
(1986) 07 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1083 of 1979

Kartar Singh

APPELLANT

Vs

Gram Panchayat, Gidder Khera

RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Citation : (1986) 2 CurLJ 643 : (1986) PLJ 617 : (1986) RRR 23

Hon'ble Judges : D.S.Tiwatia, J

Advocate : Mr. P.S. Bajwa, Advocate, Mr. R.S. Mittal, Senior Advocate, Advocates for appearing Parties

Judgement

D.S. Tewatia, J. (Oral)

1. Kartar Singh son of Kunda Singh, the present petitioner, has impugned the order dated 29.12.1978 (Annexure P.2) passed by the Assistant Collector in exercise of powers conferred under section 7 (2) of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred as to the Act), ejecting the petitioner from Killa Nos. 1, 2, 3/1, 9, 10, 11, 12, 19 and 20 of Square No. 106, measuring 70 Kanals and 9 Marlas and the order dated 2.3.1979 (Annexure P.3) of the Collector, Sirsa, dismissing the appeal of the petitioner against the order Annexure P.2.

2. The case set up by the petitioner in the writ petition is that his great grandfather was amongst the first settlers in the revenue estate, in question. He was in possession of Khasra Nos. 67 and 68 of the village Shamlat measuring 6 Bighas 18 Biswas and 14 Bighas respectively since the time of first settlement and that the petitioner's father Kunda Singh and his father's brother Ghamanda Singh had been in possession of the said Khasra numbers since the time of second settlement in 191920, and from the year 193031 the petitioner's father Kunda Singh alone had been recorded in the revenue record as the cosharer in cultivating possession of the said land and, since the Jamabandi for 194647 the petitioner had been recorded to be cosharer in cultivating possession of the land comprised in the said two Khasras. Since 195657 the petitioner had also been

recorded as the cosharer in cultivating possession of the land comprised in Khasra No. 295, measuring 11 Bighas and 10 Biswas. In lieu of these three Khasra numbers, land comprised in Rectangle No. 196, Killas Nos. 1, 2, 3/1, 9, 10, 11, 12, 19 and 20 was allotted to the petitioner during the repartition in the consolidation proceedings.

3. The petitioner was first sought to be ejected from the said land under Section 7 (2) of the Act in the year 1967. The Assistant Collector, vide Annexure P.1, dismissed the application of the Gram Panchayat, holding that, in view of the provisions of section 4 (3) (ii) of the Act, the petitioner was not liable to be ejected. The Gram Panchayat, in question, moved a fresh application under section 7 (2) of the Act, which was allowed by the Assistant Collector Ist Grade, Dabwali, vide order Annexure P.2. The petitioner has claimed that the second proceedings were barred by res judicata and it has been further averred that, in any case, in view of section 4 (3) (ii) of the Act, the petitioner is not liable to be ejected. The provisions of section 4 (3) (ii) of the Act before amendment effected in the year 1973, were in the following terms :

``Right of persons in cultivating possession of shamlat deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.""

The section 4 (3)(ii) in amended from (amended by Haryana Act No. 23 of 1973) is in the following terms :

``Rights of persons who were in cultivating possession of shamlat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act 1953 or Pepsu Village Common Lands (Regulation) Act 1954, and were in such cultivating possession for more than 12 years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.""

4. So far as the contention raised on the question of res judicata is concerned, it carries no weight. The earlier order of the Assistant Collector Ist Grade, Sirsa, (Annexure P.1) was correct in terms of the provisions of section 4 (3) (ii) as it then existed but, after the amendment in the year 1973, the concerned Authority was again competent to see as to whether, in the terms of the amended provisions of section 4 (3) (ii), the petitioner was entitled to be protected or not from ejectment. In such a case, the earlier order, even if it had become final between the parties, would not operate as res judicate against the fresh proceedings initiated under section 7 (2) of the Act, after the amendment of section 4 (3) (ii). For the aforesaid proposition, if any authority is needed, reference may be made to a judgment of the Division Bench of this Court in *Ranjit Singh v. State of Haryana*, 1980 PLJ 14.

5. The second contention advanced on behalf of the petitioner deserves to be accepted regarding part of the land, in dispute, in view of the Division Bench judgment of this Court reported as *Pritam Singh v. The Collector, Sirsa*, 1981 PLJ

179.

6. A perusal of the following observations of the Assistant Collector First Grade, Dabwali, vide Annexure P.2, would show that the documentary evidence adduced before him by the petitioner clearly established that before the commencement of the Act, the petitioner and his predecessors in interest had been in possession of the two of the Khasra numbers, namely 67 and 68, almost since the time of the first settlement :

“ I have heard the arguments of the learned Advocates for both the parties and have also perused the record file. It is apparent from the copy of Khatauni Consolidation Ex. D12 submitted by the respondent that in consolidation, in lieu of the land in dispute comprised in Khasra Nos. 67 (6 Bighas and 18 Biswas); 68 (14 Bighas), 295 (11 Bighas and 10 Biswas), total 32 Bighas 8 Biswas, he got the land after consolidation in lieu of this land. It is clear from Ex. D11, copy of Jamabandi for the year 192627, Ex. D10, copy of Jamabandi for the year 193031, Ex. D9 copy of Jamabandi for the year 193435, Ex. D8 copy of Jamabandi for the year 193839, Ex. D7 copy of Jamabandi for the year 194243, Ex. D6 copy of Jamabandi for the year 1946 47, that Khasra numbers 67 and 68 are in the possession of Kunda Singh, father of the respondent, as a shareholder in Shamlat Deh has been continuing. In the Jamabandi for the year 195051 the possession of Kartar Singh respondent shareholder has been shown in place of Kunda Singh, as is clear from Ex. D5. The copy of Jamabandi for the year 195556, Ex. D4, proves this that the respondent, in addition to Khasra numbers 67 and 68 which were in the possession of his father and he got it, has taken into his possession Khasra No. 295 measuring 11 Bighas and 10 Biswas. In this way the respondent took possession of Khasra No. 295 in the year 195556 for the first time.”

The Assistant Collector, in the light of *Atma Ram v. Gram Panchayat*, 1977 PLJ 388, however, held that twelve years" period of cultivating possession envisaged in section 4(3)(ii) of the Act has to be that of the petitioner only and that the period of cultivating possession of his predecessor in interest cannot be taken into account with which opinion the Collector also concurred. The aforesaid judgment has been overruled by *Pritam Singh's case* (supra). The aforesaid view of the provisions of section 4 (3) (ii) is clearly incorrect and the following observations of the Division Bench in *Pritam Singh's case* (supra) make it amply clear :

“ After hearing the learned counsel for the parties, we are of the considered opinion that in order to find out the cultivating possession of the persons at the commencement of the 1953 Act under section 4 (3) (ii) of the Act, the earlier possession of their predecessors in interest, if any, can also be taken into consideration while calculating the period of 12 years, provided it has been continuous and without any interruption. This will be in consonance with the purpose of the Act under which the exemption has been granted to those persons who were in cultivating possession at the commencement of the Act, and are generally either nonproprietary or small landowners. Moreover, under the

common law as well, even a trespasser is entitled to tag the possession of his predecessorininterest to perfect his title by adverse possession, provided it has been continuous and uninterrupted, as held in Johan Uraon's case (supra) and Rajagopala Naidu's case (supra). Reference to Halsbury's Laws of England and the Corpus Juris Secundum, as mentioned above is also quite relevant in this behalf"".

7. As far as land comprised in Khasra No. 296 is concerned, admittedly the petitioner came into possession of that area in the year 195556 for the first time. Therefore, the provisions of section 4 (3) (ii) do not even remotely help the petitioner's case in regard to this Khasra number. In the result, the impugned order, so far as the same ejects the petitioner from the land equivalent to the land comprised in Khasra Nos. 67 and 68, is quashed and the application of the Gram Panchayat to that extent is disallowed and the petition is allowed to the extent indicated above.

8. The case is remitted back to the Assistant Collector Ist Grade who would permit the petitioner to select area proportionate to that comprised in Khasra Nos. 67 and 68, out of the land, in dispute, and surrender the land equivalent to the area comprised in Khasra No. 295. In doing so, the area that would be retained by the petitioner would bear the same ratio to the area that has to be surrendered as the area comprised in Khasra Nos. 67 and 68 bear to the area comprised in Khasra No. 295. The Assistant Collector shall complete the proceedings within three months from the date of appearance of the parties before him.

9. The parties through their counsel are directed to appear before the Assistant Collector, Ist Grade, Dabwali, on 14th August, 1986. No order as to costs.