
(1990) 09 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 13 of 1986

Gram Panchayat Village, Bathoi Kalan, Patiala

APPELLANT

Vs

Jagar Ram and others

RESPONDENT

Date of Decision : 10-09-1990

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13, 4, 7
Punjab Village Common Lands (Regulation) Haryana (Amendment) Act, 1974 —
Section 2, 4(3)

Citation : AIR 1991 P&H 159 : (1991) 1 ILR (P&H) 187 : (1991) 99 PLR 260

Hon'ble Judges : J.V. Gupta, C.J.; R.S. Mongia, J.; M.S. Liberhan, J

Bench : Full Bench

Advocate : H.S. Mattewal, -General, H.S. Riar, D.A.G., R.S. Hundal and Jasbir Singh, for the Appellant; Sarjit Singh and O.P. Goyal, Jagdev Singh, for Private, Rajiv Kataria and I.S. Sagu, for the Respondent

Judgement

This Judgment has been overruled by : Gram Panchayat of Village Naulakha Vs. Ujagar Singh and Others, AIR 2000 SC 3272 : (2000) 2 JT 1 Supp : (2000) 6 SCALE 681 : (2000) 7 SCC 543 : (2000) 3 SCR 457 Supp : (2000) AIRSCW 3659 : (2000) 7 Supreme 102

J. V. Gupta, C. J.—Civil Writ Petition No. 1870 of 1986, when came up for motion hearing, the same was admitted to the Full Bench with the following order.

"Counsel for the respondents cites Division Bench decisions in Baldev Singh v. State of Punjab (1983) 1 LLR 385 and Gurnara Singh v. Joint Director, Panchayats, Punjab 1984 P LJ 580 which have taken a view contrary to each other on the same point."

Later on when L.P.A. No. 13 of 1986, came up for final hearing, this fact was brought to the notice of the Bench and consequently, the said L.P.A. which was against the judgment in Civil Writ Petn. No. 217 of 1985, which was decided on November 1, 1985 (now reported in 1986 PLJ 404) was also ordered to be heard and decided by a Full Bench along with the said writ petition.

2. The facts giving rise to the said L.P.A. were that the Gram Panchayat of Village Bathoi Kalan, Tehsil and District Patiala, filed an application u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter called the Act), for ejectment of Labh Singh, respondent, from the land measuring 296 kanals 6 marlas, situated in village Bathoi Kalan, Tehsil and District Patiala. That application was allowed and Labh Singh respondent, was ordered to be ejected from the land, in dispute. Appeal filed by Labh Singh, respondent, did not succeed and was dismissed. Aggrieved against the same, Labh Singh, respondent, filed Civil Writ Petition No. 217 of 1985 Inter alia pleading that he and other right-holders had filed a suit for declaration against the Gram Panchayat that they were the owners in possession of the land, in dispute. The Gram Panchayat was impleaded as a defendant. It contested the suit. The suit was decreed on July 3, 1972, by the subordinate Judge, Second Class, Patiala and it was declared that the plaintiffs were the owners of the suit land along with other proprietors of the village. No appeal against the judgment and decree of the trial Court was filed and thus the said judgment and decree which were inter partes were binding on the Panchayat. In the face of this decree, another application u/s 7 of the Act by the Gram Panchayat for the ejectment of the writ petitioner on the ground that he was in unauthorised occupation of the shamilat deh was not competent. This plea found favour with the learned single Judge who did not accept the contention of the Gram Panchayat that in view of the amendment of the principal Act, by Act No. 19 of 1976, the decree passed by the Civil Court had to be ignored by the authorities dealing with the applications u/s 7 of the Act. In reaching this conclusion, the learned single Judge relied upon a Division Bench judgment of this Court in Gurnam Singh v. Joint Director, Panchayats. Punjab, 1984 PLJ 580, wherein it was held that the decrees passed by the Civil Courts prior to the enforcement of the Punjab Act No. 19 of 1976 amending the principal Act, cannot be ignored by the authorities exercising the jurisdiction under the Act. The learned single Judge distinguished the decision of another Division Bench of this Court in Baldev Singh v. State of Punjab, (1983) 1 PLR 385, observing that it had not been mentioned therein as to whether the decree of the civil court had been passed before the enactment and enforcement of the Punjab Act No. 19 of 1976. The orders of the Collector and the Joint Director, Panchayats, exercising the powers of the Commissioner were thus quashed. Dissatisfied with the same, the Gram Panchayat, had filed this letters patent appeal. The main question to be decided by this Full Bench is, as to whether the judgment in Baldev Singh's case (supra), runs contrary to the decision rendered in Gurnam Singh's case (supra), or not.

3. Baldev Singh's case (1983 (1) LLR 385) (supra) was decided a year earlier to the case reported as Bajinder Singh v. The Assistant Collector, 1st Grade Guhla, 1983 PLJ 116, and was disposed of at the stage of motion hearing. No argument was raised on behalf of the writ petitioner therein that section 138 of the Act, as amended, could not set at naught the decrees passed by the civil Courts prior to the amendment of the Act by Act No. 19 of 1976 (passed on April 15, 1976).

Therein categorical and concurrent findings were given that the ex parte decree passed in favour of the landowners and against the Gram Panchayat was a collusive one. On the basis of that finding, the Bench observed;- "It would be manifest from the above that the law itself authorises the overriding of any decree or order of the court. Herein a concurrent finding of fact has been arrived at that the ex parte decree sought to be relied upon was a collusive one. We, therefore, see not the least ground for interference in the concurrent orders of the authorities below." Later on, it was Bajinder Singh's case (supra), in which the vires of section 13 of the Act, as substituted by Haryana Act No. 2 of 1981, were challenged. In that case, it was held by the Division Bench that the retrospective abrogation of jurisdiction of Civil Courts validly exercised by them from 1961 onwards, by section 4 of the Act, Haryana Amendment Act 2 of 1981 fictionally substituting section 13 with effect from May 4, 1961, and thereby giving retrospectivity from that date clearly amounted to trenching upon the judicial power by legislature. Consequently, the relevant part of the aforesaid section fictionally substituting section 13 with effect from the 4th day of May, 1961, and thereby giving retrospectivity thereto from the said date, was held to be unconstitutional and struck down. Following the said judgment, another Division Bench of this Court in Gurnam Singh's case (1984 PLJ 580) (supra), came to the conclusion that the decrees obtained by the landowners from the civil Courts which had become final either because no appeal was filed against the same or the appeals filed had been disposed of and decrees had been sustained whereby they became the owners of the disputed land before the enforcement of Act No. 19 of 1976, could not be ignored and the amending Act will not have any effect thereon. The relevant observations made by the Bench are as under:--

"The matter is not res integra and on principle, is covered in favour of the petitioners by a Division Bench judgment of this Court reported as Bajinder Singh v. Assistant Collector, 1st Grade, Guhla 1983 PLJ 116. We entirely concur in the view that this Court had taken in Bajinder Singh's (supra)". Thus, both for the State of Haryana and the State of Punjab, the view taken by this Court, was that the amendment made in the Haryana Act, by Act No. 11 of 1981 and in the Punjab Act, by 1991 P. &H./11 G-38 VI Act No. 19 of 1976, whereby it was provided that the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, or any agreement, instrument, custom or usage or any decree or order, of Court or other authority, will not override the decrees passed by the competent civil Courts between the parties. Here section 13-B of the Punjab Act, as introduced by Act No. 19 of 1976, may be reproduced which reads as under:

"The-provision of this Act shall have effect, notwithstanding anything to the contrary in any law, or any agreement, instrument, custom or usage, or any decree or order of any Court or other authority."

The equivalent provision as applicable in the State of Haryana, introduced by

Haryana Act No. II of 1981, was Section 13-D, which provides as under:

"The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom or usage, decree or order of any Court."

Reading both the sections together, as introduced in both the States of Punjab and Haryana, it is quite evident that they are in pari materia with each other. That being so, in Gurnam Singh's case (supra), the Division Bench rightly followed the earlier Division Bench Judgment of this Court in Bajinder Singh's case (supra). The correctness of the said two judgments was not challenged before this Bench.

4. The argument raised on behalf of the appellant Gram Panchayat was that the Assistant Collector, while deciding an application u/s 11 of the Punjab Act, as amended, could go into the decree of the Civil Court and if the same was found to be collusive, it could be ignored. In support of this proposition, the observations made in Baldev Singh's case (1983 (1) LLR 385) (supra), were pressed into service. Since in that case both the District Development and panchayat Officer as well as the appellate authority had come to the clear, categoric and cocurrent finding that the ex parte decree was a collusive one, it was argued on behalf of the Gram Panchayat that in the present case as well the decree of the civil Court had been found to be collusive and, therefore, was rightly ignored.

5. After giving our thoughtful consideration to the proposition, we find that in a way the judgment of the Division Bench in Baldev Singh's case 1983 (1) LLR 385 (supra) runs contrary to the judgment given subsequent thereto in Bajinder Singh's case 1983 PLJ 116 and followed in Gurnam Singh's case 1984 PLJ 580 (supra).

6. At this stage, it may be noticed that prior to the Haryana Amendment Act No. II of 1981, the Act was also amended in the year 1974, whereby section 13-A of the Act was introduced, which was to the following effect:

"Certain decrees to be set aside and fresh trial of cases.

(1) Where a decree has been obtained from a civil Court by any person against any panchayat in respect of any land or other immovable property on the ground of its being excluded from shamilat deh under clause (g) of Section 2 or on any of the grounds mentioned in sub-section (3) of Section 4, and the copies of the relevant entries of the revenue records had not been produced in support of the averments made in the plaint, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer authorised by the State Government or any inhabitant of the village, wherein the land or other immovable property is situate, may, within a period of two years from the date of coming into force of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974 make an application for setting aside the decree to the

Assistant Collector of the first grade having jurisdiction in the village wherein the land or other immovable property is situate.

(2) On receipt of the application, the Assistant Collector of the first grade shall summon the. record of the suit from the Civil Court concerned and also serve a notice, in the manner prescribed, on the decree-holder;

(3) After the record of the suit has been received and the service of the notice has been effected on the decree-holder, the Assistant Collector of the first grade shall examine the record and hear the decree-holder in order to satisfy himself as to whether the copies of the relevant entries of the revenue records in support of the averments made in the plaint had been produced during the trial of the suit. If he is satisfied that the copies of the said entries had not been so produced, he shall set aside the decree."

This provision came up for consideration in *The Karnal Co-operative Farhers Society Ltd. Pehowa v. Gram Panchayat, Pehowa* 1976 PLJ 237, wherein it was held that the legislature had conferred arbitrary and unguided powers on the Assistant Collector to set aside the decree of the Civil Court. Consequently sub-section (3) of section 13-A, was declared ultra vires.

7. Though there was no such provision in the Act as applicable to the State of Punjab, but it is evident that the decree passed by the competent civil Courts between the parties could not be ignored by the authorities under the Act, prior to the amendment of the Act by Punjab Act No. 19 of 1976. However, it may be made clear that the parties will always be at liberty to get those decrees set aside on the grounds of collusion, fraud etc. or otherwise, by a competent Court. Unless the said decrees passed by the Civil Courts are held to be collusive or obtained by fraud, by a competent civil Court, the same could not be ignored by the authorities under the Act in view of the judgment rendered by the Division Bench in *Bajinder Singh's case* 1983 PLJ 116 (supra), the correctness of which was not challenged before us.

8. Thus following the law as laid down in *Bajinder Singh's case* (supra), L.P.A. No, 13 of 1986 stands dismissed as the decrees therein have been passed by the Civil Courts in favour of the landowners comprising the land, in dispute, prior to the passing of the amending Act No. 19 of 1976 whereas Civil Writ Petition No. 1870 of 1986 is allowed and the orders of the Joint Director, Panchayat, exercising the powers of the Commissioner, dated October, 19, 1984, copy Annexure P.] and that of the Collector, are hereby quashed with no order as to costs.

9. Order accordingly.