
(2002) 11 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8411 of 1990

Gram Panchayat

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 3

Citation : (2003) 133 PLR 537 : (2003) 1 RCR(Civil) 273

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : S.N. Saini, for the Appellant; Randhir Singh, D.A.G. for Respondent Nos. 2 to 4 and I.S. Balhara, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—A Division Bench of this Court in Gram Panchayat, Daha v. Chief Settlement Commissioner and Ors. 1973 P.L.J. 389 held that share of the evacuee in the shamilat land of the village from which Muslim evacuees had migrated vested in the Custodian by virtue of Sections 7 and 8 of the Administration of Evacuee Property Act, 1950 and that the Punjab Village Common Lands (Regulation) Act No. 1 of 1954 did not divest such share of the evacuees and such share which had vested in the Custodian did not get vested in the Panchayats.

2. The judgment of this Court was reversed by the Supreme Court in Gram Panchayat of Village Jamalpur Vs. Malwinder Singh and Others, in which the learned Judges of the Apex Court held that evacuee interest in the shamilat deh land came to be reverted in the Panchayat of the village along with rights and interest of all others u/s 3 of the Punjab Village Common Lands (Regulation) Act No. 1 of 1954. We are concerned with the evacuee interest in the Shamilat land of village Dhani Silanwali. On the pronouncement of the judgment by the Supreme Court in the aforesaid case evacuee interest came to vest in the Gram Panchayat but nevertheless it was mutated in favour of the Custodian and

mutation No. 389 was sanctioned in favour of the Government of India. That mutation was challenged before the Collector who dismissed the appeal. Feeling aggrieved by the said order, Gram Panchayat of the village filed a revision petition before the Commissioner who agreed with the contention of the Gram Panchayat and made a reference to the Financial Commissioner, Haryana for the acceptance of the revision petition. This reference was made in view of the law as declared by the Supreme Court in Gram Panchayat, Jamalpur's case (supra). The Financial Commissioner accepted the reference but quite surprisingly made some observations therein which ran counter to the law as declared by the Supreme Court. He admitted that evacuee interest in the shamilat land in the village would vest in the Gram Panchayat but according to the Financial Commissioner, Gram Panchayat would move into the shoes of the Custodian and that it will have same rights as that of the Custodian in the land in dispute. To say the least there was no occasion for the Financial Commissioner to make such observations. Since the Gram Panchayat was declared owner of the land the same should and ought to have been mutated in its favour. Thereafter, Gram Panchayat filed a petition u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short the Act) seeking ejectment of Mangtu respondent who was in possession of 77 kanals 7 marlas of land belonging to the Gram Panchayat. That petition was dismissed and on appeal the Collector remanded the case back to the Assistant Collector with a direction that the petition be converted into a suit u/s 13-A of the Act and the question of title be decided. The Assistant Collector carried out the directions of the Collector and after converting the petition u/s 13-A of the Act relied upon the observations of the Financial Commissioner that the land continued to vest in the Custodian and dismissed the ejectment petition. Learned counsel for the petitioner informs me that an appeal against this order is pending before the Collector and the same has not yet been decided owing to the pendency of the present writ petition. He has further informed me that evacuee interest in the shamilat land of the village has since been mutated in favour of the petitioner Gram Panchayat as per mutation No. 596 dated 30.10.1985 in view of the judgment of this court in Gram Panchayat, Dhani Silanwali v. Union of India and Ors., Civil Writ Petition No. 4913, decided on 23.8.1995. Since the land already stands mutated in favour of the Gram Panchayat, the impugned order of the Assistant Collector dated 12.4.1990 dismissing the ejectment petition filed by the petitioner cannot be sustained.

3. In the result, the writ petition is allowed, the impugned order dated 12.4.1990 passed by the Assistant Collector, 1st Grade, Siwani set aside and the case is remanded to the Collector, Bhiwani with a direction to decide the petition filed by the petitioner Gram Panchayat treating the same u/s 13-A of the Act on merits in accordance with law after affording an opportunity of hearing to all concerned. He will not take into consideration the observations made by the Financial Commissioner in the order dated 4.5.1988 (Annexure P-2 with the writ petition). Parties through their counsel have been directed to appear before the Collector, Bhiwani on 9.12.2002 for further proceedings.