
(2016) 02 P&H CK 0372
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24505 of 2015

Jagdish Ram and Others

APPELLANT

Vs

Joint Development Commissioner (IRD) Punjab and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Citation : (2016) 3 LawHerald 2371 : (2016) 2 RCRCivil 867

Hon'ble Judges : Surya Kant and P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : J.S. Bhandohal, Advocate, for the Appellant; Rajesh Bhardwaj, Additional A.G., for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J.—1. The petitioners have laid challenge to the orders dated 4.9.2014 and 7.10.2015 passed by the Collector and Commissioner, respectively, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the 1961 Act"). Vide the first order, the petitioners were ordered to be evicted from the land which is the part of khasra No. 561 within the abadi deh of village Jeuli, Tehsil Dera Bassi, District SAS Nagar, Mohali. Vide the second order, the petitioners' appeal against that eviction order has been dismissed.

2. We have heard learned counsel for the parties at a considerable length and gone through the record including the report submitted by the learned Local Commissioner as well as the team of Revenue officials.

3. It may be mentioned here that in its eviction petition (P-7), the Gram Panchayat alleged that "the Land of pond, khasra No. 561 is abadi deh and is for common use of village panchayat, Jeoli."

4. It was further averred that in a civil suit for injunction the petitioners though referred to khasra Nos. 500, 501, 502 and 503 as the area of village pond but they nowhere mentioned about khasra No. 561 which is also a "pond".

5. The petitioners contested the Gram Panchayat's claim and took the following stand:-

"2. Para No. 2 is wrong and baseless. The respondents have not made any illegal possession over the pond, a common land of the village and the houses and cattle sheds of the respondents fall in Khasra No. 561, which is a gair mumkin abadi land, whereupon, the forefathers of the respondents had constructed houses and cattle sheds, are being used by the respondents, after the death of their forefathers. Apart from this, the respondents have planted trees etc. on the respective lands in their possession and upon which, the gram panchayat has no connection/concern. The respondents are in possession of the land in dispute and the possession has been coming since many years, from the time of their ancestors. The construction of houses and cattle sheds was carried out by their ancestors a very long time ago, regarding which, neither the earlier panchayats nor the present panchayat has raised any objections."

6. In the light of the above-stated claim and counter-claims, the issue that arises for consideration pertains to the nature of khasra No. 561.

7. It is an admitted fact that as per the revenue record including jamabandi for the year 2000-01 (Annexure P-1) khasra No. 561 is recorded as "abadi deh" and is shown to be in possession of Maqbuza Bashindgan, namely the residents of the village and the nature of area is also shown as gair mumkin abadi i.e. residential area of the village. The total area of khasra No. 561 is 89 bigha 5 biswa. Similarly, the jamabandi for the same year (P-4) shows khasra Nos. 500, 501, 502 and 503 as gair mumkin tobha, namely, the pond area.

8. The Gram Panchayat relied upon the map of Survey of India of 1965 and 1966 in which there is a pond shown in khasra No. 561 as well. The Gram Panchayat has also taken stand that there are several other parcels of land comprising the same khasra number 561 which are reserved for other "common purposes" also.

9. Unfortunately, the Collector or the Appellate Authority did not determine as to how area of khasra No. 561 was meant to be used as a "pond" and if that is so, then how the revenue record has depicted the entire khasra number as abadi deh which is meant for residential purposes only? Similarly, they have nowhere determined as to how much area of khasra No. 561 was initially reserved or used as a "pond" or other "common purposes"? These questions are very relevant to determine the initiation of eviction proceedings which are maintainable in respect of shamilat deh land only which vests in Gram Panchayat.

10. The expression "shamilat deh" is defined in Section 2 (g) of the 1961 Act. Section 2 (g) (1) says that the land included in shamilat deh means which is described in the revenue records as shamilat deh excluding abadi deh. Similarly, Section 2 (g) (4) describes the land which are included in shamilat deh. Section 2 (g) (1) and (4) read as follows:-

"2 (g) (1):- lands described in the revenue records as shamilat deh excluding

abadi deh.

2 (g) (4):- lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds within abadi deh or gorah deh"

11. It may, thus, be seen that if a land is exclusively used as abadi deh, then it does not include in shamilat deh and no eviction petition under Section 7 of the 1961 Act in respect of such land is maintainable. But if there is a land within the abadi deh which is used or reserved for the benefit of the village community including pond, then it is included in shamilat deh and Gram Panchayat is entitled to seek eviction in respect thereto. It is in this backdrop that it was imperative upon the Authorities to determine as to how much area of khasra No. 561 falls under clause (1) and how much under clause (4). While the Gram Panchayat is entitled to seek eviction in respect of the land which falls within clause (4), the petitioners too are entitled to the protection of clause (1) if the land occupied by them is exclusively a part of abadi deh.

12. With a view to resolve the controversy at our end, the learned Local Commissioner was appointed and the team of revenue officials was constituted for demarcation of the pond area. The Tehsildar, Dera Bassi who headed the team has filed affidavit dated 22.12.2015, para 5 whereof reads as follows:-

"5. i) That the total area of khasra no.561 is 89 bigha 05 biswa as per jamabandi for the year 2010-11 of village Jeuli, Tehsil Dera Bassi, District SAS Nagar.

ii) The area of Tobba/Pond located in khasra no.561 in the year 1961 or prior thereto has not been reflected in the revenue records."

13. In these circumstances, it is difficult to form an opinion in summary eviction proceedings as to whether the land occupied by the petitioners falls under clause (1) of Section 2 (g) of the 1961 Act or clause (4) thereof?

14. The effective recourse for the Collector would have been to undertake such an exercise by expanding the scope of the proceedings from Section 7 to Section 11 of the 1961 Act as eviction proceedings under Section 7 of the 1961 Act are summary in nature.

15. The measurement of the parcels of land comprising khasra No. 561 used or reserved for different "common purposes" can be clubbed together along with the total area, which according to the Gram Panchayat, consists the pond (Tobha) in khasra No. 561. After excluding sum total of such area out of land of khasra No. 561, the left out land would presumably fall within clause (1) of Section 2 (g). It is thereafter only that the fate and status of the houses constructed by the petitioners can be determined with reference to the questions formulated by us.

16. For the reasons aforesaid, we allow the writ petition; set aside the impugned orders dated 4.9.2014 and 7.10.2015 and remit the case to the

Collector to re-determine the whole controversy in the light of the observations made hereinabove. The parties shall be given not more than 2-3 additional opportunities to lead their respective evidence. The specific issues shall be formed and issue- wise findings shall be returned. The needful shall be done expeditiously but preferably within four months.

17. Till the matter is decided afresh by the Collector, no construction shall be raised by the petitioners or other inhabitants of the village at the disputed site. It shall be the responsibility of the BDPO of the area, SDO (Civil), Dera Bassi and Deputy Commissioner, SAS Nagar, Mohali to ensure that no further construction is raised at the site and status quo be maintained.

18. The parties are directed to appear before the Collector, SAS Nagar, Mohali on 29.2.2016.