
(2011) 05 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14652 of 1991 (O and M)

Kanhi Ram and another

APPELLANT

Vs

Gram Panchayat, Dhani Silawali and others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13B, 2G, 4, 7, 7(3)

Citation : (2011) 163 PLR 239

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—Concisely, the facts, which need a necessary mention for the limited purpose of deciding the core controversy,

involved in the instant writ petition and emanating from the record, are that Gram Panchayat of Village Dhani Silawali, District Bhiwani (for brevity

the respondent-Gram Panchayat") initiated the ejectment petition against the petitioners to eject them from the land in question, belonging to

it(Gram Panchayat), situated within the abadi deh of the village, before the Assistant Collector, 1st Grade (for short "the A.C., 1st Grade"),

invoking the provisions of Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961, as applicable to the State of

Haryana(hereinafter to be referred as "the Act"). The respondent-Gram Panchayat claimed that the petitioners are in unauthorized possession of -

its land.

2. The petitioners contested the claim of the respondent-Gram Panchayat and filed the written statement, inter alia, pleading that the land in

question does not belong to the respondent-Gram Panchayat. It was claimed that as majority of the owners of the land in dispute in the village

were Muslims, therefore, after partition of the country, the suit land being their evacuee property vested in the custodian department. They

purchased a plot measuring 542 square yards from the custodian department and got a "Bada" measuring 135 square yards. Thus, they are

owners and are in possession of the suit land for the last about 60 years and have constructed their residential houses and boundary wall on it.

They became the owners of the land, much prior to the commencement of the Act. The other allegations were denied by the petitioners and prayed

for dismissal of the ejectment petition u/s 7 of the Act.

3. After taking into consideration the evidence brought on record by the parties, in order to substantiate their respective stands, the A.C. 1st Grade

ejected the petitioners from the land in dispute by way of ejectment order dated 15.11.1990(Annexure P-1).

4. Aggrieved by the order (Annexure P-1), the petitioners filed the appeal, which was dismissed as well by the District Collector-cum-Appellate

Authority, vide impugned order dated 18.02.1991 (Annexure P-2).

5. The petitioners still did not feel satisfied and preferred the instant writ petition, challenging the impugned orders (Annexures P-1 and P-2), inter

alia, mainly on the ground that although the property does not belong to the respondent-Gram Panchayat and they raised a question of title and

prima facie proved by producing the sale certificate/sale-deed and other evidence, but the A.C., 1st Grade fell in legal error in this relevant behalf.

The impugned orders were stated, not only arbitrary and illegal, but against the statutory provisions of the Act as well. On the basis of aforesaid

allegations, the petitioners sought to challenge the impugned orders (Annexures P-1 and P-2), in the manner depicted hereinabove.

6. The respondent-Gram Panchayat contested the claim of the petitioners and filed the written statement, wherein, it was reiterated that the land in

dispute is shamilat deh vests in the Gram Panchayat and the petitioners were rightly ejected from it by the A.C., 1st Grade. The impugned orders

were claimed to be valid and legal. It will not be out of place to mention here that the respondent-Gram Panchayat has stoutly denied all other

allegations contained in the writ petition and prayed for its dismissal. That is

how, I am seized of the matter.

7. After hearing the learned counsel for the parties, going through the record of the case and legal position with their valuable help and after deep

consideration of the entire matter, to my mind, the instant writ petition deserves to be accepted in this respect.

8. As is evident from the record that the respondent-Gram Panchayat claimed that the land in dispute is shamilat deh and belonged to it. On the

contrary, the petitioners claimed that almost majority of the owners of the suit land were Muslims and after their migration, the land vests in the

custodian department, being the evacuee property. They purchased a plot measuring 542 square yards from the custodian department and they

acquired remaining land as a "Bada". Hence, they are owners and in possession of the suit land for the last about 60 years and have constructed

their residential houses and boundary wall on it, much prior to the commencement of the Act.

9. Therefore, it is clear that the petitioners have raised a legitimate question of title and prima facie proved it, by producing the sale certificate, copy

of the site plan and other related documents, but the same were ignored with impunity by the A.C. Ist Grade and he did not decide the question of

title. The same mistake was repeated by the Appellate Authority as well.

10. Meaning thereby, the petitioners have raised the deep questions of title of the land in dispute before the A.C. 1st Grade, during the course of

trial of the petition u/s 7 of the Act, which postulates that an Assistant Collector of the first grade having jurisdiction in the village may, either suo

moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social

Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary

enquiry as he may deem fit and in accordance with such procedure, as may be prescribed, eject any person, who is in wrongful or unauthorised

possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the

Panchayat under this Act and put the Panchayat in possession thereof and for doing so, the Assistant Collector of the first grade may exercise the

powers of a revenue court in relation to the execution of a decree for possession

of land under The Punjab Tenancy Act, 1887.

Proviso to Section 7 of the Act further posits that if in any such proceedings, the question of title is raised and proved prima facie on the basis of

documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide

the question of title, in the manner laid down hereinafter.

11. Sequelly, the procedure for deciding such question of title under proviso to Sub-Section (1) is provided in Sub-Section (3) of Section 7 of the

Act, which envisaged that the procedure of deciding the question of title shall be the same, as laid down in the Code of Civil Procedure, 1908.

12. A conjoint reading of Section 7 of the Act, would leave no manner of doubt that, it was incumbent upon and the statutory/mandatory duty of

the A.C., 1st Grade to first decide the question of title and without deciding the question of title at the first instance, he was not legally competent to

pass the ejectment order against the petitioners. This matter is not res integra and is well settled.

13. An identical question came to be decided by a Division Bench of this Court in case Tara Chand and Fateh Singh v. Gram Panchayat and Gram

Sabha of Village Atil and others, 1979 P.L.J. 5. Having interpreted the relevant provisions of Section 7 of the Act, it was, inter alia, ruled as

under:-

The Assistant Collector, 1st Grade conducting proceedings u/s 13-B is a Tribunal of wider jurisdiction as compared with the same officer u/s 7.

The latter is a Tribunal of comparatively limited jurisdiction. The Tribunal of limited jurisdiction cannot oust the jurisdiction of a Tribunal with wider

jurisdiction even if both the Tribunals are manned by the same person. The separate statutory provisions are made for achieving the interest of

justice and the parties cannot be denied their right to have their claims adjudicated from the proper forum by the officers manning such Tribunals,

by adopting short-cut methods of summary enquiry. In the case in hand, the Assistant Collector, 1st Grade, Sonapat, while passing orders

Annexure P-2 to the petition u/s 7 for the eviction of the petitioners from the land in dispute, travelled beyond the scope of his jurisdiction under

that section to determine the question of title which was raised before him. When the question of title was raised by the petitioners, the appropriate

procedure to be adopted by him should have been either to convert himself into a Tribunal u/s 13-B of the Act and proceed in accordance with the

procedure laid down for determination of the title or ask the petitioners raising the question of title to move appropriate petitions before him u/s 13-

B. He could keep the proceedings u/s 7 in abeyance till the final determination of the question raised before him u/s 13-B. Such a procedure is to

further the purpose of the amendment of the Act by avoiding unnecessary delay in the proceedings as has been occasioned in the case in hand. He

could not opt for an easier course for the sake of convenience to try the case in a summary manner. The rights of the petitioners have been

prejudiced by denial to try their case u/s 13-B in accordance with the provisions of CPC and this has resulted in failure of justice"".

14. Subsequently, the same view was again reiterated by this Court in cases Sewa Ram and Kanwar Bhan v. Gram Panchayat Village Shergarh

Tapu and others, (2010)157 P.L.R. 786 and Bant Singh and others v. The Joint Director, Panchayat, Punjab and others, (2010)160 P.L.R. 30.

15. What is not disputed here is that the petitioners have specifically raised an important question of title of the land in dispute and prima facie

proved by producing the evidence of sale certificate etc., as discussed here-in-above, but the A.C. 1st Grade has ordered their ejectment in a

casual fashion and routine manner, without deciding the question of title and failed in his statutory duty in this relevant behalf. In that eventuality, the

A.C. 1st Grade ought to have stayed his hands, as regards the ejectment petition was concerned, at that stage, and it was incumbent upon him to

decide the question of title, at the first instance, as per procedure, as contemplated u/s 7(3) of the Act.

16. Thus, it would be seen that the clear and explicit intention of the legislature underlying Section 7 has to be respected and complied with in the

manner commanded by the Act. The command of the legislature is mandatory and the procedure of deciding the question of title, at the first

instance, is to avoid unscrupulous ejectments, which admittedly, the A.C., 1st Grade has omitted to follow. Therefore, the A.C., 1st Grade has

bye-passed the mandatory provisions with impunity and illegally passed the impugned ejectment order (Annexure P-I) and the Appellate Authority

has also dismissed the appeal in a mechanical manner, inculcating and perpetuating injustice to the petitioners, by virtue of impugned order

(Annexure P-2), which cannot legally be sustained in this respect.

17. This is not the end of the matter. It is not a matter of dispute that the A.C. 1st Grade did not decide the question of title and passed the non-

speaking ejectment order (Annexure P-1). The same very mistake was repeated by the Appellate Authority, while passing the impugned order

(Annexure P-2). That means, the impugned ejectment orders (Annexures P-1 and P-2) passed by the A.C. 1st Grade and the Appellate Authority,

are non-speaking orders and lack application of mind in this connection. They ought to have discussed the evidence brought on record and were

legally required to record the valid reasons, for arriving at a right conclusion, in order to decide the real controversy between the parties, in the right

perspective. The orders of such statutory authorities must be fair, clear, reasonable and in the interest of fair play and must be informed by reasons.

Every order must be confined and structured by rational and relevant material on record, which is totally lacking in the instant case. Therefore, to

my mind, the impugned ejectment orders (Annexures P-1 and P-2) cannot legally be maintained, in the obtaining circumstances of the case.

18. In this manner, whether the land in dispute was the evacuee property, vests in the custodian department or falls within the definition of shamilat

deh, as defined u/s 2(G) of the Act, or that the land of the petitioners is exempted from the operation of law, in view of Section 4 of the Act, on

account of their long possession for the last about 60 years etc., would be the moot points to be decided by the authorities under the Act.

Therefore, to my mind, it would be in the interest and justice would be sub served, if this matter is remanded back to the A.C. 1st Grade, for its

fresh decision.

19. In the light of aforesaid reasons, thus, seen from any angle and without commenting further anything on merits, lest it may prejudice the case of

either side during the adjudication of question of title between the parties, by the A.C., 1st Grade, the instant writ petition is accepted. The

impugned ejectment orders (Annexures P-1 and P-2) are hereby set aside. The matter is remitted back to the concerned A.C., 1st Grade, for its

fresh decision, on the question of title, after affording adequate opportunity to the parties, to lead their respective evidence, in view of the aforesaid

observations and in accordance with law and then to pass appropriate order, as

warranted by the situation.

20. Needless to mention here that, nothing observed hereinabove would reflect, in any manner, on the merits of the main case, as the same has

been so recorded for a limited purpose of deciding the present controversy.

21. The parties through their counsel are directed to appear before the concerned A.C., 1st Grade on 28.07.2011.