
(1997) 01 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1371 of 1989

Gurdial Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-01-1997

Acts Referred:

East Punjab Utilization of Lands Act, 1949 — Section 7

Citation : (1997) 117 PLR 215 : (1997) 3 RCR(Civil) 40

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : R.S. Bindra and Renu Bala, for the Appellant; S.K. Kapoor, A.A.G., C.B. Goel, Swapan Garg and Pradeep Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This shall dispose of Civil Writ Petition Nos. 1371 and 2767 of 1989 as common question of law and facts is involved therein. For facility of reference, facts are taken from Civil Writ Petition No. 1371 of 1989.

2. Gram Panchayat, Bohli, Tehsil Thanesar, District Kurukshetra, filed an application against the writ petitioners/predecessors-in-interest u/s 7 of the East Punjab Utilisation of Lands Act, 1949 (hereinafter referred to as 1949 Act) for their ejectment from the land in dispute. The Special Collector, Kurukshetra, issued show-cause notice on the said application calling upon them to lead their defence, if any, showing why they should not be ejected from the land in their occupation. On receipt of notice, various occupants filed written statement and contested that application. Special Collector passed an order on 30.1.1981 holding that the lease period of 20 years having expired in Rabi 1979, the lease stood terminated and as a consequence thereof, the Tehsildar was directed to take possession of the lands in question from the lessees and hand it over to the Gram Panchayat, Bohli, because the real owner of the land in dispute was found to be Gram Panchayat. Having felt aggrieved of the order of Special Collector, persons affected filed an appeal before the Commissioner, Ambala Division,

Ambala, who vide order dated 26.8.1981 set aside the order passed by the Special Collector and remanded the case for fresh decision after properly looking into the records. After remand no fresh evidence was led either by the lessees or by the Gram Panchayat. Special Collector once again passed an order on 14.6.1986 directing that the Gram Panchayat be given possession of the land in dispute. The Special Collector in this order observed that the Government had taken the land from Gram Panchayat and as such, the Government must restore the same to it. The persons aggrieved filed an appeal before the Commissioner, Ambala Division, Ambala, who once again vide order dated 11.3.1987 remanded the cases to the Collector on the ground that while deciding the cases the Collector had not given any finding in the light of the judgment of the Supreme Court. Gram Panchayat having felt aggrieved of the order dated 11.3.1987 passed by the Commissioner, filed revision petition before the Financial Commissioner, Haryana, who disposed of all the revision petitions by common judgment dated 2.8.1988. The learned Financial Commissioner found that the land in dispute had been given on lease for 20 years under the 1949 Act and the Collector was duty-bound to return possession of the land in dispute to the owners after the expiry of stipulated period of 20 years. The order of the Financial Commissioner is being impugned in these writ petitions.

3. Mr. R.S. Bindra, Sr. Advocate, counsel for the petitioners, has contended that lease-deeds on the basis of which land was given to the petitioners on lease have not been produced on record and in absence thereof, the finding of the Financial Commissioner that the land was given on lease to the petitioners under the 1949 Act is without any basis. He contended that the land was allotted to the petitioners as it was lying vacant and the petitioners have made it cultivable and therefore, they cannot be ordered to be ejected on the basis of orders passed under the 1949 Act.

4. After hearing the learned counsel for the parties, I am of the view that there is no merit in the writ petitions. If the claim of petitioners is that the land had been allotted under any other Act and was not on lease under the 1949 Act, then surely some letters of allotment must have been produced in support of allotment. None having been produced, in my opinion the contention that the land was not leased out to the petitioners under the 1949 Act is not acceptable. From a reading of para 3 of order dated 26.8.1981 passed by the Commissioner, Ambala division, Ambala, shows that counsel for the petitioners had fairly conceded before the Commissioner that the land in dispute was given to the petitioners under 1949 Act by the Government. The only dispute raised before the Commissioner was that the Gram Panchayat is not the owner of the land in dispute. Having conceded that the land was leased out to them under 1949 Act and no order of allotment under any other Act under which land could have been allotted to the petitioners having been produced, the Financial Commissioner rightly came to the conclusion that the land was taken over by the Collector from the Gram Panchayat under 1949 Act and was given to lease to the petitioners for a period of 20 years. The contention that the Financial Commissioner while

deciding the revision petitions has not kept in view the judgment of the Apex Court in Prem Ex-Servicemen Coop. Tenant Farming Society v. State of Haryana 1974 PLJ SC 272, is without any merit. Their Lordships of the Supreme Court in that case were pleased to formulate five questions while remanding the matter as their Lordships were of the view that the Collector would have no jurisdiction to order dispossession of the aggrieved Ex-Servicemen Societies from the land unless he had found after requisite investigation that the land had been leased out to them under the 1949 Act. Since no such finding had been recorded by the Collector, the Hon'ble Supreme Court quashed the order directing dispossession. For lack of material on record, to enable it to find for itself the Supreme Court formulated five questions arising out of the conflicting claim of the parties and directed the Collector to settle them with a view to ultimately decide whether or not the land had been leased out under the 1949 Act. In the present case, Financial Commissioner in order to determine whether the land had been leased out to the petitioners under the 1949 Act and also to determine whether it was under the ownership of the Gram Panchayat, summoned the record and found that the land was leased out for a period of 20 years under the 1949 Act to the petitioners. The learned Financial Commissioner in para 8 of his order found as follows :-

"8. Coming to the evidence in the case, Jamabandi for the year 1977-78 (Exhibit A1) states the ownership of the Gram Panchayat. In the tenancy column it states D.C. Karnal as lessor, under the ownership of Gram Panchayat and the respondents as lessees. Remarks column says the lease is for 20 years from Kharif 1959 to Rabi 1978. In a representative case that of Bakshish Singh respondent, the Patwari has stated that as per Mutation No. 389, the land has been taken over by the Collector for 20 years under East Punjab Utilization of Lands Act vide the orders of the Collector dated 3.11.1958. By Mutation No. 390 this was leased out to the respondents. The order of the Collector is referred to in the Rapat Roznamcha of 3.11.1958. File of the Collector at pages 321 to 351 contains the office copies of the allotment letters of the Collector of the land in favour of respondents. The pattanama between the Collector and the landowner are not traceable on the file before me. Similarly the lease agreement between the respondents and the Collector are also not traceable. They are either not executed or have been misplaced. However, there is correspondence on the file of the Collector dealing with the various representations of the Gram Panchayat and lessees and orders of the Collector and Commissioner in early sixties which show that these transactions were agitated under East Punjab Utilization of Lands Act. In any case, the vital evidence of revenue record available is that the land was taken over by the Collector under East Punjab Utilization of Lands Act as mentioned in Mutation No. 389 and leased out for 20 years as mentioned in Mutation No. 390. Latest Jamabandi on record also says that the respondents are the lessees of the Collector for 20 years on the land taken over by the Collector from the land-owner Gram Panchayat. I asked specifically the counsel for the respondents and they admitted that they took possession of the land in question

only by virtue of transaction as recorded in Jamabandi and not before that. Therefore, the copy of the allotment letters, the Roznamcha report of 3.11.58, the Mutations Nos. 389 and 390 etc., and the entries in Jamabandi leave no doubt that the lease was under East Punjab Utilization of Lands Act. Absence of Pattanama does not finish the claim of the landowners. We have to go by best evidence."

5. The finding recorded by the learned Financial Commissioner that the land was taken over by the Collector under the 1949 Act and it was given on lease to the petitioners, is based on documentary evidence. Nothing has been brought to my notice during the course of arguments by the counsel for the petitioners which may persuade me to take a contrary view or to hold that the finding of fact recorded by the Financial Commissioner is without basis. It deserves to be mentioned that u/s 3 of the 1949 Act, the Collector can take possession of the land from the owners if it had not been cultivated for the last six or more harvests and on taking possession, Section 4 provides for payment of compensation by the Collector. Having taken the possession, the Collector is competent to lease out the land to any person on such terms and conditions as he may deem fit for the purpose of growing food and fodder crops for a period of not less than 7 years and not more than 20 years. u/s 7, on expiry of lease the Collector is required to pass an order in writing specifying the person to whom the possession of the land shall be given, The delivery of possession of the land to the, person specified in the order shall be a full discharge of the Collector from all liabilities in respect of such delivery. If the Collector cannot determine as to which person the land is to be given the Collector shall cause a notice, declaring that the land is released, to be affixed on some conspicuous part of the land and the land shall be deemed to have been delivered to the person entitled to possession and it will discharge the Government or the Collector from the liability of payment of any compensation or other claim. It is clear from the scheme of the Act that the Collector is statutorily bound to deliver possession of the land to the landowners or to be responsible for payment of damages. Thus, having regard to the scheme of the Act and the finding recorded by the Financial Commissioner, I am of the view that the order of the Collector as affirmed by the Financial Commissioner neither violates the provisions of the Act nor the observations in the judgment of the Apex Court in M/s. Prem Ex.-Servicemen Cooperative Tenant Farming Society's case (supra) and therefore, the orders impugned are not to be interfered with.

6. Consequently, both the writ petitions, namely, C.W.P. Nos. 1371 and 2767 of 1989, being without any merit shall stand dismissed. No costs.