

(2000) 08 P&H CK 0217
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9588 of 1998

Gurmukh Singh and others	Vs	APPELLANT
State of Punjab and others		RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7

Citation : (2000) 4 RCR(Civil) 416

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Gurnam Singh, for the Appellant; Balbir Singh, for the Respondent
No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The two attempts of the Petitioners to stay in possession of the land having failed, they have approached this Court through this petition under Article 226 of the Constitution for the third time. They pray that a writ of mandamus be issued "directing the Respondents-authorities to take a policy decision for allotment of land to the persons, who were given possession of the lands on patta for a period of ten years in the year 1961 to 1971." They also pray that a direction be issued to the Respondents to "transfer the disputed land in favour of the Petitioners and deliver the possession....on the basis of the amendment made by the State Government of Punjab Village Common lands (Regulation) Act, 1961"....."

2. The Gram Panchayat, Respondent No. 3, contests the claim of the Petitioners.

3. A few facts, as are admittedly established on the record, may be noticed.

4. In the year 1961, the Petitioners were given different pieces of land on lease for a period of 10 years. This period had admittedly expired in the year 1971. The Petitioners did not hand over the possession of the land which measured 225 kanals approximately. Consequently, the Village panchayat had filed a petition u/

s 7 of the Village Common Lands (Regulation) Act, 1961. This petition was allowed vide order dated 31st March, 1987 by the prescribed authority. The Petitioners filed appeals. These were dismissed by the Additional Director, Panchayats, vide order dated 7th February, 1989. The Petitioners filed Civil Writ Petition No. 6134 of 1989 to challenge this order. This writ petition was dismissed in limine by order dated 22nd May, 1989. The Petitioners were, however, given liberty to approach the appropriate authority u/s 11 of the 1961 Act.

5. The Petitioners moved a petition u/s 11 of the 1961 Act. This was dismissed vide order dated 26th April, 1990. They filed appeals, which were also dismissed by the Appellate Authority. Thereafter the warrant of possession was issued on 17th January, 1995. It appears that even at that stage the Petitioners tried to salvage the situation by filing Civil Writ petition No. 3671 of 1995. Even this petition, as stated by the counsel for the Petitioners, was disposed of with the observation that the Petitioners shall not be dispossessed except in due course of law. In pursuance to the warrant of possession, which had been issued as a consequence of the orders of eviction upheld vide order dated 22nd May, 1989 passed in Civil Writ Petition No. 6134 of 1989, the Panchayat was given the physical possession of the land on 21st April, 1995.

6. The present petition is an attempt to recover the possession. The contention raised on behalf of the Petitioners by Shri Gurnam Singh is two-fold. Firstly, the counsel claims that the Government had taken a policy decision in November, 1988 that the lessees should not be evicted. Secondly, the counsel submits that the Petitioners are entitled to restoration of possession in view of the provisions of Section 2, as amended vide notification dated 8th May, 1995.

7. The claim made on behalf of the Petitioners has been contested. Shri Balbir Singh, learned Counsel for the Respondent No. 3 contends that the orders for eviction having been upheld vide order dated 22nd May, 1989, the present writ petition is wholly incompetent and should, thus, be dismissed.

8. The two questions that arise for consideration are:

(i) Are the Petitioners entitled to any benefit under the letter dated 9th February, 1988, a copy of which has been produced as Annexure P4 with the writ petition?

(ii) Do the Petitioners have a right to the restoration of possession in view of the amendment made in Section 2 in May, 1995?

Regarding (i):

9. The document relied upon by the counsel for the Petitioners is a letter dated 9th February, 1988. It was sent by the Financial Commissioner (Revenue) to the various Deputy Commissioners. It was, inter alia, stated that "certain lessees under the East Punjab Utilisation of Lands Act, 1949 have met the Chief Secretary and the undersigned with the request that they should not be dispossessed from the lands which they had been given on lease under the above Act and which have been made cultivable by them after putting a very hard

labour..... It has been decided that pending a further policy decision in the matter and amendment of relevant acts, the lessees from lands belonging to the State Government/Gram Panchayats as well as those belonging to big land owners should not be dispossessed from the present". In view of this position, the Deputy Commissioners were asked to "apprise the State Government at an early date about the amount (area) of land in each of these categories presently under such lease in your districts."

10. On a perusal of this letter we find that it was only an interim direction given to the Deputy Commissioners not to evict certain categories of lessees. However, there was no conscious policy decision to authorise the unauthorised occupation of persons, whose lease had expired as far back as the year 1971. Still further, it is not disputed that this letter never became a final/policy decision. If at all, a part of this letter was actually withdrawn by the Government vide its letter dated 27th March, 1990, a copy of which has been produced as Annexure P5 with the writ petition. In any event, the letter did not confer any right on persons like the Petitioners to continue in occupation of the land in their possession. It did not authorise the unauthorised occupation to continue for ever. It only postponed the evil day temporarily.

11. There is another aspect of the matter. The Panchayat had initiated proceedings for the eviction of the Petitioners. Petitions u/s 7 of the, 1961 Act had been filed. This claim was allowed. The appeals filed by the Petitioners were dismissed. Thereafter the Petitioners had filed Civil Writ Petition No. 6134 of 1989. This petition was dismissed by the Division Bench on 22nd May, 1989. Thus, the orders of eviction passed against the Petitioners had become final. The Petitioners had not challenged the order of this Court, by which the orders of their eviction had been affirmed. It may also be mentioned that the ground based on the letter of 1988 was available to the Petitioners. Shri Gurnam Singh is not in a position to state as to whether or not this ground was raised. Whatever be the factual position, the plea was available. Even if it was not raised, it shall be deemed to have been raised and rejected. Thus, the dismissal of the writ petition would result in sealing the fate of the Petitioners in so far as their eviction from the land is concerned.

12. It also deserves notice that one of the prayers made by the Petitioners is that the Government should be directed to take a policy decision. The plea militates against the claim that the letter under reference embodied a policy decision.

13. In view of the above, the first question is answered against the Petitioners. It is held that the writ petition having been dismissed and the order of their eviction having been upheld, the Petitioners can get no advantage from the letter of 1988. Regarding (ii):

14. Section 2(g) of the 1961 Act defines "Shamilat Deh". By Act No. 8 of 1995, the following sub-clause was inserted:

(ii-a) was shamlat deh, but has been allotted on quasi-permanent basis to a

displaced person, or has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th days of July, 1985.

On the basis of this provision, Shri Gurnam Singh contends that the land having been given on lease in the year 1961, it shall be deemed to have been transferred to the Petitioners and would, thus, cease to be a part of the Shamilat Deh.

15. The contention is misconceived. Firstly, the claim of the Petitioners that the land is not Shamlat Deh or it does not vest in the Panchayat has already been rejected by the competent authorities under the 1961 Act and their writ petition has been dismissed. The orders of eviction passed u/s 7 of the said Act have already been upheld. Secondly, the amendment of the 1961 Act is only intended to protect the interests of displaced persons or of those to whom the land has been transferred by sale or by some other similar process. It is not intended to give any advantage to persons, who had remained in unauthorised occupation after the expiry of the lease. The language of the provision cannot mean that a person, who has failed to vacate the land despite the expiry of lease, is entitled to continue in possession on a purely fictional basis that the land has been transferred. There can be no transfer without an order of transfer. Thus, the claim based on the amended provision cannot be sustained.

16. Shri Gurnam Singh has referred to the decision of the learned Single Judge of this Court in Civil Writ Petition No. 5282 of 1982 (Bachna Ram and Anr. v. The State of Punjab and others) decided on 12th February, 1997. This was a case where the land was transferred on "quasi-permanent basis". Such is not the position in the present case. Herein, no transfer has taken place.

17. It may also be observed that the Petitioners had filed Civil Writ Petition No. 3671 of 1995. They have, for the reasons best known to them, not produced a copy of that petition. However, the order passed by the Bench is on the record. The writ petition was disposed of with the direction that the Petitioners shall not be dispossessed except in accordance with law. They were dispossessed. Thereafter one of the Petitioners had filed a contempt petition, viz. C.O.C.P. No. 461 of 1995. This was decided vide order dated 13th November, 1995. In this order it was, inter alia, observed that the Petitioner "has been dispossessed according to law and in execution of the order of eviction. In the circumstances, no action is required to be taken against the Respondents.

18. Not only that the order is relevant, the Petitioners have even failed to disclose the factum of the finding in their writ petition. They have also not disclosed the fact that they had filed Civil Writ Petition No. 6134 of 1989, nor have the Petitioners made any averment with regard to the orders of eviction passed against them by different authorities. It was clearly an attempt to keep back the relevant information. We cannot compliment the Petitioners for their conduct.

19. No other point has been raised.

20. In view of the above, we find no merit in this writ petition. It is, consequently, dismissed with costs. The costs are assessed at Rs. 5,000/-. Since the Gram Panchayat alone has contested the petition, the costs shall be payable to it only.