
(1961) 09 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1252 of 1960

Harbans Singh and Others

APPELLANT

Vs

Smadh Bawa Darbar Puri and Others

RESPONDENT

Date of Decision : 28-09-1961

Acts Referred:

East Punjab Utilization of Lands Act, 1949 — Section 14, 3, 3(1), 3(2)

Citation : (1962) 1 ILR (P&H) 601

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : Y.P. Gandhi and G.C. Mittal, for the Appellant; S.L. Puri, Munishwar Puri and S.L. Ahluwalia, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Singh, J.—u/s 3 of the East Punjab Utilization of Lands Act, 1949, the Collector of Karnal, issued a notice, copy Exhibit P. 10, calling upon Samadh Bawa Darbarpuri (through gurjan Puri, the Mahant) the owner of the land described in the notice, declaring that the aforesaid land had not been cultivated for more than six previous harvests and that it was proposed to take over and give the same on lease for a minimum period of eight years and that if the same was desired to be brought under cultivation, an application should be put in before the 14th of February, 1955, the notice having been issued on 14th of January. This notice was served on one Amir Chand, described as a karinda of the Mahant, on 28th of January, 1955. According to the Mahant, no such notice was received by him or brought to his notice and that Amir Chand was not his karinda at any time. In pursuance of this notice, the land, which is the subject-matter of the suit, out of which the present appeal has arisen, was taken over and given on lease to various persons who have been impleaded as Defendants 2 to 18, the Collector being impleaded as Defendant No. 1. The present suit was brought by the Mahant on the -allegation that no notice was served on him, that the notice was not valid and that, in any case, the act of the Collector in issuing

the notice and taking further steps was without jurisdiction inasmuch as the land in dispute was actually under cultivation at the time the notice was issued. The suit was resisted and a number of Issues were settled which it is not necessary to detail for the purposes of this appeal. Sufficient to indicate that the trial Court came to the conclusion that the notice was properly served and that out of the land certain specific khasra numbers were actually under cultivation and no notice in respect of that land could be given, while with regard to the remaining khasra numbers the notice was proper and the land covered by these khasra numbers not being under cultivation was properly dealt with by the Collector. The learned trial Court, consequently, granted a decree for possession of the land comprised in the khasra numbers which were under cultivation. The Collector did not go in appeal against this order but the Defendants to whom the land had been leased filed an appeal impleading the Collector as a Respondent. A preliminary objection that no appeal lay at the instance of Defendants other than the Collector was upheld by the learned Additional District Judge, but very rightly, he proceeded to decide the appeal on merits as well. On merits, he confirmed the findings of the trial Court that the khasra numbers in respect of which a decree had been granted were under cultivation at the time of the notice and, consequently, affirmed the decree. Cross-objections filed by the Plaintiff, mainly based on the ground that the notice was invalid and was not served on the proper person, were also rejected. The lessees from the Collector have filed this second appeal.

2. The main point urged by the learned Counsel is that the proviso to Sub-section (2) of Section 3 of the East Punjab Utilization of Lands Act, (hereinafter referred to as the Act), makes all defects in the notice served by the Collector free from any challenge. Sub-sections (1) and (2) of Section 3 of the Act are to the following effect-

3(1) Notwithstanding any law to the contrary the Collector may at any time take possession of any land which has not been cultivated for the last six or more harvests after serving on the owner a notice that, if he does not cultivate the land within such reasonable period as may be specified in the notice, the Collector may take possession of such land for the purposes of this Act.

(2) The notice required by Sub-section (1) shall be deemed to be duly served if delivered at, or sent by post to, the usual or last known place of residence of the owner:

Provided that no notice shall be deemed to be invalid on the ground of any defect, vagueness or insufficiency.

3. It was urged that according to the proviso, all sorts of defects in the notice are cured and cannot form the basis of any adjudication by a civil Court. Obviously the proviso relates to defects, vagueness or insufficiency in the details of the notice and does not relate to the question whether the Collector could, under Sub-section (1) of Section 3, take possession of any land which is actually under

cultivation and has not been left uncultivated for the last six or more harvests. The learned Counsel further relied on Section 14, which makes the decision by the Collector of any matter, which he is empowered by this Act to decide, to be final and conclusive, and urged that it is for the Collector to decide whether he would issue a notice under Sub-section (1) of Section 3 in respect of any land and that even if he chooses to issue a notice in respect of land which is under cultivation, such an order cannot be challenged. I am afraid, I cannot agree to this contention. According to the provisions of Sub-section (1) of Section 3, the prerequisite of the jurisdiction of the Collector is that the land is left uncultivated for more than six harvests and if that prerequisite is missing he has no jurisdiction to take over the possession of the land. The question whether a particular act of the Collector which purports to be under Sub-section (1) of Section 3, is or is not within his jurisdiction as laid down in the Act is certainly for a civil Court to decide and Section 14, is no bar.

4. As regards the merits there is a concurrent finding of fact by both the Courts below that the khasra numbers detailed in the decree were under cultivation at the relevant period and this is also supported from the documents referred to by the two Courts below, including the jamabandi according to which the relevant khasra numbers were actually under cultivation. This finding of fact, which is based on evidence, is unassailable in second appeal and apart from this, it appears to be well-based in view of the evidence on the record.

5. In view of the above, it is not necessary to go into the question whether an appeal lay at the instance of the Defendants other than the Collector particularly when the Collector was impleaded as a Respondent.

6. For the reasons given above therefore, I find no merit in this appeal and the same is hereby dismissed with costs.