
(2015) 08 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : CWP-10431-2014

Kapur Singh and Others

APPELLANT

Vs

Director, Rural Development and Panchayats and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42, 42-A
Evidence Act, 1872 — Section 116

Citation : (2015) 4 RCR(Civil) 698

Hon'ble Judges : Rajive Bhalla, J;Shekher Dhawan, J

Bench : Division Bench

Advocate : Atul Lakhanpal, Senior Advocate and Arjun Lakhanpal, for the Appellant; Rajinder Goyal, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J—The petitioners pray for issuance of a writ of certiorari, quashing orders dated 20.05.2013 and 31.03.2014 (Annexures P-10 and P-12), passed by the Collector/Divisional Deputy Director, Rural Development and Panchayat, Ferozepur and the Director, Rural Development and Panchayat Department, Punjab (exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act"), respectively.

2. Counsel for the petitioners submits that the land, in dispute, is in the petitioners' possession and as it was never reserved or earmarked for any common purpose of the village nor has the Gram Panchayat (respondent No. 3) produced any document to prove that the land was ever reserved for any common purpose during consolidation, the land does not vest in the Gram Panchayat. The Collector has, however, decided this question in favour of the Gram Panchayat, without framing any issues or referring to any relevant revenue record. Counsel for the petitioners further contends that as the land, in dispute,

was "Banjar Qadim" and the Gram Panchayat has not produced by evidence to prove that the land, in dispute, was used for common purposes of the village, it is excluded from the Shamilat Deh, by Section 2(g)(5) of the 1961 Act. Counsel for the petitioners further submits that as the land was "Banjar Qadim" it was allotted to the petitioners as lessees, under Section 3 of the East Punjab Utilisation of Lands Act, 1949 (hereinafter referred to as the "Utilisation Act"), by the Collector, for twenty years, in the year 1963. The petitioners have not been dispossessed by resort to the procedure prescribed by Section 3 of the Utilisation Act. The petitioners are neither unauthorised occupants nor does the Gram Panchayat have any right to dispossess them. The only authority that is empowered to dispossess the petitioners is the Collector, exercising powers under Section 3 of the Utilisation Act. The petitioners are not only cultivating the land but have constructed a large number of houses, a gurdwara, a bus stand, and even an anganwari centre etc.

3. Counsel for the petitioners further submits that though the Gram Panchayat did not file any eviction petition but as the petitioners were threatened with forcible eviction, they filed CWP-22403-2011, which was dismissed with liberty to file a petition under Section 11 of the 1961 Act. The petitioners filed a petition under Section 11 of the 1961 Act, which has been dismissed on the ground that as Section 42-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "Consolidation Act"), prohibits the claim petition further by the petitioners. Section 42 of the Consolidation Act does not apply to the controversy, in hand. The plea that the petitioners took back the land forcibly after the Gram Panchayat dispossessed them and then prevented the Gram Panchayat from auctioning the land, is false.

4. Counsel for the petitioners further submits that as held by a Full Bench of this Court in "Jai Singh Versus State of Haryana" 2003(2) PLR 658, land contributed by proprietors which is not earmarked for any common purpose, does not vest in the Gram Panchayat.

5. Counsel for the Gram Panchayat (respondent No. 3) submits that a perusal of all relevant jamabandis reveals that the land is recorded as Shamilat Deh and after mutation, dated 19.10.1957, is recorded as the ownership of the Gram Panchayat. The Gram Panchayat filed a petition under Section 7 of the Utilisation Act, before the Sub Divisional Officer (Civil) Zira (exercising powers of the Collector), for possession of the land leased out by the Collector. The petition was initially dismissed but an appeal filed by the Gram Panchayat, before the Divisional Commissioner, Ferozepur, was allowed, vide order dated 16.02.1989 and the petitioners and others were ordered to be evicted from the land, in dispute. The petitioners and others filed a revision before the Financial Commissioner (Revenue), Chandigarh, which was dismissed on 30.12.1991. The petitioners have not controverted these pleadings. The Gram Panchayat has appended a copy of the order passed in one such case but similar orders were passed against all the petitioners. Kapur Singh (petitioner No. 1) and the other

petitioners filed civil suits at Zira, claiming adverse possession against the Gram Panchayat. The Sub Judge, Ist Class, Zira, dismissed the suit on 09.06.1993. An appeal filed by Kapur Singh was dismissed by the Additional District Judge, Ferozepur, on 01.12.1994. A perusal of the judgment reveals that the Gram Panchayat has been held to be owner of the land, in dispute. It has also been held that as the land was leased out to the petitioners for twenty years, they cannot deny the title of the Gram Panchayat or claim ownership by adverse possession. The judgment also refers to the other ejectments orders passed under the Utilisation Act. Kapur Singh, thereafter filed RSA-90-1995, which was initially admitted but was withdrawn on 14.09.2010. The petitioners filed a petition under Section 42 of the Consolidation Act, which was dismissed by the Director, Land Records, Jalandhar, on 25.10.2011 and then pursuant to liberty granted in a writ petition, filed a petition under Section 11 of the 1961 Act. Counsel for the Gram Panchayat further submits that as the petitioners were admittedly lessees of the Gram Panchayat, who had taken the land on lease for twenty years they are estopped by Section 116 of the Evidence Act, 1872, from denying the ownership of the Gram Panchayat. The petitioners, even otherwise, have no locus standi to file a petition under Section 11 of the 1961 Act, as they are neither proprietors nor do they have any rights, title or interest in the suit land other than the lease that has expired. Even as per their averments, the petitioners migrated from the part of Punjab that now falls in Pakistan thereby admitting that they are not proprietors who may claim a right in the Shamilat Deh of the village. Counsel for the Gram Panchayat contends that jamabandi for the year 1953-54, records that the land is "Shamilat Deh Hasab Rasad Malgujari" i.e. the Shamilat Deh of the village that came to vest in the Gram Panchayat under the Punjab Village Common Lands Act, 1953 and thereafter under the 1961 Act.

6. We have heard counsel for the parties and perused the impugned orders.

7. Before proceedings to answer the question posed, namely whether the land, in dispute, vests or does not vest in the Gram Panchayat, it would be necessary to refer to the facts in detail and clarify that the controversy in the present writ petition pertains to a question of title raised by the petitioners under Section 11 of the 1961 Act. The question whether any evictions orders were or were not passed against the petitioners, is not germane to this controversy, but is relevant.

8. Admittedly, jamabandi for the year 1953-54, records that the land, in dispute, is "Shamilat Deh Hasab Rasad Malgujari" i.e. the common land of the village. Admittedly, during consolidation, a mutation was recorded, changing the ownership from Shamilat Deh to the name of the Gram Panchayat. The petitioners allege that they settled in village Soodan after they migrated from Pakistan. The petitioners also claim, in paragraph 3 of the petition, that they entered possession in the year 1950 and made the land cultivable by the dint of their hard labour and after spending a large amount. The petitioners, however, admit that the Collector, exercising power under the Utilisation Act, allotted the

land, in dispute, to them in 1963, as lessees, for twenty years, on payment of a lease amount of Rs. 3/- per year. The period of lease expired in 1983 but the lessees did not vacate the land. The Gram Panchayat filed petitions under Section 7 of the Utilisation Act, for eviction of the lessees. The petitions were dismissed by the Sub Divisional Officer (Civil) Zira, exercising powers of the Collector but the appeals filed by the Gram Panchayat were allowed and the lessees were ordered to be evicted. The order passed in the case of Kapur Singh (petitioner No. 1), is appended with the reply filed by the Gram Panchayat. A relevant extract from the eviction order, reads as follows:-

"As regards the merits of the case, Shri Om Parkash, Office Kanungo, Zira who has appeared as a witness, stated that the land in dispute was leased out for a period of two decades to the respondent in accordance with the East Punjab Utilization of Lands Act, 1949 and its possession was given to the respondent on 1.10.1963. He has further stated that when the land was given to the respondent the Gram Panchayat Soodan was its owner. Shri Karnail Singh, Patwari Halqa, who appeared as a witness, has also stated that at the time of consolidation, owner of the disputed land was Gram Panchayat Soodan. According to the entry in the Jamabandi 1984-85, Gram Panchayat has been shown to be the owner of the land in question. It is, thus, apparent that Gram Panchayat Soodan is the owner of the land in question. The land being banjar was given to the respondent on a 20 year lease which expired on 10.1.1983. Since the period of lease has expired the respondent is an unauthorised occupant and hence is to be evicted. I do not agree with the contention of the learned counsel for the respondent that the Gram Panchayat has no locus standi. The Gram Panchayat being the owner of the land has full powers to get the respondent evicted from the land. In the circumstances, I accept the appeal and order the eviction of the respondent from the land in question."

9. Aggrieved by this order, Kapur Singh and others filed revisions before the Financial Commissioner (Revenue), Punjab, Chandigarh, which were dismissed on 30.12.1991, by holding that as the lease period has expired, the petitioners have no right to remain in possession. The order is annexed with the reply filed by the Gram Panchayat as Annexure R-2.

10. At this stage, it would be appropriate to point out that the petitioners have pleaded and urged that no eviction order was passed against them but a perusal of the reply filed by the Gram Panchayat reveals that the Gram Panchayat has specifically averred that eviction orders were passed against the petitioners. The petitioners have not controverted these averments by filing a rejoinder or a replication.

11. After the eviction orders were passed, Kapur Singh (petitioner No. 1), filed Civil Suit No. 205-1, dated 21.03.1989, before the Sub Judge, Ist Class, Zira, for a declaration of his ownership by adverse possession and as a consequential relief prayed for a permanent injunction to restrain the Gram Panchayat from alienating the land or from dispossessing him. Kapur Singh also impugned the

correctness of eviction orders passed by the Commissioner, Ferozepur and the Financial Commissioner. The Sub Judge, Ist Class, Zira, vide judgment and decree dated 09.06.1993, dismissed the suit by holding that the Gram Panchayat is the owner and as the plaintiff was a lessee of the Gram Panchayat, he has no right in law, particularly in view of Section 116 of the Evidence Act, 1872, to deny the title of the Gram Panchayat or claim ownership by adverse possession.

12. Kapur Singh, thereafter, filed an appeal which was dismissed by the District Judge, Ferozepur, on 01.12.1994. Kapur Singh then filed RSA-90-1995, which was dismissed as withdrawn on 14.09.2010 as he sought liberty to make a representation to the competent authority for allotment of the land, in dispute.

13. Kapur Singh and others thereafter approached consolidation authorities but without success and thereafter in another attempt to perpetuate their possession, filed a writ petition wherein they were granted liberty to file a petition under Section 11 of the 1961 Act i.e. to agitate any rights, title or interest in the land, in dispute. The petitioners filed a petition under Section 11 of the 1961 Act, which has been dismissed by the Collector and by the appellate authority and is now subject matter of this petition.

14. A due consideration of the facts reveals that the land, in dispute, was recorded as the ownership of "Shamilat Deh Hasab Rasad Malgujari" i.e. the common land of the village, owned and possessed by proprietors but after enactment the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as the "1953 Act"), came to vest in a Gram Panchayat. A mutation recorded by consolidation authorities reflects this statutory vesting of Shamilat Deh in the Gram Panchayat. After repeal of the 1953 Act, the Shamilat Deh of a village came to vest in the Gram Panchayat, under the 1961 Act which provides by Sections 2(g)(1) to (5) the circumstances in which land should be included in the Shamilat Deh of the a village and by Sections 2(g)(i) to (ix) the circumstances in which it shall be excluded. Even after enactment of the 1961 Act, the land was recorded and continues to be recorded as the ownership of the Gram Panchayat. The petitioners admit that the land, in dispute, was leased out to them by the Collector, exercising power under the Utilisation Act, for 20 years in 1963.

15. A perusal of the petition filed under Section 11 of the 1961 Act and the impugned orders, reveals that the petitioners claim that the land, in dispute, is excluded from the Shamilat Deh of the village, under Section 2(g)(5) of the 1961 Act i.e. it was "Banjar Qadim" and was not used as per the revenue record for common purposes. The Collector and the appellate authority have rejected this plea by holding that as the petitioners were lessees of the Gram Panchayat, they cannot deny the title of the Gram Panchayat.

16. The first question, that requires an answer, is the locus standi of the petitioners to file a petition, claiming rights, title or interest in the land, in dispute, particularly as they admit that they were lessees. The petitioners admit

that after migrating from Pakistan, they settled in the village and began cultivating the land. The petitioners have not proved their status as proprietors or proved any pre-existing rights in the land, in dispute, that may be protected by any of the exclusion clauses, enacted by Section 2(g) of the 1961 Act. The petitioners, in fact, admit that the land, in dispute, was leased out to them by the Collector, for 20 years, in 1963. The petitioners having failed to prove any pre-existing rights that would enable them to surmount their status as lessees and, therefore, had no right to file a petition under Section 11 of the 1961 Act, challenging the ownership of the Gram Panchayat. The petitioners have not denied by controverting averments, in the reply filed by the Gram Panchayat, that eviction orders have been passed against them. The petitioners are also unable to deny that civil Courts have while rejecting the plea of ownership by adverse possession, held that the Gram Panchayat is owner and the petitioners are lessees. A relevant extract from the judgment, recorded by the Sub Judge, Ist Class, Zira, reads as follows:-

"9.....As such, as per his own admission, the plaintiff had taken the suit land on lease from the Government and that he has also been paying the lease money under Section 116 of the Indian Evidence Act, 1872, clearly envisages that no tenant or licence of immovable property can deny the title of the land-lord of lessor. Therefore, in the instant case, the plaintiff is barred from denying the title of the Government in the suit land by the principle of law as laid down in the above referred to Section 116 of the Indian Evidence Act. Therefore, after admitting that he got the land in dispute from the Government and that he has also been paying lease money, he cannot be heard saying that he has become owner of the suit land by way of adverse possession. His statement that he was allotted land for the purpose of making it cultivable is also meaningless in view of his own admission that he had been paying the lease money to the Government for some time. Had he been allotted the land for the purpose of making it cultivable, only he would have not been paying any lease money to the Government.

10. According to jamabandi for the year 1963-64, Ex.P1, 1969-70, Ex.P2, 1974-75, Ex.P3, 1979-80, Ex.P4, 1984-85, Ex.P5 and 1989-90, Ex.P6, the Gram Panchayat is owner and plaintiff is tenant of the suit land as ghair maurusi. According to allotment order Ex.D2, Naksha Hakdarwar Ex.D3, Khatauni Paimaish Ex.D4, the plaintiff was allotted the suit land under the provisions of the East Punjab Utilization of Lands Act, 1979 (hereinafter referred to an Act). A perusal of order of the learned Financial Commissioner, Revenue, Punjab, Chandigarh, Ex.D6, shows that the suit land was allotted to the plaintiff on lease for a period of 20 years under the provisions of Section 5 of the Act. It has also been observed in this order that the Gram Panchayat is the owner of the suit land. The plaintiff contested the proceedings before the learned S.D.O. (Civil) Zira, learned Commissioner, Ferozepore Division, Ferozepore, and learned Financial Commissioner, Revenue, Punjab Chandigarh and he no-where denied the title of the Gram Panchayat over the suit land. The Gram Panchayat simply

leased out the land through a competent authority under the Act. Therefore, the Gram Panchayat is the real land-lord of the plaintiff who cannot deny the title of the Gram Panchayat in the suit land in the same way, he cannot deny the title of the Government as his lessor. Neither in his plaint nor in his statement on oath, Kapur Singh, PW1, has explained that the Gram Panchayat is not owner of the suit land. He simply stated in his examination-in-chief that he does not consider the Gram Panchayat as an owner of the suit land. This statement of the plaintiff is not sufficient to divest the Gram Panchayat of its ownership of the suit land. Under these circumstances, the possession of the plaintiff over the suit land has never been hostile to any body. In fact his possession thereover was permissive and he is holding over after lapse of the lease period. The pleadings also appear to be defective, in as much as the plaintiff does not plead that the Gram Panchayat was owner of the suit land and that the Gram Panchayat never asserted its title thereover. Therefore, if he did not know that the Gram Panchayat was the owner of the suit land, the question of his being in adverse possession of the same qua the gram panchayat never arose."

17. A perusal of the above extract reveals that petitioner No. 1 was held to be lessees whereas the Gram Panchayat was held to be owner. We may have considered the petitioners' plea that the land is excluded from the Shamilat Deh, if the petitioners had proved any rights, in the Shamilat Deh, that may be protected by the 1961 Act but as the petitioners themselves admit that they migrated from Pakistan, settled in the village, admit that the land was leased out to them for 20 years and have not produced any evidence that they were proprietors or had any right that can be protected under the 1961 Act, have no hesitation in holding that the petitioners had no locus standi to claim any rights, title or interest in the land, in dispute or challenge the ownership of the true owner i.e. Gram Panchayat much less by referring to any of the exclusion clauses contained in Section 2(g) of the 1961 Act. The petitioners are, therefore, prohibited from raising a plea challenging the title of the true owner, i.e. the Gram Panchayat. A reference in this regard, may be made to Section 116 of the Evidence Act, 1872 and judgments of the Hon'ble Supreme Court in *Atyam Veerraju and Others Vs. Pechetti Venkanna and Others*, AIR 1966 SC 629 : (1966) 1 SCR 831 , and *Bilas Kunwar vs. Desraj Ranjit Singh and Others* 19 CWN 1207 (Privy Council) .

18. The plea that the land was "Banjar Qadim", is even otherwise, contrary to averments in paragraph 3 of the writ petition wherein the petitioners have averred that they are in continuous cultivating possession of the land since 1950 as they made the land cultivable by spending a huge amount and by the dint of their hard labour. At this stage, it would be appropriate to point out that "Banjar Qadim" is the land that has remained fallow for eight or more harvests.

19. Apart from the aforesaid facts, the petitioners have suffered eviction orders, under the Utilisation Act, which have been affirmed up to the Financial Commissioner (Revenue), Punjab. The adjudication under the Utilisation Act may

not be binding in proceedings for declaration of title but as the petitioners were admittedly lessees and apart from their status as lessees have not been able to refer to any rights, title or interest as proprietors or otherwise, have no right in law to deny the title of the true owner, i.e. the Gram Panchayat.

20. A desperate attempt by the petitioners to remain in possession by raising a plea that the land, in dispute, is excluded from the Shamilat Deh of the village, has been rightly negated by the Collector and the appellate authority, by relying upon revenue entries that record the Gram Panchayat as the owner and the petitioners as lessees. The petitioners are nothing more than lessees who have after expiry of the lease period in 1983 have successfully held on to the land, in dispute, for more than 30 years, by resort to one remedy or the other.

21. An argument that the land was never reserved for any common purpose, during consolidation, or the argument based upon a Full Bench judgment of this Court in Jai Singh's case (supra), appears to have raised more in an attempt to confuse the issue than with any degree of conviction. It would be appropriate to point out that "Jumla Mushtarka Malkan Wa Digar Haqdarar Hasab Rasad Zare Khewat" is the nomenclature assigned to land reserved during consolidation and not Shamilat Deh. The land, in the present case, is recorded as "Shamilat Deh Hasab Rasad Malgujari" and, therefore, has nothing to do with any reservation for common purposes, made during consolidation.

22. The judgment in Jai Singh's case (supra) pertains to Section 2(g)(6) of the 1961 Act, introduced by the State of Haryana, to declare that land reserved during consolidation shall be included in Shamilat Deh. The case, in hand, relates to the State of Punjab and, therefore, the ratio of Jai Singh's case (supra), does not apply to proceedings in the State of Punjab under the 1961 Act. The argument that the Collector has not framed issues, is a mere irregularity as the petitioners were granted every opportunity to lead evidence and both parties were alive to the issue in hand. This apart, the petitioners have not alleged or proved any prejudice for failure to frame issues.

23. As regards the plea raised by the petitioners that they have constructed houses, a gurdwara, a bus stand, and an anganwari centre etc., the petitioners may approach the Gram Panchayat under Rules 12(iv) of the Punjab Village Common Lands (Regulation) Rules, 1964, to save their houses.

24. In view of what has been recorded hereinabove, we find no merit in the contentions raised by counsel for the petitioners, affirm the impugned orders and dismiss the writ petition with liberty to the petitioners to approach the Gram Panchayat for protection of their houses etc. No order as to costs.