

(1986) 01 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4589 of 1978

Gram Panchayat Asa Kalan

APPELLANT

Vs

Collector, Karnal

RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Citation : (1986) 1 LLR 388 : (1986) PLJ 443 : (1986) Rent LR 139 : (1986) RRR 207

Hon'ble Judges : D.V.Sehgal, J

Advocate : Mr. Som Nath Saini, Advocates., Mr. P.C. Mehta, Advocates for appearing Parties

Judgement

D.V. Sehgal, J.

1. The Gram Panchayat Asan Kalan, the petitioner, filed an application under section 7 of Punjab Village Common Lands (Regulation) Act, 1961 as applicable to Haryana (hereinafter called 'the Act'), before the Assistant Collector Ist Grade, Panipat, alleging that Ram Chander respondent No. 3 was in unauthorised possession of the land belonging to it comprising Khewat No. 304, Khatoni No. 487, Rectangle Nos. 28/2, 26, 7, 8, 9, 12, 13, 14, 15, 16 to 18, 23 to 25, 29/11, 20, 21, 31/3, 4, 5/1, 5/2, 6, 7, 10, 7/2, 13/1, 13/2, 14, 18, 58/11, 23, 24, 25, 12/1, 18, 16, 114/13, 17/2, 18 Khatoni No. 818 Khewat No. 304 Rectangle No. 114/3, 8/1, 8 total 246 Kanals and praying for his ejectment therefrom. The Assistant Collector, however, dismissed this application vide his order dated 31.1.1978 Annexure P. 1. The petitioner filed an appeal before the Collector, Karnal, which was also dismissed vide order dated 9.6.1978. Annexure P. 3. Both these orders have been challenged through the present writ petition.

2. Section 7 of the Act vests the power with the Assistant Collector Ist Grade having jurisdiction in the village either suo motu or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer to any other officer authorised by the Block Development and Panchayat Officer to eject any person

who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have vested in the Panchayat under the Act, if after making such summary enquiry as he may deem fit he comes to the conclusion that such person is in wrongful and unauthorised possession of the land or other immovable property in the shamlet deh of the village. Through the impugned order Annexure P. 3, the Collector has reached at a firm finding of fact that respondent No. 3 is in possession of the shamilat deh land measuring 64 Bighas 8 Biswas prior to 26.1.1950 and that the land in dispute was given to him in lieu of the said shamilat deh land in the consolidation of holdings proceedings. He has not been paying and batai to the Gram Panchayat. This finding of fact was supported by the certified copies of the revenue record which were placed before the Assistant Collector Ist Grade.

3. In view of the above finding of fact reached at by the authorities below, it has to be determined whether the land in dispute falls within the definition of shamilat deh as defined by section 2(g) of the Act. Clause (5)(iii) of the said provision lays down that the land which has been partitioned and brought under cultivation by individual landholders before 26.1.1950 is not included in the definition of shamilat deh for the purpose of the Act. Since, therefore, respondent No. 3 has been in cultivating possession of the shamilat deh land prior to 26.1.1950 and the land in dispute was allotted to him in lieu thereof in the consolidation of holdings as per findings of the Collector, the petitioner could not seek eviction of respondent No. 3 from the said land under Section 7 of the Act. No fault, therefore, can be found with the impugned orders Annexures P1 and P3 whereby the application under Section 7 of the Act filed by the petitioner was dismissed.

4. Consequently, there being no merit in this petition, the same is dismissed. There shall, however, be no order as to costs.