
(1988) 07 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 887 of 1988

Gram Panchayat Village Bashamberpura

APPELLANT

Vs

Sardara Singh and Another

RESPONDENT

Date of Decision : 29-07-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 15, 23A, 44
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13, 2, 4, 5, 7

Citation : (1989) 1 ILR (P&H) 97

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : R.K. Joshi, for the Appellant; Suresh Amba, for the Respondent

Judgement

A.L. Bahri, J.—This revision petition has been filed by the Defendant-Gram Panchayat of Village Bashamberpura against order of Additional District Judge, Amritsar dated December 15, 1987 whereby appeal filed by Sardara Singh and Anr. Plaintiffs, against order dated January 8, 1987 passed by Sub Judge IInd Class, Amritsar was accepted and ad interim injunction order was issued against the Gram Panchayat restraining it from dispossessing the Plaintiffs Sardara Singh and another from the suit property till decision of the suit on merits.

2. Sardara Singh and another claimed to be in possession of the suit land for the last about 40 years. The land was reserved for the proprietors of the village community including the Plaintiffs! who were as such co-sharers in the suit land. Ownership of the Gram Panchayat over the suit land was denied. The land was never used for common purposes for which it was reserved. The order passed by the Collector (D.D.P.O.), Amritsar dated August 19, 1985 directing ejectment of the Plaintiffs was also challenged as illegal, void and without jurisdiction. The Gram Panchayat contested the suit and denied ownership of the Plaintiffs over the suit land. It was also denied that Plaintiffs had raised some construction. The possession of the Plaintiffs for 40 years was denied. It was only in July, 1984 that

some building was raised by Sardara Singh and another. Immediately, the Gram Panchayat took legal remedy by approaching the Collector (D.D.P.O.), Amritsar who ordered ejectment of Sardara Singh and another on August 19, 1985 from the suit land. The land was reserved for common purposes of the village and thus was owned by the Gram Panchayat. It was reserved for the school of the village during consolidation proceedings in 1959-60. Till then, the land was being managed by the Gram Panchayat. On the application for the grant of ad interim injunction, the trial Court declined to grant the injunction and dismissed the same on January 8, 1987. This order was set aside in appeal. Hence, this revision petition by the Gram Panchayat.

3. Copy of Jamabandi for the year 1979-80 of the suit land has been shown. Under the column of ownership, the entry reads as under:

JUMLA MUSHTARKA MALKAN WA DEEGAR HAQ DARAN ARAZI HASAB RASAD RAQBA

(jointly owned by the owners and other right-holders in proportion to their respective areas of land.)

Under the column of cultivation, the entry is "RAFAEY-AAM" (public welfare purposes). Under the column of kind of land, the entry is GAIR MUMKIN (uncultivable land)--School.

4. From the aforesaid entries, it is clear that in the revenue record, land is not recorded as shamilat deh which vests in the Panchayat as such u/s 4 of the Punjab Village Common Lands (Regulation) Act and, therefore, Gram Panchayat could not get unauthorised occupant of such land evicted u/s 7 of the said Act. Land which is surplus during consolidation proceedings or reserved for common purposes comes under the management of the Gram Panchayat. The Panchayat can get unauthorised occupants from such land evicted under the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act. The aforesaid distinction has been brought out in judicial decision. *Mange Ram and Ors. v. The Collector, Sonapat and Ors.* 1986 P.L.J. 406. It was a case of eviction of an unauthorised occupant or a number of proprietary body from the land which belonged to the proprietary body of village reserved for common purposes. Administration of such land vested in the Panchayat under the Consolidation Act. It was held that such land did not form part of the shamilat deh as defined u/s 2(g)(1) of the Punjab Village Common Lands (Regulation) Act and eviction of unauthorised occupant could not be ordered u/s 7 of the said Act. Gram Panchayat could take appropriate proceedings under the provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act.

5. If the property from which the Gram Panchayat wanted unauthorised occupants to be evicted formed shamilat deh, provisions of Sections 7 and 13 of the Punjab Village Common Lands (Regulation) Act would be attracted and civil Court will have no jurisdiction to entertain suit on behalf of such occupants. In this respect, reference may also be made to the decisions of the Supreme Court

in Ram Singh and Ors. v. Gram Panchayat Mehal Kalan and Ors. 1986 P.L.J. 636, Babu Ram and Ors. v. Gram Sabha Buhavi and Anr. 1988 P.L.J. 310 and Ishar Singh v. Badan Singh 1988 P.L.J. 26. Even in the case of shamilat deh which vests in the Panchayat, proceedings under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act could be initiated for evicting the unauthorised occupant as held by Kang J. in Kaka Singh v. Commissioner, Ferozepore Division 1985(2) P.L.R. 53.

6. In the present case, in the revenue record land is not described as shamilat deh. However, in view of the entry in the jamabandi for the year 1979-80, as reproduced above, the land was jointly owned by the owners and other right-holders in the village. It was reserved for public welfare purposes (common purposes) i.e. school during consolidation proceedings. Such land comes under the management of Panchayat and thus vests in the Panchayat u/s 23-A(b) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act and such land would be public premises as defined u/s 2(e) of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act. Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act bars institution of civil suits with respect to matters which the State Government or any officer under the said Act is empowered to determine, decide or dispose of. Further, if an order of eviction is passed under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, no Court shall have jurisdiction to entertain any suit in respect of such eviction of any person who is in unauthorised occupation of the public premises, as provided u/s 15 of this Act. Suit of the present kind after order of eviction has been passed by the Collector (D.D.P.O.), Amritsar on August 19, 1985 prima facie would be barred. Thus, it cannot be said that merely because the Respondent-Plaintiffs are in possession, though unauthorised, of such public premises they can approach the Court to defend their possession when they are being evicted in due course of law by the Gram Panchayat.

7. In the facts and circumstances of the present case, there is no question of balance of convenience being in favour of the Plaintiff-Respondents. The lower appellate Court thus was not justified in setting aside the well-considered order of the trial Court dismissing miscellaneous application filed under Order 39, Rules 1 and 2 read with Section 151 of the CPC declining to grant the ad interim injunction during pendency of the suit. This revision petition is, therefore, accepted. The order of the lower appellate Court is set aside and that of the trial Court is restored. However, there will be no order as to costs.