
(2014) 10 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5076 of 1987 (O and M)

Hartawal Singh and Others	Vs	APPELLANT
Joint Director, Panchayats and Others		RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 4

Citation : (2015) 3 RCR(Civil) 331

Hon'ble Judges : Surya Kant, J;Shekher Dhawan, J.

Bench : Division Bench

Advocate : Abhishek Singla, Advocate, for the Appellant; Aman Bahri, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J.?The petitioners have laid challenge to the order dated 23.06.1987 (Annexure P-5) passed by the Joint Director, Panchayats, Punjab exercising the powers of Commissioner-cum-Appellate Authority under the Punjab Village Common Lands (Regulation) Act, 1961 whereby Gram Panchayat's appeal has been accepted declaring it to be the owner of land in dispute measuring 7 kanals. In view of the nature of order, which we propose to pass, it is not necessary to refer to the facts in extenso. Suffice it shall be to mention that according to the petitioners, they are in physical possession of the subject land since the time of their forefathers and their possession is duly recorded in the jamabandis for the year 1925-26 onwards. The Gram Panchayat, on the other hand, claimed that the subject land was Shamlat Deh and the petitioners are in its unauthorized occupation. Reliance was placed on the jamabandis starting from the year 1961-62 till 1979-80 wherein the Gram Panchayat was recorded as its owner though petitioners and their predecessor were shown to be in possession as gair marusi.

2. The Gram Panchayat filed a petition under Section 11 of the 1961 Act read with Section 4 of the Punjab Public Premises and Land (Eviction and Rent

Recovery) Act, 1973 seeking declaration of its title and eviction of the petitioners from the suit land. The District Development and Panchayat Officer, Bathinda exercising the powers of Collector, dismissed the Gram Panchayat's petition vide order dated 23.08.1982 (Annexure P-2) after giving a categorical finding of fact that the predecessors-in-interest of the petitioners were duly recorded in possession in the jamabandis of the year 1925-26 onwards and the old Khasra numbers mentioned in those jamabandis were changed and substituted by new numbers by the Consolidation Officer, Mansa vide order dated 29.05.1961 (Annexure P-3). The Collector, thus, held that the possession of the petitioners or their predecessor was continuous and uninterrupted for more than 12 years before the commencement of the 1961 Act. The subject land was, thus, held to be out of the purview of the Shamlat Deh within the meaning of Section 2 (g) of the 1961 Act.

3. The aggrieved Panchayat preferred an appeal which has been allowed by the Appellate Authority vide order dated 23.06.1987. The Appellate Authority has viewed that the land mentioned in jamabandis for the year 1925-26 till 1958-59 is different and is not the same land as mentioned in the jamabandis for the year 1961-62 onwards. The Appellate Authority has further observed that in the later jamabandis from 1961-62 onwards, the Gram Panchayat is recorded as owner whereas the nature of possession of the petitioners is bewajah kabja zabran i.e. forcible possession.

4. The Appellate Authority has, however, not questioned the genuineness of the entries in the jamabandis for the year 1925-26 till 1958-59. Similarly, there is no controversy that the consolidation was held in the village in the year 1958-59.

5. In this factual backdrop, the core question that arose for consideration was whether the land possessed by the petitioners or their predecessor, the details whereof are mentioned in the jamabandis for the year 1925-26 till 1958-59 is different from the land described in jamabandi for the year 1961-62?

6. We have perused both sets of revenue entries with the able assistance of learned counsel for the parties. We find from the jamabandis for the years 1942-43, 1946-47, 1954-55, 1958-59 (Annexures P-12 to P-15) that predecessor-in-interest of the petitioners, namely, Gurdial Singh was in possession of Khasra Nos. 778/704 (5 kanals 7 marlas) and 780/197 (0 kanal, 10 marlas).

7. The petitioners have placed on record the order passed by Consolidation Officer, Mansa dated 29.05.1961 (Annexure P-3) according to which Gurdial Singh-shareholder was in possession of Khasra No. 778/704 and 780/197 and in lieu of these two Khasra numbers, he was allotted and given possession of Khasra No. 202/5 (7 kanals 0 marla) and Khasra No. 79/1/1 (1 kanal 3 marlas).

8. It may be further seen from the jamabandis for the year 1961-62 onwards that Gurdial Singh is shown in possession of Khasra Nos. 79/1/1 and 202/5. If that is so, it is apparent that the petitioners who were in possession of old

Khasra Nos. 778/704 and 780/197 continued in possession of the substituted Khasra Nos. 202/5 and 79/1/1.

9. The reason assigned by the Appellate Authority, thus, cannot be accepted.

10. Faced with this, learned counsel for the Gram Panchayat has questioned the very validity and jurisdictional competence of the Consolidation Officer in passing the order dated 29.05.1961 (Annexure P-3).

11. In our considered view, the above-stated question need not be dwelled upon by this Court for the reason that the Appellate Authority has not even made a mention of the order dated 29.05.1961 passed by the Consolidation Officer. In other words, a material piece of evidence which is duly produced on record went unnoticed and has been overlooked by the Appellate Authority while accepting the appeal of the Gram Panchayat. For the reasons aforesaid, we are of the considered view that the order passed by the Appellate Authority dated 23.06.1987 cannot sustain. The question of validity or relevance of the order passed by the Consolidation Officer can be gone into by the Appellate Authority while deciding the appeal afresh after taking into consideration the entire evidence on record. Resultantly, the writ petition is allowed; the order dated 23.06.1987 passed by the Appellate Authority is set aside and the matter is remitted to the Appellate Authority under the 1961 Act to decide the Gram Panchayat's appeal afresh and in accordance with law as early as possible but not later than six months from the date of receipt of copy of this order.