

(2005) 09 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3005 of 2004

Gram Panchayat, Balad Kalan

APPELLANT

Vs

Commissioner, Patiala, Division and others

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Citation : (2006) 1 PLJ 151 : (2006) 1 PLR 260 : (2005) 4 RCR(Civil) 666

Hon'ble Judges : J.S.Narang, J and Baldev Singh, J

Advocate : Mr. S.S. Salar, Advocate and Mr. Ashok Aggarwal, Addl. A.G. Punjab;
Mr. S.D. Sharma, Sr. Advocate with Mr. Neeraj Sharma, Advocate., Advocates for
appearing Parties

Judgement

J.S. Narang, J.—The Gram Panchayat had filed an application under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) for ejectment of predecessor in interest of the private respondents on the premises that they were in unauthorised and wrongful possession of the land comprised in Khasra Nos. 1343, 1344, 1345, 1346, 1347, 1348, 1355, 1356 and 1357 Khata Nos. 204/338, 204/343, 206/351 measuring 68 Bighas 17 Biswas belonging to the Gram Panchayat. An order of eviction had been passed on 30.12.1966 which was challenged by way of an appeal and that the appeal was accepted and the matter was remitted for fresh decision. The parties were again heard and that vide order dated 28.7.1971, the eviction order had been passed. This order was never ever challenged by way of an appeal or revision at the instance of any of the parties. Pursuant to the aforesaid order, an application had been filed by the Gram Panchayat for retrieving the possession accordingly. The warrants of possession had been issued. The respondents filed a Civil Suit on 1.5.1974 along with an interim application, the interim stay qua the possession had been granted. The suit was decreed by the trial Court and that the Gram Panchayat had been restrained from dispossessing the respondents on the premises that Gram Panchayat is not the owner. The order dated 28.7.1971, though having become final, became inexecutable. The judgment and decree of the trial Court was challenged by way of an appeal before the lower Appellate

Court, which was dismissed, which was further challenged by way of Regular Second Appeal filed before this Court by the Gram Panchayat. The appeal was allowed on the premises that the jurisdiction of the Civil Court is barred under the provisions of the Act. Thus, the question of title could be decided only by way of filing an application under Section 11 of the Act.

2. Resultantly, the petition under Section 11 of the Act was filed which was accepted vide order dated 5.5.1986 by holding that Gram Panchayat is not the owner. The Gram Panchayat challenged the aforesaid order by way of an appeal before the learned Commissioner. The appeal was allowed vide order dated 20.6.1990, copy Annexure P7, the order dated 5.5.1986 was set aside and Gram Panchayat permitted to proceed under Section 7 of the Act. This order was challenged by way of Civil Writ Petition before this Court and that the petition was allowed and the case was remitted to the learned Commissioner. The appeal of Gram Panchayat was dismissed by the learned Commissioner holding that the land did not vest in the Gram Panchayat. Feeling aggrieved against this order, the Gram Panchayat filed C.W.P. No. 419 of 1996. The petition was admitted and it was finally decided on 14.5.2003 by holding that the land in question was being used for common purposes, i.e. for "charand", therefore, it falls within the definition of Shamlat Deh. Copy of the judgment has been appended as Annexure P9.

3. This judgment was challenged by way of LPA Nos. 377 and 386 of 2003. The appellants had purposely omitted the word "Charand" from the jamabandi which was attached with the copy of the petition. The respondents when confronted with the document, which was certainly forged, both the appeals were withdrawn vide order dated 18.12.2003. The extract of the order is as under :

"Present : Shri S.D. Sharma, Senior Advocate withdrawn

Shri Amarjit Markan, Advocate for the applicantappellants.

Shri S.S. Salar, Advocate for the respondents.

Shri S.D. Sharma, learned counsel appearing on behalf of the applicant appellants after it was pointed out by the learned counsel appearing on behalf of the respondents, that the words "Makbooja charand" mentioned in the document appended as Annexure P3, which for the reasons best known to the applicantappellants, has been omitted in the document filed with the appeal, prays to withdraw the appeal.

Permission is granted and the Letters Patent Appeal is dismissed as withdrawn.

Since the appeal has been dismissed as withdrawn prayed for stay is also dismissed.

December 18, 2003

Sd/ Binod Kumar Roy

Chief Justice

Sd/ Justice G.S. Singhvi,

Judge."

4. The Gram Panchayat moved the learned Assistant Ist Grade, Sangrur for reviving of the execution application. The respondents filed frivolous objections which were dealt with vide order dated 6.10.2003. An order issuing the warrants of possession was granted. Against the aforesaid order, an appeal was filed before the learned Collector, Sangrur, which was dismissed vide order dated 28.10.2003. This order was further challenged before the learned Commissioner, Patiala Division, Patiala. In the first instance, the execution was stayed and the case was fixed for hearing on 7.11.2003. Learned Commissioner allowed the appeal and remitted the case with the direction to appear before the Assistant Collector Ist Grade on 20.2.2004 for further proceedings. Since the order had been reserved and was pronounced on the aforesaid date, a direction had been issued that the order be communicated to the parties, through their counsel. Learned counsel for the petitioner noted the order on 23.1.2004. This order is the subjectmatter of challenge in the present petition.

5. Notice of motion was issued vide order dated 24.2.2004. However, no interim order was passed.

6. The respondent Nos. 3, 4 and 9, 5, 6, 8 and 7 have filed three written statements separately. The plea taken is that the order of the learned Commissioner is appealable and that no appeal having been filed, the petition deserves to be dismissed on this count alone. It has also been pleaded that Mr. Gurjant Singh Sarpanch has been debarred from conducting and persuing the Panchayat cases regarding Shamlat Land and in his place Shri Pardeep Kumar, Panchayat Officer has been appointed and authorised to do such cases. Upon his transfer, Mr. Harkirit Singh, Panchayat Secretary has been given the powers. Thus the petitioner has not been correctly filed. It is also the plea that respondent No. 11 has filed LPA No. 171 of 2004, therefore, on the basis of the judgment of learned Single Judge dated 14.5.2003, the proceedings cannot proceed. Apart from (sic) the frivolous objections numbering 15 have been taken. The pleas which have attained finality have been set out again for the reasons best known to the respondents.

7. We have heard learned counsel for the parties and have also perused the paper book as also the orders appended with the petition as also the documents appended with the respective written statements. It is the admitted case, that the question of title was raised under Section 11 of the Act which stood finally decided by virtue of the judgment rendered in C.W.P. No. 419 of 196 decided on 14.5.2003. By giving categoric finding in this regard, learned Single Judge has dismissed the petition under Section 11 of the Act declaring Gram Panchayat as the owner of the land in question by awarding costs against the respondents amounting to Rs. 10,000/. This order had been challenged by way of LPA No.

377 of 2003 and that the respondents cleverly omitted the word "Maqbooja Charand" mentioned in document appended as Annexure P3 with the copy of the writ petition and that on this account, when confronted, counsel appearing on behalf of the appellants made a prayer to withdraw the appeal. The appeal was dismissed as withdrawn before the LPA Bench vide order dated 18.12.2003, the extract of which has been noticed hereabove. The plea that in other appeal registered as LPA 171 of 2004 is pending, is of no consequence as no order staying the operation of the judgment rendered by the learned Single Judge has been pleaded nor any order has been produced before us.

8. We have perused the order of learned Commissioner dated 30.12.2003, which is the subjectmatter of challenge before us. We are surprised to know that it has been observed that the order dated 28.7.1971 passed by the Assistant Collector Ist Grade, Sangrur cannot be executed as the same has become time barred. An observation has been made that an order passed under Section 7 is deemed to be a decree and the same has to be executed by the revenue officer accordingly and that by virtue of the provisions of Indian Limitation Act, 1963, the decree can be executed within the period of 12 years and after the expiry of the said period, the decree does not remain executable. Ordinarily, such principle would be applicable but there are certain exceptions to the rule where the enforcement of such order remains in abeyance by virtue of the order passed by the statutory authority. In the case at hand, the execution application was filed well before the expiry of the period 12 years but by virtue of the orders passed by one Court or an authority under the revenue heirarchy, the execution application remained suspended. It was a different matter, if no such application had been filed but in the present case, the application had been filed but the same remained in abeyance by virtue of the interim orders. The petitioners had only sought the reviewing of the execution application after the respondents had lost on all counts and before every forum. The respondents made miserable attempt of forum hunting as well, which fact is evident that a Civil Suit had been filed which was wrongly decreed by the trial Court and that the said judgment and decree affirmed by the lower Appellate Court was ultimately set aside by this Court in Regular Second Appeal. However, an observation had been made that the question of title could be decided only by way of filing an application under Section 11 of the Act, which was filed by the respondents and which again became an obstacle against the prosecution of the application.

9. The petition under Section 11 was allowed by the authority and this order was set aside by the learned Commissioner, which order was again challenged before this Court and that the petition was allowed and the case was remitted to the learned Commissioner for a fresh decision. Learned Commissioner dismissed the appeal of the Gram Panchayat and this order was again challenged by the Gram Panchayat by way of C.W.P. No. 419 of 1996 which was decided on 14.5.2003 and that the order of the learned Commissioner as also that of Assistant Collector Ist Grade vide which the respondents had been held to be the owners, were set aside and that the petition under Section 11 of the Act was dismissed.

This was again challenged by way of LPA by misstating and concealing the real facts, which had been ultimately pointed out by learned Counsel for the Gram Panchayat and that the counsel for the respondent appellants had no escape but to withdraw the appeal, which order has been noticed and has been reproduced hereabove. It is only on 14.5.2003, the matter had come to rest visavis the title between the parties. Resultantly, the petitioners correctly sought the revival of the execution application and were granted the relief accordingly, i.e. by way of issuing warrants of possession. It is strange that learned Commissioner, Patiala Division, Patiala has virtually declared the respondents as the owners of the land, despite this fact having been finally decided by way of dismissal of the application under Section 11 of the Act by the learned Single Judge of this Court and that upon withdrawal of the appeal against the said judgment, the order became final.

10. Learned Commissioner exceeded his jurisdiction by holding that the respondent appellants and respondent Nos. 2 to 7 before him will continue to pay Chakota amount to the Gram Panchayat as per revenue record in each and every year. It has also been observed that the appellant and respondent Nos. 2 to 7 and their forefathers made the land in question fit for cultivation which was banjar qadim, by spending huge amount from their own pocket. Was that the question before the learned Commissioner ? Learned Commissioner has erroneously and without any application of mind nullified the order dated 28.7.1971, which had become final between the parties and further declaring the judgment of this Court dated 14.5.2003 rendered in C.W.P. No. 419 of 1996 nonest in the eyes of law. It is certainly grave error of jurisdiction on the part of learned Commissioner. It may be noticed that the learned Commissioner had been impleaded by name as respondent No. 2 and he has filed written statement to the petition and has still maintained that the execution application was time barred and therefore, is inexecutable after the expiry of 12 years. He has not even given any reply to the judgment of this Court rendered in the aforesaid Civil Writ Petition vide which the application under Section 11 of the Act has been dismissed by categorically holding that the respondent Nos. 3 to 12 are not the owners of the land in question. He has conveniently ignored the fact that the execution application had been filed well within time but the same remained in abeyance by virtue of the orders passed by different forums. We do not express our anger on the nonapplication of mind because the quasi judicial authorities do make certain mistakes also but the responsible forums which are presided by a Commissioner ought not to be making such observations which are not sustainable under law. De hors this while filing written statement before this Court, the learned Commissioner has perhaps not consulted or taken the legal advice accordingly.

11. In view of the fact that the title between the parties stands settled by virtue of a judgment of this Court rendered in C.W.P. No. 419 of 1996 decided on 14.5.2003, the respondent Nos. 3 to 12 are not entitled to retain possession of the land at all. Apart from this, the order dated 28.7.1971 had become final

between the parties. Upon the application filed under Section 7 of the Act requires that the respondents should be evicted accordingly. It is also the fact that the execution application had been filed which was kept in abeyance due to the orders passed by different forums by virtue of the forum hunting made by the respondents, which is not at all appreciable. The forums are not meant to be used and abused but are meant only to get the right, rightfully claimable, determined accordingly. In this case, particularly, dishonest attempt on the part of the respondents is made out especially when the order under Section 7 was never ever challenged beyond 1971 but the other plea unsustainable under law had been taken for claiming the title. The conduct of the respondents has also become far too obvious, the manner in which the judgment of learned Single Judge had been challenged by way of an appeal by specifically withholding the factum that the land had been described as "Maqbooja Charand" and when later on this matter was pointed out, the counsel for the appellant withdrew the appeal instead of facing the prosecution for having concealed the fact with an effort to mislead the Letters Patent Bench.

12. In view of the above, the petition is allowed with costs, which are assessed as Rs. 10,000/ payable by respondent Nos. 3 to 7 in equal share, which shall be paid to the State Legal Service Authority, Punjab and the order dated 30.12.2003 passed by the learned Commissioner, Patiala Division, Patiala, copy Annexure P1 is quashed. The Gram Panchayat i.e. petitioner shall be at liberty to claim damages from the respondents for the use and occupation of the land in question w.e.f. 28.7.1971 as the order despite having become final remained in abeyance, the execution of which remained in abeyance at the instance of respondents by virtue of the interim orders, which permitted the respondents to continue to exploit the land in question, meant for the benefit of the right holders.