
(1966) 08 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2638 of 1965

Karnail Singh

APPELLANT

Vs

Magistrate, 1st Class and Others

RESPONDENT

Date of Decision : 25-08-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Gram Panchayat Act, 1952 — Section 6(5)
Punjab Tenancy Act, 1887 — Section 4(5)

Citation : (1967) 1 ILR (P&H) 846

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; A.S. Bains, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—The short question, which falls for decision in this writ petition under Articles 226 and 227 of the Constitution is whether a person, who is recorded in the khasra girdawari as "gair maurusi", can be treated without any other evidence to He a tenant-at-will or a lessee holding a tenancy within the meaning of Clause (1) of Sub-section (5) of Section 6 of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. IV of 1953) (hereinafter called the Act) so as to disentitle him to stand for election as, or continue to be, a Sarpanch or Panch of a Panchayat in the Punjab.

2. The facts leading to the filing of this writ petition lie in a very narrow compass. Nomination papers for election to the office of Sarpanch of the Gram Panchayat of Rurkee Mughlan were filed on January, 1 1964, by the Petitioner as well as by Gurdial Singh and Darshan Singh, Respondents 2 and 3. The Petitioner's nomination

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which capacity the Petitioner is occupying the land. The cultivation column shows

Karnail Singh, Petitioner, along with others to be in cultivating possession of khasra No. 18/14 of Gram Panchayat in the capacity of tenant. Hence, this issue is also decided in favour of the Respondents."

7. The argument of Mr. Kuldip Singh is that in order to disentitle a candidate to stand for election as a Sarpanch or Panch under the Act on account of the disqualifications referred to in Clause (1) of Sub-section (5) of Section 6, thereof, it is necessary to give a finding to the effect that he is a "tenant". He then asserts that the word "tenant" not having been given any special definition in the Act, we have to fall back on the meaning of this expression as ascribed to it in Sub-section (5) of Section 4 of the Punjab Tenancy Act, 1887. Relevant part of the said definition is in the following terms:

(5) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that other person; but it does not include--

* * * * *

8. The learned Counsel contends that on the assumption on which the case was decided by the Election Tribunal, the Petitioner could, at best, be found to be holding land belonging to the Gram Panchayat, but there is neither any evidence of any special contract nor any evidence of the Petitioner having incurred any liability to pay rent of the land in question to the Panchayat. He has referred me to the judgment of a Division Bench of the Lahore High Court (Tek Chand and Agha Haidar, JJ) in AIR 1930 991 (Lahore) , wherein it was observed regarding such entries in revenue papers as below:

It has also been found that the entries in the revenue papers, showing them as tenants-at-will had been made in accordance with the usual practice that every person in possession, whose title as owner has not been recognised by the revenue authorities, is shown as such.

9. Similarly, in *Sher and Ors. v. Phuman Ram and Ors.* 1940 P.L.R. 497, it was observed by Bhide, J., that no presumption of correctness can be attached to the entries in the revenue records showing the Defendants as tenants-at-will under the Plaintiffs, where the Plaintiffs do not allege that the Defendants are their tenants.

10. In the column of cultivation, the Petitioners are not recorded as tenants as such but only as "gair maurusian" by virtue of allotment. According to the dictionary meaning, word "maurusi" means "inherited, hereditary, partimonial or ancestral"; the meaning of "maurus" being "to receive by inheritance". The word "pair" means "other, another", etc. The words "gair maurusi", as such, are not given in the dictionary. Though, therefore, no part of the word of "gair maurusian" brings within its dictionary meaning any reference to tenancy, it is not disputed that, by practice; this expression has been used for tenants-at-will in all revenue records. That may indeed be so and I am deciding this case on the

assumption that the relevant entry in the "cultivation" column of the khasra girdawari, records the Petitioner as a "tenant-at-will by virtue of allotment". But in the light of the law laid down in the cases of Ghulam Murtaza and of Sher and others (supra), all that such an entry means is that the cultivator is neither an owner nor an occupancy tenant of the land in question.

11. In Maman Singh's case, not only was the person concerned described as being in occupation as a tenant, but it was recorded in the column of rent that he was in such occupation without payment of any rent on account of previous possession (bila lagan bawaja kabza sabka). On those facts, it was held by Khanna, J., that we have to look to the column of "rent" in the revenue papers because it is the entry in that column which goes to show as to whether the person is occupying the land as a tenant and if so, on how much rent, or, whether he is occupying the land in any other capacity. The learned Judge found that since, in the case before him the revenue papers themselves showed that no rent was being paid and that the occupation was without payment of rent because of previous possession, the person would not fall within the definition of "tenant" as the revenue entry in the "rent" column in the jamabandi militated against the conclusion that Maman Singh was a tenant. On that oasis, it was held that since Maman Singh was recorded as occupying the land without payment of rent and as there was nothing to show that the non-payment of the rent was because of any special contract, and, on the contrary, it was clear that the non-liability to pay rent was due to old possession of the land, Maman Singh did not fall within the definition of "tenant". Mr. Kuldirj Singh contends that Maman Singh's case is on all fours with that of the Petitioner, as the relevant column in the khasra girdawari being the "rent" column and the said column being admittedly, blank, the amount of rent payable by the Petitioner to the Panchayat if any is deemed to be written in the revenue papers as "nil". Putting no figures in the relevant column or saying "nil" or putting the figure zero in that column, amounts to the same thing. It would, therefore, have to be inferred that so far as the revenue papers are concerned, they did not show that the Petitioner was liable to pay any rent. A case may be different where the revenue entry in the "rent" column shows that rent is payable, but it has not been able to ascertain its quantum or rate. I think, it was in such a caterer that Hakam Singh's ease decided by Sharma. J. fell. The judgment of Khanna, J., was brought to the notice of Sharma, J., but the learned Judge rightly held that the facts of the two cases were different as in Hakam Singh's case the relevant entry in the "rent" column was to the effect:--"bawaja la ilmi"

12. The meaning of that expression would be that the person, who made the entry, was not able to ascertain the rate of rent. This would, impliedly, mean that rent was definitely payable but the amount could not be ascertained. In the instant case, there is no such entry in the "rent" column. The said column had, admittedly, been left blank. Whether in a judgment of a Court it is said that the parties would bear then own costs, or there would be no order as to costs, or a judgment is completely silent as to the matter of costs the meaning is the same

that there is no order as to costs. Applying the same analogy to the matter in dispute before me. I hold that whether it is written in the "rent" column that no rent is payable or it is written that zero rent is payable or the column is left blank in all these cases it is meant that there is no entry relating to liability to pay rent in the revenue papers, in question and in the absence of any evidence to show that rent was, in fact, payable, it has to be held that no rent was payable. I have not been able to appreciate, how the Election Tribunal interpreted the relevant blank entry relating to liability to pay rent, as an entry meaning that there was definite liability to pay rent. This appears to me to be an error of law apparent on the face of the order of the Election Tribunal. Things would have been different if the Election Tribunal had believed any single witness or any other piece of evidence produced before it and held on the basis of such evidence that the Petitioner was liable to pay rent to the Panchayat and was, therefore, a tenant within the meaning of that expression. In fact, the Election Tribunal has nowhere recorded any finding of fact about the liability of the Petitioner to pay rent to the Panchayat. The Tribunal contented itself merely with the absence of any entry to the contrary in the "rent" column of the khasra girdawari. No one had appeared on behalf of the Panchayat to claim before the Election Tribunal that the Petitioner was Panchayat's tenant. The Petitioner had vehemently denied the suggestion. It is admitted that the entire land, of which the khasra number in dispute forms part, was allotted to the Petitioner by the Rehabilitation authorities, that the said authorities had granted a Sneed for the same to the Petitioner and that in consolidation proceedings, the khasra number in question, out of that land, fell to the lot of the Panchayat but no agreement to pay rent was proved to have been entered into between the Petitioner and the Panchayat. Nor has any law been shown to me by numeration of which the Petitioner might have automatically become liable to pay rent of the field in question to the Panchayat in these circumstances. There was therefore, no evidence before the Election Tribunal on which it could hold that the Petitioner was liable to pay rent to the Panchayat.

13. Though it is a matter of regret that the Petitioner did not disclose in the writ petition that he had given up the case of claiming ownership to khasra No. 18/14 for the purposes of getting the issue in question decided before the Election Tribunal. I do not think, he has disentitled himself to relief in this case merely on that ground though the said consideration has certainly weighed with me in the matter of disallowing costs to him in spite of his success in this case. It is certainly not for this Court in exercise of its writ jurisdiction to set aside a finding of fact of an Election Tribunal, howsoever glaring may be the errors of fact contained therein. But if the finding of the Election Tribunal on a question of fact is based on no legal evidence at all as in this case, this Court would never hesitate to quash the impugned order in a fit case in order to maintain the rule of law.

14. In the above circumstances, I hold that the finding of the Election Tribunal to the effect that the Petitioner was a tenant of the Gram Panchayat, in the absence

of any evidence to show that he was liable to pay rent, is not based on any legal evidence, and, therefore, vitiates the whole of the impugned order. This writ petition is, accordingly, allowed and the impugned order of the Election Tribunal is set aside. The Election Tribunal will now re-decide the case in accordance with law on the basis of the evidence already on record with him, keeping in view the observations made in this ; judgment.

15. In the circumstances referred to above, there would be no order as to costs.