
(2008) 11 P&H CK 0047
In the Punjab And Haryana At Chandigarh

Gulzari Ram

APPELLANT

Vs

Joint Director Panchayats and Others

RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 2 ILR (P&H) 487 : (2009) 154 PLR 56 : (2009) 3 RCR(Civil) 604

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—The challenge in this writ petition filed under Articles 226/227 of the Constitution of India is to the orders, Annexures P-2 and P-3, passed by the revenue authorities to which detailed reference will be made at the appropriate place. In the first instance, the background in which the aforesaid orders came to be passed is noticed:

2. One Phuman Singh, who owned the land measuring 6 Kanals comprised in Khewat Khatauni No. 86/121, Khasra No. 25/22/1(5-0), 23(1-0), sold a plot out of it, measuring 11 Marias, to the petitioner on 12.11.1979 vide registered sale deed and the petitioner constructed a residential house thereon. Khasra No. 103 of Khewat No. 155, Khatauni No. 229 fell adjacent to the land of Phuman Singh and khasra No. 103 was shown as path which was the ownership of the Gram Panchayat. Likewise is the position with regard to another Khasra No. 178 which is adjacent to Khasra No. 23, and in the column of cultivation, it is shown that the same is in the possession of "non-Maliks" which was also owned by Gram Panchayat. On a demand raised by the villagers, the village road was straightened through khasra Nos. 22/1 and 23 belonging to Phuman Singh, which in fact, was initially planned to be taken through khasra No. 103. This alignment of the road was done with the consent and for the convenience of the villagers. Since the land of khasra Nos. 22/1 and 23 was included in the proposal, which was owned by Phuman Singh, the Gram Panchayat decided to

compensate him by giving land adjacent to the road but no resolution was passed at that time by the Gram Panchayat in that regard. Phuman Singh who had actually sold the plot measuring 11 Marias to the petitioner from his land comprised in Khasra Nos. 22/1 and 23 gave possession to him from the land in khasra No. 103 which he had actually got from the Gram Panchayat in the arrangement. Consequently, the petitioner constructed his house on the plot comprising khasra No. 103. The Gram Panchayat, Khichipur (respondent No. 4) thereafter accepted the arrangement arrived at between the Gram Panchayat and Phuman Singh, by passing a resolution dated 14.7.1984, Annexure P-1. It is further stated that by accepting the arrangement above-referred and passing the resolution in that regard, the Gram Panchayat in a way accepted the petitioner as lawful owner and in possession of the plot given to him by Phuman Singh from land in khasra No. 103 and according to the petitioner this also meant that the Gram Panchayat had no objection to his continuing in occupation of his house constructed in the plot in khasra No. 103. It is here that a Member of the Gram Panchayat, respondent No. 3-Harbans Lal, moved an application u/s 7(1) of the Punjab Village Common Lands (Regulation) Act, 1961 (in short "the Act") for eviction of the petitioner from the plot in Khasra No. 103, on the ground that the petitioner had illegally and unlawfully encroached upon the Panchayat "Deh". According to the petitioner no such authority or power had been given to him by the Gram Panchayat. It was pleaded further that although respondent No. 2, the District Development and Panchayat Officer-cum-Collector, Jalandhar, could not take cognizance of the application moved by respondent No. 3, yet he entertained and accepted the same and ordered eviction of the petitioner from the plot in question, vide order dated 9.8.1984, Annexure P-2. Appeal preferred by the petitioner against the order, Annexure P-2, was dismissed by the Joint Director Panchayats, Punjab (exercising the powers of the Commissioner) vide order dated 8.2.1985, Annexure P-3. These orders have been sought to be quashed on the ground that the same are illegal, arbitrary, against the provisions of the Act and violative of the principles of natural justice.

3. In its written statement, the Gram Panchayat Village Khichipur, respondent No. 4 admitted the claim of the petitioner and stated in clear terms that the Gram Panchayat, Khichipur, had no objection if the petitioner is granted the relief claimed in the petition. The main contestant on whose initiation the proceedings for eviction of the petitioner launched is respondent No. 3, Harbans Lal. He is none else but a Member of the Gram Panchayat, Khichipur. It was admitted in the written statement filed by him that khasra No. 103 above-said was a path and the same was the ownership of the village Panchayat. The village is dominated by the members of the Jat Community. At the time when pucca road was constructed in the village, Phuman Singh was the Sarpanch of the Gram Panchayat and after leaving some land which belongs to the Village Gram Panchayat, there are the houses of Harijan Community. Phuman Singh taking advantage of his status as Sarpanch wanted to grab the land of the Gram Panchayat adjoining the Circular Road which was yet to be constructed, and in

order to achieve this object, he got the road constructed through his land and grabbed the land of the village Gram Panchayat which was adjoining the houses of the Harijan community and fell in between the pucca road and the Harijan locality. It was clarified that there was no request made by any of the co-villagers and it was Phuman Singh himself who of his own got the alignment changed to succeed in his purpose. It was denied that the Gram Panchayat had ever agreed to compensate Phuman Singh and gave him any land adjacent to the road. For almost 12 years, neither any resolution was passed by the Gram Panchayat nor was claimed by Phuman Singh Sarpanch. It was vehemently stated that the Gram Panchayat had no power to give its land to any other person by means of a resolution and, thus, the resolution dated 14.7.1984 passed by the Gram Panchayat was illegal. It was stated that majority of the Gram Panchayat members were conniving with the petitioner and Phuman Singh. In the end, it was stated that where the public interest was involved, any member of the public had a right to make an application to the proper authority for redressal of his grievance. The answering respondent tried to justify his making application for eviction of the petitioner from the disputed piece of land.

4. I have heard learned Counsel appearing for the parties and have gone through the record.

5. The lone controversy involved in this writ petition centers around a fact, whether a member of the Gram Panchayat can in his individual capacity initiate proceedings for eviction of a person in unauthorized possession of the panchayat land.

Section 7 of the Act as applicable to Punjab reads as under:

7. Power to put the panchayat in possession of shamlat deh.- (1) The Collector shall, on an application made to him by a Panchayat or by an officer duly authorized in this behalf by the State Government by a general or special order, after making such enquiry as he may think fit and in accordance with such procedure as may be prescribed, put the Panchayat in possession of the land or other immovable property in the shamlat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the Collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the Shamlat Leh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim u/s 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim u/s 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is

involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the Shamlat Deh.

6. The aforesaid provision authorizes the Collector to put the Panchayat in possession of the land or other immovable property in the Shamlat Deh of that village which vests or is deemed to have been vested in it under the Act. The Collector, however, exercises jurisdiction either on an application made to him by a Panchayat or by an officer duly authorized in this behalf by the State Government by a general or special order. It is further provided that the Collector shall pass appropriate orders under the above provision after making such enquiry as he may think fit and in accordance with such procedure as may be prescribed there under.

7. A careful perusal of the aforesaid provision leaves no manner of doubt that the Collector is empowered to initiate action, either on an application made to him by the Panchayat or by an officer duly authorized in this behalf by the State Government and said provision nowhere envisages or provides that a member of the Panchayat who has not been authorized, can initiate action for eviction of a person in possession of the shamlat deh which vests in the Gram Panchayat. Admittedly, in the present case, the action for eviction of the petitioner was sought to be initiated by Harbans Lal, a Member Panchayat (respondent No. 3) who had never been authorized to do so by the Panchayat or the State Government. The proceedings initiated by him were, thus, void ab initio and the authorities were not justified in passing the order of eviction of the petitioner. Furthermore, the claim of the petitioner has been admitted by the Gram Panchayat in the written statement filed by it. In these circumstances, the impugned orders cannot be legally sustained.

8. In view of the above, the writ petition is allowed and orders, Annexures P-2 and P-3 are quashed. Consequently, application filed by respondent No. 3 u/s 7(1) of the Act is dismissed. There shall, however, be no order as to costs.