

(1995) 07 P&H CK 0091
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1190 of 1981

Gram Panchayat	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 12(2)

Citation : (1996) 112 PLR 113

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

Bench : Single Bench

Advocate : V.K. Jain and J.L. Malhotra, for the Appellant; Amol Rattan, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—Admittedly, the Gram Panchayat is the owner of land measuring 53 kanals 2 marlas in Khewat No. 314 (Min), Khatoni 544 (Min) Rect. 202, situated in the revenue estate of Patti Chaudhri, Kaithal. The Gram Panchayat passed a resolution to sell the land to the 3rd respondent after obtaining necessary permission of the State Government and allowed the 3rd respondent to take possession of the property in the meantime. As the 3rd respondent did not make arrangement for purchase of the land, a resident of the village moved an application u/s 7 of the Act for eviction of the 3rd respondent from the land impleading the Gram panchayat as the 1st respondent. The Assistant Collector by his order dated 28.11.1979, held that the land belonged to the Gram Panchayat but in view of the fact that the 3rd respondent made constructions on the land, he directed the 3rd respondent to pay the price of the land at the rate of Rs. 25,000/-per acre as fixed by the Government within two months from the date of his order. Against the said order, the 3rd respondent preferred an appeal to the Collector, Kurukshetra who set-aside the order of the Assistant Collector. Against the said order of the Collector, the Gram panchayat filed the present writ petition.

2. No body appeared for the 3rd respondent in the writ petition though the matter was called thrice today. Heard the arguments of the learned counsel for the petitioner and perused the record.

3. It is in the order of the Assistant Collector that the State of Haryana vide its letter No. 8107-8 dated 26.2.1976, granted permission to the Gram Panchayat to sell the land to the 3rd respondent at the rate of Rs. 25,000/- per acre. Therefore, when the Government itself fixed the price of the land at Rs. 25,000/- per acre, it is not known how the Collector can direct the dispute in regard to the price to be settled in accordance with the rules with the consent of the parties. Collector has not given any reasons at all for fixing the price of the land at Rs. 8,000/- per acre in his order dated 27.12.1975. This order of the Collector dated 27.12.1975 was reversed by the Government in its order dated 26.2.1976. In his order, the Collector completely ignored the order of the Government which was available in the file and also referred to by the Assistant Collector in his order. A reading of the order of the Collector clearly shows that he did not apply his mind at all.

4. u/s 15 of the Punjab Village Common Land (Regulation) Act, 1961, as applicable in the State of Haryana, the State Government is empowered to make rules providing for the manner and the circumstances in which any land vested in the Gram Panchayat may be disposed of, transferred or sold. In exercise of its powers, the State Government framed Sub-rule (1) Rule 12 providing for the manner and circumstances in which the land vested in the Gram Panchayat may be sold. Under Sub-rule(2) of Rule 12 whenever it has been proposed to sell the land in shamilat deh under Sub-rule (1), the Panchayat shall forward to Government a copy of the resolution passed by a majority of three-fourth of its members proposing to sell the land through the Panchayat Samiti stating the price therein. Thus it is clear that it is only the Government which can permit to sell the land and while permitting the sale of the land, it is open to the Government to stipulate the terms and conditions on which the sale could take effect. The terms and conditions also include the fixation of price for the land. Thus the Collector has no power to fix the price of the land. Even if he fixes the price it amounts to a recommendation or suggestion to the Government in regard to the price. Simply because the Collector fixed the price, it does not take away the right of the Government of vary the price and fix a higher price. When the Government fixed the price of the land at Rs. 25,000/- per acre, the 3rd respondent is bound by the same and it can only purchase the land at the price fixed by the Government. The Collector appears to be under the mistaken impression that the Government cannot alter the price fixed by him and the orders of the Government have no binding force and that his decision alone is supreme and revision of price by the Government was not warranted under the rules. Therefore, to my mind, the Collector ignored and acted contrary to the orders of the Government. Obviously the Collector did not like his subordinate to tell him that he had no power to permit the sale of the land or fix the price thereof.

5. Undisputably, the Gram Panchayat is the owner of the land. Though the Gram Panchayat permitted the 3rd respondent to purchase the land, the 3rd respondent did not purchase the land by paying the price fixed by the Government. Therefore, the possession of the 3rd respondent is unauthorised and illegal.

6. u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961, an order of ejectment can be passed against any person who is in wrongful or unauthorised possession of the land of the Gram Panchayat. Rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964, as applicable in Haryana, reads as follows:-

"19. Unauthorised occupation Shamilat Deh.- For purposes of Section 7 of the Act, a person shall be deemed to be in unauthorised occupation of any land in shamilat deh:-

xx xx xx xx (ii) otherwise acted in contravention of any of the terms express or implied, under which he is authorised to occupy such land in shamilat deh;"

7. Thus it is clear that whoever is in possession of the land in contravention of any terms express or implied under which he was authorised to occupy such land in shamilat deh shall be deemed to be in unauthorised occupation. The third respondent agreed to purchase the land under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961. As demonstrated above, the land can be purchased by the 3rd, respondent only at the price fixed by the Government. The Government fixed the price in the year 1976 at Rs. 25,000/- per acre. But the 3rd respondent did not make an effort to purchase the land at the price fixed by the Government till 1979 when an application u/s 7 of the Act was filed by a resident of the village before the Assistant Collector. Even after the order of the Assistant Collector, the 3rd respondent insisted to purchase the land at the price fixed by the Collector i.e. Rs. 8,000/- per acre instead of at Rs. 25,000/-. Further, he preferred the appeal and dragged the matter. Thus, it is clear that the 3rd respondent violated the terms under which he had been permitted to occupy the land. Therefore, his possession is certainly illegal and unauthorised.

8. I am of the opinion that the Collector clearly erred in holding that the 3rd respondent i.e. appellant before him was not in unauthorised possession of the land in dispute. The observation of the Collector that dispute with regard to the price of the land can be settled in accordance with the rules with the consent of the parties, is not only perverse but also contrary to the provisions of the Act and rules and Government orders. The Government itself decided and fixed the price of the land at Rs. 25,000/- per acre. When the Government fixed the price of the land and order of the Government was within the knowledge of the Collector, it is not open to the Collector either to reduce the price of the land or leave to the arbitration. The order passed by the Collector is therefore liable to be set-aside.

9. The petition is accordingly allowed and the orders of the Collector, Kurukshetra

are hereby set-aside and the orders of the Assistant Collector are restored holding that the 3rd respondent is in unauthorised occupation. The 3rd respondent is directed to pay the price of the land @ Rs. 25,000/- per acre with simple interest @ 12% per annum from the date of the order of the Collector within three months from today, failing which the Gram Panchayat would be at liberty to evict the 3rd respondent as per orders of the Assistant Collector and the 3rd respondent is not entitled to claim any damages for the Super-structures raised by it on the land in dispute.