

(2011) 05 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12349, 12491, 14601, 14602, 14603, 14604 of 1990 (O&M)

Joginder Singh

APPELLANT

Vs

Additional Director, Panchayats, Punjab, Chandigarh and others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7

Citation : (2012) 2 RCR(Civil) 386

Hon'ble Judges : K.Kannan, J

Advocate : Mr. Jitender Singla, Advocate for Mr. Ashok Singla, Advocate. For the Respondent Nos. 1 , 2, Mr. K.S. Sivia, DAG, Punjab, None., Advocates for appearing Parties

Judgement

K.Kannan, J. (Oral)

1. All these cases address the same issue of the tenability of the order of eviction passed under Section 7 of the Punjab Village Common Lands (Regulation) Act of 1961. In an action by the panchayat for ejection complaining of unauthorized occupation of various persons, the defence was that the property was not shamlat deh and all of them were in possession of the property in their own right and they could not be evicted.

2. At the enquiry before the Collector, Draftsman, Nabha, had given a statement that he had prepared a plan after inspecting the property and had noticed that there had been constructions with 4 walls that appeared to more than 30 to 35 years old. Each one of the respondents had been contending that they had been in possession from the time of their father and grand father and that their houses have been built and electricity connections had also been obtained. They were making out cases of gathering cattle and using the property as their own. The panchayat examined the Sarpanch and relied on jamabandi for the year 198586 to say that the property had been entered as the property belonging to Gram

(v) is described in the revenue records as Shamilat, Taraf, Patti Panna an Thola and not used; according to revenue records for the benefit to the village community or a part thereof or for common purposes of the village. 2[(vi) lies outside the abadi deh and was being used as gitwar, bara manure pit, house or for cottage industry, immediately before the commencement of this Act].

3(vii) is Shamilat deh????????????????????]

(viii) was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of coshares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or

4[(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act].

(h) ?Shamilat Law? means:

(i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953, or

(ii) in relation to land situated in territory immediately before the 1st . November, 1956, was comprised in state of Patiala and East Punjab States Union; the Pepsu Village Common Lands Regulation Act, 1954;

5. The learned counsel would point out that the property which is described in the revenue records as shamlat deh could qualify for being treated as such only in cases where the property was shown as shamlat deh at the time when shamlat deh law came into force and, therefore, the revenue entry for the relevant year must have been 09.01.1954 when shamlat deh law came into force. The reference to an entry in the jamabandi of the year 198586 cannot be taken as proof of the property as shamlat deh. The learned counsel would make reliance on the judgment of this Court in Gurnam Singh Versus Gram Panchayat, Village Mangoli and others 1988 PLJ 520, to contend that in view of the fact that Punjab Village Common Lands (Regulation) Act of 1953 came into force on 09.01.1954, if only the gram panchayat was able to show that when the shamlat deh law came into force, the land in dispute had been recorded as shamlat deh and was being used as such for common purposes, then only it would be taken as vested in gram panchayat. In the absence of any proof that the property had been described in the revenue records as shamlat deh during that relevant period, it was unnecessary to call upon the respondents to prove that they had been in possession even before 26.01.1950. The learned counsel would also refer to the decision of a Division Bench of this Court in Jagir Singh Versus State of Punjab 1994 PLJ 53 that a Collector cannot take the property as vested in a panchayat without recording any positive finding that the property becomes vested with the panchayat by merely observing that the respondents had failed to prove possession for 30 years. The Bench held that such observation of the Collector could not be considered and found that the land was not shamlat deh

vested in the panchayat.

6. The learned counsel would also explain the reference to column 2 in the khasra girdawari as meaning that it is not shamlat deh but it was a property which was held in proprietary character of the khewatdars. The reference is to "shamlat thulla chhaja Hasab Rasad Rakba Khewat". This would mean that the land is that the proprietors of that very thulla according to their shares. In the dictionary of revenue terms by Chawla Publication, 1996, the "Shamili Ta'alluq" is described to mean thus:

?Shamili Ta'alluq: A subordinate proprietary estate, one comprehended within the zamindari, and paying revenue through the zamindari, but considered to be hereditary and independent property, and inalienable as long as the dues to the superior holder and government are paid.?

7. The contention of the learned counsel, therefore, is that his property cannot be taken as shamlat as was wrongly understood by the Collector and the Appellate Authority. The further contention is that if it ever were to be taken that this property was used for some common purposes, even then it would only mean that a petition under Section 7 under the Village Common Lands Act itself could not have been maintained for different legal incidence will obtain in case of a property which is held for the common purposes of the villagers and which are treated as such under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948. The learned counsel would argue that in respect of the property which are treated as reserved for common purposes in the Act as aforesaid, the appropriate mode of action would be only under the Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act of 1976. The learned counsel refers to a decision in Kala Singh Versus Commissioner Hissar Division and others 1984 PLJ 169 as governing the issue that in such cases, it will be only the 1976 Act which could be applied and not the Punjab Village Common Lands (Regulations) Act of 1961. I do not feel constrained to go into this aspect, for, it was not the contention of the panchayat that it was the property reserved for common purposes under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948. It sought for ejectment only treating the property as shamlat deh and that fact was taken as established. It is undeniable that the panchayat cannot maintain an action for ejectment under the said Act. I uphold the contention of the petitioner that the authorities misconstrued the revenue entries themselves as referring to shamlat deh when they were not. Even if such a reference was taken to be found in the year 1985, without proving that the property existed as such at the time when shamlat law came into force, the respondents cannot be called upon to prove that they were in possession of the property even before 1950.

8. All the orders are quashed and the writ petitions are allowed.