done on the basis of evidence led by the parties. Thus, the Collector was right in not dismissing the ejectment petition as infructuous. The findings of the learned Commissioner to the contrary were perverse against evidence on record and illogical and as such the same were rightly set aside by the learned Single Judge. As a matter of fact, the cardinal principle of law is that an appellate authority even if comes to a different finding than that of trial court, it will not substitute its own findings until and unless the findings of the Court is perverse or defies logic. In the instant case, the order of the learned Commissioner was based on surmises and not evidence adduced before the Collector.

21. Therefore, in view of the above, various findings recorded by the learned Single Judge cannot be termed to be perverse and the view to restore the order of the Collector and set aside the order passed by the Commissioner, as has been taken after considering the material on record, the provisions of the 1961 Act and the settled law on the subject, is quite reasonable and does not warrant any interference.

In view of the above, we find no legal infirmity in the order passed by the learned Single Judge and hence the present Letters patent appeal is dismissed with costs.