
(2001) 07 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1113 of 2000

Jage Ram and others

APPELLANT

Vs

Gram Panchayat and another

RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (2001) 07 P&H CK 0057

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Attar Singh Kaushik, for the Appellant; Yash Pal Malik, for Respondent Nos. 1 to 6 and 8, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Jage Ram and others filed suit for declaration against the Gram Panchayat of village Chirsmi. Tehsil Ganaur, through its Sarpanch and Zile Singh @ Zaila, Sarpanch of the Gram Panchayat, to the effect that order dated 28.4.1989 of Collector, Sonapat, order dated 24.8.1990 of Commissioner, Rohtak Division, Rohtak and order dated 4.6.1998 by which warrant of possession was issued by Collector, Ganaur, are illegal, null and void and not binding upon them and are liable to be set aside and for permanent injunction restraining the Defendants and the concerned Government machinery from interfering in their possession of the plots/land as detailed in para 2 of the plaint and from removing the construction of fourwalls and rooms over the disputed land illegally and forcibly and further for mandatory injunction directing the Defendants to get the plots registered in the names of the Plaintiffs.

2. It was alleged in the plaint that they are residents of village Chirsmi and are kumhar by caste which is a backward class declared by the State of Haryana. Since the time of their ancestors, they have been preparing earthen pots. Land measuring 3K-17M as detailed in para 2 of the plaint was reserved for gair mumkin awa, kumharan, during consolidation because this land was in

possession of kumhar community since before consolidation proceedings took place in the village. Plaintiffs constructed there fourwalls and rooms etc in this land. Vide order dated 20.9.1984, Sub Judge I Ind Class, Sonapat protected the construction of the fourwalls in this land in a civil suit filed by the Sarpanch of the Gram Panchayat. On 27.6.1986, the Gram Panchayat of village Chirsmi filed an application u/s 4 of the Public Premises Rent Recovery and Eviction Act (hereinafter referred to as the Act) in the Court of Collector, Sonapat against them and prayed that they be evicted from the disputed land and possession be handed over to the Gram Panchayat. In that application, Gram Panchayat suppressed the fact that Civil Judge vide order dated 20.9.1984 had granted injunction against the removing of the fourwalls. Collector vide order dated 28.4.1989 decided that the land comes under the control and management of the Gram Panchayat and, therefore the Plaintiffs and other kumharan could continue using the disputed land for making earthen pots, but the four-walls and the rooms over the disputed sites were ordered to be removed. Vide order dated 24.8.1990, the Commissioner, Rohtak Division, Rohtak, upheld the order of the Collector dated 28.4.1989. Gram Panchayat filed execution on 24.10.1990 for getting possession of the suit land from the Plaintiffs. On 15.2.1989, letter was received from the Financial Commissioner. Haryana by all the Deputy Commissioners in the State for allotment of house sites in rural areas free of costs to poor belonging to Scheduled Castes and Backward Class. In compliance with the orders of the Deputy Commissioner, the Gram Panchayat of village Chirsmi invited applications from such persons. Plaintiffs also filed applications for allotment of such land to them as they had already built their houses and such scheme had also been framed by the Government. Gram Panchayat passed resolution on 18.7.1992 vide which the panchayat had decided that the residential houses of the Plaintiffs and other kumharan shall not be demolished because poor kumhars had no other place to live and also the said construction was very old and panchayat was not getting any revenue from the disputed land and this land be allotted to the Plaintiffs and other kumharan in the shape of plots. This resolution was sent for approval to the B.D.O. and D.C. Deputy Commissioner visited the spot on 23.11.1992 and had given the orders to the Gram Panchayat that the disputed land be registered in the names of kumhars because these persons had permanent houses over the disputed land. BDPO on 17.3.1993 vide letter No. 307 in reference to the letter of Deputy Commissioner No. 1128 dated 11.3.1993 asked the panchayat to get the plots registered as per the resolution of the panchayat. as such were the orders of the Deputy Commissioner. In the face of what the Deputy Commissioner had ordered, the Gram Panchayat's resolution dated 18.7.1992 regarding the allotment of plots to the Plaintiffs and other kumharan, order dated 28.4.1989 of Collector, Sonapat and order dated 24.8.1990 of Commissioner, Rohtak Division, Rohtak have no bearing on the rights of the Plaintiffs. Against this resolution of the Gram Panchayat dated 18.7.1992, one Hari Chand, who is a resident of village Chirsmi. filed case in the Court of S.D.M. Ganaur, for declaring the resolution of the Gram Panchayat null and void. S.D.O. (Civil) Ganaur vide his order dated 30.9.1994

upheld the resolution of the Gram Panchayat and further held that it is the policy of the Government that any person belonging to scheduled Caste/Backward Class, who does not have any land for residential purpose, shall be allotted a plot measuring 100 Sq. yards to enable him to construct a house and the land in Khata No. 373 Rect. and killa No. 39/10/2 and 40/6/I is reserved for Awa Kumharan and therefore this land be allotted to them as they had already constructed their houses over the said land according to the Government policy. Zile Singh Sarpanch of the Gram Panchayat along-with others filed civil suit against the gram Panchayat, Chirsmi restraining the Gram Panchayat from allotting any plot to the Plaintiffs and other persons under the resolution of the Gram Panchayat dated 18.7.1992. Civil Judge vide order dated 20.12.1993 rejected the application of Zile Singh. Zile Singh filed appeal. District Judge, Sonapat vide order dated 3.6.1994 held that the Gram Panchayat had every right to deal with the suit property i.e. 3K-17M and the allotment of plots from this land to the Plaintiffs is not bad in the eye of law. Gram Panchayat filed execution for the implementation of order dated 28.4.1989 passed by the Collector. While doing so, Gram Panchayat has suppressed all the aforesaid material facts from the Court, namely the Government scheme, order of S.D.O. (Civil). Ganaur. dated 30.9.1994. Civil Court order dated 20.12.1993 and also the fact that the resolution passed by the Gram Panchayat stood affirmed. Alongwith the plaint, the Plaintiffs made an application for the grant of temporary injunction restraining the Gram Panchayat from interfering in their possession of land measuring 3K-17M and also from removing the construction of the fourwalls and the rooms raised by them on the disputed land and also direction to get registered the plots allotted to the Plaintiffs over the disputed land. Vide order dated 27.7.1998, Civil Judge (Junior Division), Sonapat, dismissed this application.

3. Plaintiffs went in appeal, which was allowed by learned District Judge, Sonapat, vide order dated 14.12.1999.

4. Not satisfied with the order of the learned District Judge, Sonapat dated 14.12.1999, Gram Panchayat has come up in revision to this Court.

5. It was submitted by the Learned Counsel for the Petitioners that the Gram Panchayat is executing an order of eviction obtained by it from the Court of Collector by filing an application u/s 4 of the Act on 28.4.1989 which was maintained in appeal by the Commissioner, Rohtak Division, Rohtak vide order dated 24.8.1990. The Collector observed that the land comes under the control and management of the Gram Panchayat and Plaintiffs and other kumharan could continue using the plots, but the fourwalls and the rooms etc, over the disputed site constructed by them would have to be removed. It was submitted that no injunction can be obtained restraining the execution of a lawful order. No irreparable loss can be said to result when an order of competent Court is being executed. Lawful exercise of right vesting in a person cannot be said to be "injury". It was submitted that the Court should be slow in granting injunction

restraining the execution of a lawful order affirmed by the Superior Courts. In support of his submission, he drew my attention to *Bishan Singh v. Hukam Chand and others*, 1989 PLJ 380, where it was held that lawful exercise of right vesting in a person cannot be said to be injury. It is the lawful decree which is being executed. There is no irreparable loss where a decree of a competent Court is being executed. He drew my attention to *Fateh Mohammad and Ors. v. Khursheed and Ors.* 1991 PLJ 439 where it was held that no irreparable loss is going to be caused to the Plaintiffs, in case the Defendants intend to execute the decree nor balance of convenience lies in favour of the Plaintiffs, who have failed to satisfy all the three essential ingredients of Order 39 Rules 1 and 2, viz. (i) a prima facie case, (ii) balance of convenience, (iii) irreparable loss. It is true that execution of a lawful order cannot be restrained by an order of injunction. Plaintiffs are kumhars. Their case is that since the time of their ancestors, they have been engaged in preparing earthen pots and so far as this land measuring 3K-17M is concerned, this land was reserved during consolidation proceedings for being used as gair mumkin "Awa Kumharan". Apart from making earthen pots, Plaintiffs and other kumharan have raised fourwalls and constructed rooms for residential purpose. In pursuance of the letter dated 15.2.1989 addressed to Deputy Commissioners in the State of Haryana by the Financial Commissioner calling for allotment of house sites in rural areas free of costs to the poor belonging to the Scheduled Caste and Backward Class, the Deputy Commissioner. Sonapat directed the Gram Panchayat of village Chirsmi to invite requests/representations from such persons, who were desirous of allotment of house/sites free of costs to them belonging to Scheduled Castes and Backward Classes and were poor. Gram Panchayat invited requests from such people. Plaintiffs filed applications for allotment of such house/sites to them where they had already built their houses. Gram Panchayat passed resolution on 18.7.1992 vide which it was decided that the residential houses of the Plaintiffs and other kumharan shall not be demolished because poor kumharan had no other place to live and also the said construction was very old and panchayat was not getting any revenue from the disputed land and the present land be allotted to the Plaintiffs and other kumharan in the form of plots. It was submitted by the Learned Counsel for the Petitioners that resolution dated 18.7.1992 has no effect. It could have effect, if it had been approved by the Director of Panchayats. It was submitted that the land belonging to the Gram Panchayat cannot be allotted unless there is a resolution by the Gram Panchayat and that resolution is approved by the Director of Panchayats. It was submitted that the possession of the Respondents-Plaintiffs is un-authorised and that was why Collector passed order dated 28.4.1989 ordering their eviction under the Act which was affirmed in appeal by the Commissioner, Rohtak Division, Rohtak.

6. Learned Counsel for the Respondents, on the other hand, submitted that the resolution passed by the Gram Panchayat dated 18.7.1992 was challenged by one Hari Chand before S.D.O. (Civil). Ganaur. His challenge was not accepted. It was observed by the S.D.O. (Civil), Ganaur in order dated 30.9.1994 passed in

case No. 127 of 1994 titled Hari Chand v. Gram Panchayat that Kumhars have raised fourwalls and houses adjacent to the site of awa. As per the policy of the Government, kumhars were to be allotted residential plots and if they are allotted residential plots away from the site of awa, there would be obstruction in the quick and efficient making of earthen pots by them in the awa and it was in view of this difficulty of the kumhars that this land where they have awa, the residential houses have been resolved to be allotted to them by the Gram Panchayat. It was submitted that these are subsequent events which should be taken into account and temporary injunction should be granted to the Plaintiffs.

7. Faced with this position, Learned Counsel for the Petitioners submitted that Civil Court had no jurisdiction to question the legality of any action taken or matter decided by any revenue Court or Officer/authority empowered to do so under the Punjab Village Common Lands Regulation Act. 1961 (hereinafter referred to as the act of 1961). It was submitted that the grant of stay by the Civil Court is barred u/s 13 of the Act of 1961. It was also submitted that the Respondents claim injunction on the basis of resolution dated 18.7.1992 of the Gram Panchayat. This resolution is meaningless till it was approved by the Director of Panchayats under the rules framed under the Act of 1961. It was also submitted that the resolution dated 18.7.1992 of the Gram Panchayat could be invoked by the Respondents in the civil writ petition filed by them which was decided on 29.7.1997.

8. High Court vide order dated 29.7.1997 held that the Gram Panchayat will not take possession of the property except after following the procedure established by law. Gram Panchayat has itself passed resolution dated 18.7.1992. Resolution dated 18.7.1992 was passed by the gram Panchayat in view of the declared policy of the Government that the residential sites will be allotted to poor belonging to Scheduled Castes and Backward Classes. Plaintiffs are carrying on the avocation of the making of earthen pots since the times of their ancestors on this land and this land was allotted during consolidation proceedings for being used as awa. Plaintiffs have thus prima facie case in view of the declared policy of the Government. Balance of convenience is also in their favour. Principle of irreparable loss and injury is also in their favour. If temporary injunction is not granted to them and their houses are demolished forthwith in pursuance of the order of eviction dated 28.4.1989 passed against them by the Collector, they will be thrown out of gear so far as their avocation/residences are concerned. In my opinion, the exercise of discretion by the learned District Judge, cannot be said to be arbitrary or capricious going against the well recognised principles governing the grant of temporary injunction.

9. For the reasons given above, this revision fails and is dismissed.