
(2001) 04 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6025 of 2001

Harnek Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11
Constitution of India, 1950 — Article 14, 226
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (2001) 4 RCR(Civil) 348

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Rao Ranjit, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioners have failed twice before this court and twice before the Apex Court. They have now ventured upon a third round of litigation. A few facts, as relevant for the decision of this case, may be briefly noticed.

2. The petitioners were given land on lease under the provisions of the East Punjab Utilization of Lands Act, 1949 in the year 1956. At the expiry of the period of lease, proceedings for their eviction were initiated. The Assistant Collector vide his order dated December 31, 1984, had accepted the application and ordered the eviction of the petitioners. They filed an appeal. It was dismissed by the Commissioner. Thereafter, they approached the Court through various Civil Writ Petitions, including Writ Petition Nos. 4376 to 4378 of 1985 and WritPetitionNos. 323 and 324 of 1986. Vide Order dated March 20, 1986, these petitions were dismissed by a Bench of this Court. Thereafter, the petitioners filed Special Leave Petitions, which were dismissed by their Lordships of the Supreme Court.

3. Despite these orders of the Court, the petitioner did not vacate the land. On

the contrary, they initiated fresh proceedings by filing Civil Writ Petition No. 5075 of 1999. In this petition, a prayer was made that a writ in the nature of mandamus be issued directing the respondent-State to allot the land in their possession to them at the reserve price. Notice of this petition was given to the respondents. The parties were heard. Vide order dated January 30, 2001, the petition was dismissed by this Bench. It was held that the petitioner had no right or title in the property. Resultantly, the prayer for allotment of the land to the petitioners was declined. The petitioners filed a SLP (Civil) No. 5219 of 2001. It was dismissed by their Lordships of the Supreme Court, vide order dated April 4, 2001.

4. Now the third round of litigation has been initiated, The petitioners allege that the provisions of Haryana Act No. 13 of the 1996 create a discrimination between the persons, who had been allotted land prior to 1961 and those who were allotted land during the period from May 4, 1961 to July 9, 1985. The provision contained in Section 2(g)(ii-a) is, thus, ultra-vires Article 14 of the Constitution. Still further it is claimed that the action of the respondents suffers from the vice of discrimination. On these premises, the petitioners pray that a writ of certiorari be issued, "quashing Haryana Amendment Act No. 13 of 1996 dated April 15, 1996."

5. We have heard Mr. Rao Ranjit, learned counsel for the petitioners.

6. It is not disputed that the provisions, which are now sought to be challenged and the grounds, which have been urged by the counsel, were available to the petitioners at the time of filing the Civil Writ Petition No. 5075 of 1999. Learned counsel also concedes that these grounds were not raised before this Court despite the existence of the provisions and the availability of the plea. Still further, learned counsel has shown to us a copy of the SLP (Civil) No. 5219 of 2001. On a cursory glance through the paper book, we find that in para D at page 11, a clear and categorical reference has been made to the notification dated April 15, 1996, by which the Punjab Village Common Land (Regulation) Act, 1961 was amended. A reference has also been made to Sections 2(g) and 3. Thus, it is clear that the petitioners were aware of the provisions. Despite that, no challenge to the vires was made. This having happened, the petitioners cannot be permitted to have the whole case tried de novo, by raising certain additional grounds.

7. Section 11 and Order 2 Rule 2 of the CPC contain a principle of public Policy. The provision bars that re-decision of a decided cause. It makes it incumbent upon a litigant to raise all possible grounds and claim all the reliefs at the time he files a petition. It does not permit piecemeal trial of an issue on different occasions. This is for the reason that finality must attach to the decision of a dispute, which has been once heard and decided. In the present case, the pleas, as now sought to be raised, are clearly barred by the principle of res judicata or at least constructive res judicata. Thus, the petitioners cannot be permitted to maintain this petition.

8. Irrespective of the above, we have considered the pleas as raised by the petitioners.

9. Section 2(g)(ii-a) of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1996, provides as under ; -

In clause (g) of section 2 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the principal Act), after sub-clause (ii), the following sub-clause shall be inserted, namely :-

"(ii-a) was shamlat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July, 1985;"

A perusal of the above provision shows that such land, as was Shamlat deh, but was allotted to a person by the Rehabilitation Department after My 4, 1961 and before July 9, 1985, has been excluded from the ambit of Shamlat deh. In the present case, we have nothing on record, which may indicate as to what was the nature of the land which was allegedly allotted to the petitioners. Was it allotted by the Rehabilitation Department ? Or were the petitioners merely given the land on lease for a limited period ? No letter of allotment by the Rehabilitation Department has been placed on record. Nothing has been produced to show that the land was a part of the Shamlat deh prior to its being leased to the petitioners. In this situation, we find that the question as now sought to be raised is purely academic. Still further, under the provision, the Legislature has chosen to grant limited protection to a class of persons. The burden of proving that the petitioners are similarly placed or that the classification is arbitrary, is on them. It has not been shown that the petitioners are in any way similarly placed to the persons, who have been granted the protection u/s 2(g)(ii-a). In this situation, we find no ground to uphold the challenge.

10. Equally futile is the attempt to contend that the action suffers from the vice of discrimination. No instance of any person, who may have been granted any benefit as claimed by the petitioners, has been brought to our notice. Mr. Rao has made a reference to the letter dated September 4, 1998, a copy of which has been produced as Annexure P9. This relates to an application moved by one Baba Masih and others for acceptance of reserve price of the land. What were the facts relating to their case ? There is no answer. Nothing has been placed on record to show that their cases were similar to that of the petitioners. Still further, the letter is only an inter-departmental communication, by which the Government has requested the Deputy Commissioner to go through the matter and take necessary action. What was the final decision ? There is nothing on the record.

11. Learned counsel has also referred to the order passed by a Bench of this Court on March 3, 1997 in a writ petition. However, details regarding the factual position of the case in which this order was passed, have not been given. There is nothing which may even remotely suggest that the petitioners are in any way

similarly placed with Baba Masih or the persons, regarding whom observations were made in the order dated March 3, 1997. Resultantly, even the charge of discrimination cannot be sustained.

12. No other point has been raised.

13. We may mention that the petitioners have prolonged their unauthorised possession after the expiry of the lease for the last more than 22 years by invoking the process of litigation. They have lost upto the Apex Court on two occasions. This petition is only an attempt to prolong the illegal possession. The petitioners are paying nothing to the owners of the property for the last so many decades. They have utilised substantial area of land for a long period. There Is no equity in their favour. Thus, we are not inclined to invoke our discretionary jurisdiction under Article 226 of the Constitution in favour of the petitioners, in favour of who are trespassers on public property.

In view of the above, we find no merit in this petition. It is consequently dismissed in limine.

14. Petition dismissed.