
(2003) 02 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19904 of 2001

Gurbachan Dass

APPELLANT

Vs

G.P. Dadha and Others

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 12, 13, 5

Citation : (2003) 133 PLR 709 : (2003) 2 RCR(Civil) 145

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Ishwar Lal, for the Appellant; Harsh Bungar and H.S. Sran, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner has filed the present petition for issuance of a writ of certiorari for setting aside and quashing of the order dated 30.7.2001 passed by the authorities in an application u/s 7 of Village Common Lands (Regulation) Act, 1961 (for short hereinafter to be referred as "the Act") filed by the Gram Panchayat-respondent No. 1.

2. The petitioner has claimed that he was allotted 5 marla plot being a landless person of the village in pursuance of the resolution passed by the Gram Panchayat on 24.8.1981. It has been stated that after the allotment of the plot, the petitioner has constructed a house and is residing therein. However, due to change in Panchayat members, the land is purported to have been given to Animal Husbandry Department for dispensary, without any notice to the persons already in possession.

3. The Gram Panchayat initiated eviction proceedings by filing an application u/s 7 of the Act. The Panchayat has filed the eviction petition on pick and choose basis. Ejectment petition filed against Darshan Ram was allowed by respondent No. 3 but the orders of eviction passed by respondent No. 3 was set aside by the

appellate authority. The said order has attained finality with the dismissal of the writ petition and SLP against the said order.

4. On the other hand, in reply, the Gram Panchayat-respondent No. 1 has stated that the petitioner is not landless person as he has a residential house in the abadi of village which is admitted by him in Civil Suit No. 288 of 1994. The Panchayat also denied that any exchange has ever taken place and that there is no resolution dated 24.8.1981 but it is a letter written to the Block Development and Panchayat Officer. It is further submitted that the said communication, even if to be taken as resolution, is without any authority and without any prior permission of the Government as contemplated by Rule 5 of Punjab Village Common Lands (Regulation) Rules, 1964 (for short hereinafter to be referred as "the Rules"). It is also denied that there is any pucca residential house on the spot. Regarding the dismissal of eviction petition against Darshan Ram, it is pointed out that it pertained to different land than the land which was involved in the case of Darshan Ram. The petitioner was alleged to be in illegal/unauthorised possession and, thus, order of eviction was rightly passed against him.

5. The primary reliance of the petitioner is on the order passed by the appellate authority in eviction proceedings initiated against Darshan Ram, Annexure P-I. A perusal of the said order shows that the land in dispute was 7 kanal 6 marla in khasra No. 75, 79, 80, 87 and 81, khewat No. 258, Khatoni No. 345, 347 and 348. Still further, Darshan Ram in the said case relied upon resolution of the Panchayat dated 15.1.1981. However, the land in dispute in the present case is comprising in khasra No. 48/1. khewat No. 295, khatoni No. 375. The petitioner herein is relying upon resolution dated 24.8.1991 and, thus, the land as well as the resolution relied upon by the petitioner are different. In fact, a perusal of the judgment and decree passed by the civil Court in Civil Suit No. 288 of 1994 shows that the petitioner, while appearing as a witness in the said case, has admitted that he has another house in the village abadi. The said civil suit was filed against the present petitioner for raising any construction over the land in dispute as the same is to be utilized for construction of veterinary hospital. The said suit was decreed on 29.3.1997. Thus, the stand that the petitioner was landless is not factually correct.

6. Still further, communication, Annexure P-6, dated 24.8.1981, is from the well wishers of village Dhadha plot holders which is counter-signed by the Sarpanch. The property of the Panchayat can be disposed of only in accordance with the rules which contemplate prior approval of the government. It is not the case of the petitioner that there was any approval regarding transfer of the land in favour of the petitioner. It is relevant to re-produce the provision of Rule 5 of the Rules which reads as under:-

"5. Exchange of land- A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may with the prior approval of the Government, transfer any land in shamilat deh by exchange with the land of an equivalent value to be determined by the Tehsildar in whose jurisdiction the land

is situate."

7. In fact, prior approval of the State Government is necessary even for sale in terms of Rule 12 of the Rules or gift in terms of Rule 13 of the Rules. There is no resolution of Panchayat on record resolving to gift, transfer, sale, or exchange the land in favour of the petitioner nor there is any approval of the State Government.

8. The Apex Court in *B.L. Wadhera v. Union of India and Ors.* 2002 (3) R.C.R. 64 has held that Panchayat can gift land from shamilat deh only for the purpose mentioned in Section 5-A of the Act and y following the procedure prescribed in the Rules i.e. with amendment of 1974. The prior approval of the State Government is necessary.

9. In view of the above, we do not find any illegality in the order, dated 30.7.201, Annexure P-2, and order dated 9,11.2001, Annexure P-4, passed by the authorities in an application u/s 7 of the Act. Consequently, the writ petition is dismissed.

Sd/- S.S. Nijjar, J.