
(2011) 03 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : LPA No's. 1686 and 1687 (O and M) of 2010

Gulzar Singh

APPELLANT

Vs

Director, Rural Development and Panchayats and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2, 4(3)

Citation : (2011) 03 P&H CK 0022

Hon'ble Judges : Satish Kumar Mittal, J;M. Jeyapaul, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal , J.—This order shall dispose of Letters Patent Appeals No. 1686 and 1687 of 2010, filed by Appellant Gulzar Singh, against the order dated 28.5.2010, passed by the learned Single Judge, whereby Civil Writ Petitions No. 2938 of 2007; and 16763 of 2006, filed by Gram Panchayat, village Amrala, Tehsil Khamano, District Fatehgarh Sahib (Respondent No. 2 herein); and Appellant Gulzar Singh, respectively, have been disposed of.

2. Vide the aforesaid impugned order, CWP No. 2938 of 2007, filed by Respondent No. 2 - Gram Panchayat, challenging the orders dated 21.1.1999 and 15.7.2005, passed by the District Development and Panchayat Officer, Fatehgarh Sahib (exercising the powers of the Collector) and the Director Rural Development and Panchayats, Punjab (exercising the powers of Commissioner), respectively, has been allowed, whereas CWP No. 16763 of 2006, challenging the aforesaid order dated 15.7.2005, passed by the Director Rural Development and Panchayats, Punjab (exercising the powers of Commissioner), has been dismissed.

3. In the present case, the dispute is about 8 Kanals 7 Marlas of land, situated in village Amrala. With regard to the said land, an application u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the

Act") was filed by Respondents Gurbachan Singh and Avtar Singh, for declaration that the land in dispute vests in the Gram Panchayat and Appellant Gulzar Singh is in un-authorised occupation of the said land. The Appellant contested the said application on the ground that the disputed land does not vest in the Gram Panchayat, as the same was in possession of his predecessors, even prior to 26.1.1950. The Collector, vide his order dated 21.1.1999, dismissed the said application, while coming to the conclusion that since the predecessors of the Appellant were in possession of the land in dispute, prior to 26.1.1950, therefore, in view of Section 2(g)(viii) of the Act, the land does not fall within the definition of shamilat deh" and the cultivating possession of the Appellant or his predecessors is protected u/s 4(3)(ii) of the Act.

4. Aggrieved against the said order, the Gram Panchayat filed an appeal before the Commissioner, who vide his order dated 15.7.2005 had partly modified the order of the Collector, while holding that in view of the jamabandis for the year 1940-41 and 1954-55, the land in dispute is owned by the Gram Panchayat. It was never recorded as shamilat deh", therefore, the provision of Section 2(g)(viii) is not attracted. However, possession of the Appellant, being old possession prior to 26.1.1950, was held to be protected u/s 4(3)(ii) of the Act.

5. Feeling aggrieved against the said order, the Appellant as well as the Gram Panchayat filed separate writ petitions, i.e. C.W. Ps No. 16763 of 2006 and 2938 of 2007, respectively, which have been disposed of by the learned Single Judge vide a common order dated 28.5.2010, which is being challenged by the Appellant by filing these two appeals. It has been held by the learned Single Judge that in the jamabandis for the years 1940-41 and 1954-55 and even in the subsequent jamabandis for the years 1965-66, 1970-71 and 1975-76, the Gram Panchayat was recorded as owner of the disputed land. In these jamabandis, the land in dispute was never recorded as "shambled den", therefore, it has been held that the provisions of Sections 2(g)(viii) and 4(3)(ii) of the Act are not attracted qua the land in dispute, which has not been described as "shamilat deh" in the revenue record. Even prior to the year 1950, the land in dispute was already owned by the Gram Panchayat. Therefore, argument of the Appellant that in view of Sections 2(g)(viii) and Section 4(3)(ii) of the Act, the land is excluded from the ownership of the Gram Panchayat has been held to be entirely mis-placed. It has been further found as a fact that in the jamabandi for the year 1940-41, predecessor of the Appellant was though recorded in possession of the disputed land, but his possession was on payment of "batai nisf (half share of produce) and thus was akin to the possession of a tenant. While taking into account this factual position, the learned Single Judge has held that in the absence of the ingredients of Section 2(g)(viii) of the Act, Appellant cannot claim ownership of the land in dispute. It has also been held that the ingredients of Section 4(3)(ii) of the Act are conspicuous by their absence, as the land is not described as "shamilat deh". While coming to the said conclusion, the learned Single Judge set aside the order dated 21.1.1999, passed by the Collector, and partly set aside the order dated 15.7.2005, passed by the Commissioner,

whereby in view of Section 4(3)(ii) of the Act, possession of the Appellant was protected. However, finding of the Commissioner that the Gram Panchayat is the owner of the land in dispute has been affirmed and thereafter, it has been held that the Appellant is in unauthorised occupation of the disputed land.

6. We have heard learned Counsel for the parties and have gone through the impugned order, as well as the orders dated 21.1.1999 and 15.7.2005, passed by the Collector and the Commissioner, respectively.

7. Learned Counsel for the Appellant could not dispute the factual position that in the jamabandis for the years 1940-41, 1954-55, 1965-66, 1970-71 and 1975-76, the disputed land is recorded under the ownership of the Gram Panchayat and not as shamilat deh". It has also not been disputed that in the revenue record, the predecessor of the Appellant has been recorded to be in possession on payment of batai nisf (half share of produce) and not recorded as a co-sharer. Even the Appellant was recorded as Gair Marusi" in the jamabandis for the years 1965-66, 1970-71 and 1975-76. It is also undisputed position that in the jamabandi for the year 1985-86, one Gurmail Singh has been recorded in possession of the disputed land as a tenant of the Gram Panchayat and thereafter, in the jamabandis for the years 1990-91 and 1995-96, Appellant Gulzar Singh has again been recorded as tenant "Gair Marusi" under the Gram Panchayat. It is the case of the Gram Panchayat that the disputed land was owned by it and from time to time, it was leased out to various persons, including the Appellant, by conducting public auction. The Gram Panchayat has also produced the auction register for the years 1967-68 and 1980-81, wherein it is clearly recorded that the Appellant participated in the auction and was recorded as a successful bidder. These facts have not been controverted by the Appellant.

8. In view of the aforesaid factual position, we do not find any force in the argument of learned Counsel for the Appellant, which is entirely based upon the provisions of Sections 2(g)(viii) and 4(3)(ii) of the Act, that the land in dispute does not fall under the definition of shamilat deh", therefore, the same does not vest in the Gram Panchayat and possession of the Appellant on the said land, which was prior to 26.1.1950, is protected. In order to get protection u/s 2(g)(viii) of the Act, a person claiming the land is required to prove the four ingredients, i.e. (i) the land was "shamilat deh"; (ii) the land was assessed to land revenue; (iii) the land has been in the individual cultivating possession of co-sharers not being in excess of their respective shares; (iv) on or before 26.1.1950. But in the present case, neither the land in dispute was recorded as "shamilat deh" in the revenue record, nor possession of the predecessor of the Appellant was that of a co-sharer, therefore, this provision has been rightly held to be not attracted. Similarly, in order to take protection of Section 4(3)(ii) of the Act, a person in possession of the land is required to prove three ingredients, i.e. (i) he is in cultivating possession of "shamilat deh"; (ii) he is in continuous possession of land for a period of more than 12 years preceding the

commencement of the Act; and (iii) his possession is without payment of rent or by payment of charges not exceeding the land revenue and the cesses payable thereon. The main ingredient, i.e. that the land should be "shamilat deh" has not been proved in this case, therefore, the Appellant also cannot take protection of the said provision. Thus, we do not find any illegality in the order, passed by the learned Single Judge.

9. Both the LPAs are dismissed.