
(2002) 10 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15514 of 2002

Khillan

APPELLANT

Vs

Social Education and Panchayat Officer and Others

RESPONDENT

Date of Decision : 22-10-2002

Acts Referred:

Limitation Act, 1963 — Article 137

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7(1)

Citation : (2003) 133 PLR 442 : (2003) 1 RCR(Civil) 479

Hon'ble Judges : V.K. Bali, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : A.L. Jain, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—Khillan, the petitioner, has filed the present petition under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the order dated 23.7.2002 (Annexure P-7), passed by Assistant Collector, 1st Grade, Hodal, as well as the order dated 11.9.2002 (Annexure P-9) passed by the Financial Commissioner, Haryana, confirming the said order, vide which the application of the Gram Panchayat for delivery of possession of the land in question, from which the petitioner was ordered to be ejected vide order dated 7.6.1990 passed by Assistant Collector, 1st Class, Palwal (Annexure P-3), has been allowed. The petitioner has also challenged the initial order of ejectment dated 7.6.1990 passed by the Assistant Collector, 1st Grade in the present petition.

2. The brief facts of the case are that in the year 1990, the petitioner was found to be in illegal possession of the land in question by the Assistant Collector, 1st Grade, Palwal, vide its order dated 7.6.1990 (Annexure P-3) on an application filed by the Block Development and Panchayat Officer, u/s 7 of the Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") and he was ordered to be ejected from the said land. Against that order, no appeal

was filed by the petitioner and the same became final. Thereafter, in the year 1998, the Social Education & Panchayat Officer, Hodel, respondent No. 1 herein, filed application before the Assistant Collector 1st Grade, Hodel for implementation of the order dated 7.6.1990 and for putting the Gram Panchayat in possession of the land in question, from which the petitioner was ordered to be ejected. The said application was contested by the petitioner on the ground that the application filed by respondent No. 1 is not maintainable being barred by limitation as the application for execution of the order dated 7.6.1990 could have been filed within a period of three years. The said contention of the petitioner was rejected by the Assistant Collector vide order dated 23.7.2002 (Annexure P-7) while holding that no limitation is prescribed for restoration of the possession to the Gram Panchayat in compliance of the order passed u/s 7 of the Act. Aggrieved against the said order, the petitioner filed revision before the Financial Commissioner, which was also dismissed vide order dated 11.9.2002 (Annexure P-9).

3. Before us, Shri Amrit Lal Jain, counsel for the petitioner, raised two contentions. Firstly that the ejectment order dated 7.6.1990 is void order as had been passed without jurisdiction and the same is a nullity, therefore, it cannot be executed by the authorities under the Act. He submitted that the land in question does not fall under the definition of "Shamilat Deh" as defined in Section 2(g) of the Act and the Assistant Collector did not record any such finding in his order dated 7.6.1990. Without recording such finding, he has no jurisdiction to pass an order of ejectment. Therefore, the ejectment order dated 7.6.1990 is a nullity being an order without jurisdiction and the same cannot be implemented by way of execution. This contention of the learned counsel for the petitioner cannot be accepted at all. Once the order of ejectment dated 7.6.1990 has become final between the parties and no appeal against the same was filed, though the same could have been filed u/s 13-B of the Act within 30 days from the date of passing of the order, the authorities while implementing the aforesaid order of ejectment, cannot go behind the order and see whether the order was passed legally or not. When the ejectment order has become final, the petitioner cannot question the validity of the said order at the time of its implementation. Thus, this contention of learned counsel for the petitioner is liable to be rejected.

4. Learned counsel for the petitioner, then, raised the second contention that the ejectment order dated 7.6.1990 cannot be executed after the expiry of three years and the petitioner cannot be dispossessed from the disputed land in execution of the aforesaid order. He contended that Article 137 of the Limitation Act is applicable in the present case and the limitation to execute such an order is three years. In our view, this contention of learned counsel is also liable to be rejected. For implementation of an order of ejectment passed u/s 7 of the Act, there is no limitation. It is the duty of the Assistant Collector 1st Grade to immediately put the Gram Panchayat in possession of the "Shamilat Deh" found to be in illegal possession of an unauthorised occupant. This is clear from the wordings used by the Legislation u/s 7(1) of the Act, which is reproduced below:-

"7. Power to put the Panchayat in possession of Shamilat deh.- (1) The Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in 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 it under this Act and for so doing the Collector may exercise the power of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887."

5. From the scheme of the Act itself, it is clear that after finding a person in wrongful and unauthorised possession of the land vested in the Gram Panchayat, the Assistant Collector shall put the Gram Panchayat in possession of the said land. No separate execution application is required to be filed by the Panchayat for implementing such order. Sub-section (4) of Section 7 of the Act further provides that if any person refuses or fails to comply with order of ejectment passed under Sub-section (1) within ten days of the said order, the Assistant Collector, 1st Grade may use such force including the police force as may be necessary for putting the Panchayat in possession. Not only this, the alleged occupation on the Panchayat land has been made an offence. Sub-section 5 of Section 7 of the Act further provides that the person, who is found in wrongful or unauthorised possession of land belonging to the Panchayat and is ordered to be ejected under Sub-section (1) shall be punished with imprisonment for a term which may extend to two years. The contention of learned counsel that the order passed by the Assistant Collector u/s 7(1) of the Act is like a civil court decree and that can only be implemented by filing of an execution application, cannot be accepted at all. Learned counsel for the petitioner draws the aforesaid inference that the order passed by the Assistant Collector is to be executed, from the words used in this sub-section i.e. "put the Panchayat in possession thereof and for so doing the Collector may exercise the power of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887." while referring to Rule 10 of the Punjab Tenancy Rules, he submitted that the orders of ejectment from and delivery of possession of immovable property shall be enforced in the manner provided in the CPC for the time being in force in respect of the execution of a decree whereby a Civil Court has adjudged ejectment from, or delivery of, possession of such property. He submitted that in view of this, the ejectment order passed by the Assistant Collector, 1st Grade has to be implemented only by way of filing the execution application and that too within a period of three years. We are afraid that such contention of learned counsel for the petitioner can not be accepted. Once an order of ejectment has been passed against an illegal occupant by the Assistant Collector, 1st Grade on the application filed by the Gram Panchayat or any inhabitant of the village, no separate application is required to be filed for putting the Gram Panchayat in possession of the land, which is found in illegal occupation of a person. Since no separate application is required, therefore, Article 137 of the Limitation Act,

1963, is not attracted at all. If we again analysis the phrases used in Section 7(1) of the Act, it is clear that the Assistant Collector, 1st Grade is duty bound to put the Gram Panchayat in possession of the land or other immovable property found to be in illegal occupation of a person. Merely because the Assistant Collector, 1st Grade has been given the power of a revenue court while restoring the possession of the Gram Panchayat land after passing the order of ejectment does not mean that all the trappings of the CPC have been brought in and for implementation of an order passed by the Assistant Collector, 1st Grade, filing of the execution application is mandatory.

6. In view of the aforesaid discussion, we find no force in the contention of learned counsel for the petitioner that for implementing an ejectment order passed by the Assistant Collector 1st Grade, execution application has to be filed and that too within a period of three years, The Assistant Collector is duty bound to implement such order and put the Gram Panchayat in possession of the land in unauthorised and illegal possession of a person in compliance of an ejectment order at any time. We find no merit in the present petition and the same is hereby dismissed with no order as to costs.