
(2009) 03 P&H CK 0240
In the Punjab And Haryana At Chandigarh

Gram Panchayat	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

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

Citation : (2009) 156 PLR 480 : (2009) 3 RCR(Civil) 607

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The Gram Panchayat, Village Dhingsara-petitioner has approached this Court with a prayer for quashing order dated 16.4.1986 passed by the Assistant Collector, Ist Grade, Fatehabad-respondent No. 3 as also order dated 21.5.1994 passed by the Collector, Hisar-respondent No. 2 (Annexures P-6 & P-7 respectively). In the aforesaid orders, the view taken by the Assistant Collector as well as the Collector is that the private respondents have been the owner in possession of the land in dispute. The operative part of the order of the Assistant Collector Ist Grade-respondent No. 3 in so far it is relevant, reads thus:

...In the jamabandi for the year 1961-62 prepared at the time of consolidation and in the Sharayat Wajub-ul-Arz, this is shown as uprahan pond in which there is no bar on drinking of water, that it cannot be made cultivable. From the copies of the jamabandies from P-1 to P-6, it is clear that the respondents are the owners in possession. 16 Kanals of land has been acquired by the State for Water Works regarding which mutation has been sanctioned in favour of the State. From the mutation Exhibit R-2, it is clear that the owners have themselves sold some area. Exhibit R-4 indicates that the owners were bearing the expenses regarding the lining of the khaal in respect of this land. In addition, 48 kanals has been leased out by the owners for brick kiln. This area does not come u/s 2(g) of the Punjab Village Common Lands Act. It is owned by the owners. It cannot be declared as Shamlaat Deh. It cannot vest in the Panchayat....

2. The order of the Assistant Collector has been upheld by the Collector. It is, thus, evident that categorical findings have been recorded on the basis of jamabandi for the year 1961-62, prepared at the time of consolidation and also on the basis of entries made in Sharayat Wajub-ul-Arz, where the land has been shown as "Uprahan pond, which does not bar drinking of water and that the land could not be made cultivable. The entry further clarifies that the names of the private respondents have been entered as owners in possession in the revenue record. A series of acts have been quoted in the order showing that these were the acts which could have been done only by owner and not by a person other than the owner. The first instance of this nature is that 16 Kanals of land was acquired by the State for Water Works regarding which mutation in favour of the State Government was sanctioned later on. The other illustration is that the owners have themselves sold some area which is evident from the perusal of mutation. The last illustration is that the owners have been bearing expenses regarding lining of the Khaal (water course) in respect of the land in question and that 48 Kanals of land was leased out by the owners for brick kiln. From these instances no doubt could be entertained that these are the acts which are done by an owner openly and to the knowledge of the petitioner Gram Panchayat. There is, thus, categorical finding that the land did not vest in the Gram Panchayat.

3. Mr. B.R. Gupta, learned Counsel for the Gram Panchayat petitioner has drawn our attention to the entries made in "Sharayat Wajubul-Arz" pertaining to the jamabandi for the year 1961-62. The entry does not state anything more than what the Assistant Collector Ist Grade and Collector have already noticed. According to the learned Counsel, once the land is found to be "Uprahan Pond" then it has to be recorded as "Shamlat Deh" irrespective of anything else.

4. Mr. S.S. Godara, learned Counsel for respondent No. 69 has drawn our attention to the view taken by the Full Bench of this Court in the case of *Jai Singh and Others Vs. State of Haryana*, and submitted that it is only that area of land, as laid down by the Full Bench; which may vest in the Gram Panchayat and none else. In that regard, the concluding para 62 of the judgment of the Full Bench deserve to be considered, which reads thus:

62. In view of the discussion made above, we hold that:

i) Sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;

ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g) (1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared u/s 14 read with Rules 5 and 7 and confirmed u/s

20, which has been implemented under the provisions of Section 24 and no other lands;

iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared u/s 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of Sub-section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat etc.

5. According to the learned Counsel unless the aforesaid requirements given in para (iv) are met the land would not vest in the Gram Panchayat and continue to be the land of the proprietors.

6. Having heard learned Counsel we are of the considered view that such land which have been contributed by the proprietors on pro-rata cut on their holdings imposed during the consolidation proceedings which had not been earmarked for any common purpose in the consolidation scheme prepared u/s 14 read with Rules 5 and 7 and/or entered in the column of ownership as Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat and the possession is with the proprietors, would not vest with the Gram Panchayat or the State Government as per Section 2(g)(6) and the explanation appended thereto or any other provision of the Punjab Village Common Lands (Regulation) Act, 1961 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. It is only that land which as per the consolidation scheme have been reserved for common purposes whether utilised or not, is to vest with the State Government or the Gram Panchayat. Even though in the column of ownership, the entries may be Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat. There are categorical findings in the present case showing that the land in question is a Uprahan pond and the names of the private respondents have been recorded as owners in possession. The land has not been reserved for common purposes of the village and, therefore, according to the Full Bench judgment in Jai Singh's case (supra) it would not be covered by Section 2(g)(6) of the Act. Moreover, there are various acts highlighting the private respondents to be the owner of the land. Therefore, the writ petition is liable to be dismissed.

7. For the reasons aforementioned, the writ petition fails and the same is dismissed.