
(1995) 03 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1553 of 1981

Kiru

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (1995) 110 PLR 668

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : G.S. Jaswal, for the Appellant; Vijay Pal Singh, A.A.G., for the Respondent

Judgement

T.H.B. Chalapathi, J.—This writ petition is filed challenging the order of Assistant Collector 1st Grade, Kaithal, dated 27th March, 1980 as confirmed by the Collector, Kurukshetra in his orders dated 28th October, 1980.

2. The Gram Panchayat, Duliani filed an application before the Assistant Collector Ist Grade, Kaithal u/s 7(1)(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act") alleging that the petitioner has encroached upon the common land and he was liable to be evicted from the same. The said application was taken on file by the Assistant Collector Ist Grade, Kaithal. An order of eviction was passed on 22nd November, 1978. The petitioner filed an appeal challenging the said order and the matter was remanded by the Collector, Kurukshetra to the Assistant Collector Ist Grade, Kaithal with a direction to make spot inspection and then decide the matter. Thereafter, Assistant Collector, Ist Grade, Kaithal took up the matter, inspected the land and held that it was not in unauthorised occupation of the petitioner in Khasra No. 118 by constructing pucca house and brick boundary wall. The Assistant Collector Ist Grade further directed that the land on which the house was constructed may be assigned to the petitioner at the double of the rate of the market price and also directed the ejectment of the petitioner from the remaining land. The Collector, Kurukshetra

in his order dated 28th October, 1980 confirmed the order of Assistant Collector Ist Grade, Kaithal but modified the price to be paid to the respondent-Gram Panchayat in respect of the land in his possession.

3. Aggrieved by the said orders, the petitioner preferred the above writ petition.

4. The learned counsel for the petitioner contended that the petitioner has been in possession of the land in question prior to 1976 and even assuming that the land is shamilat deh which is adjacent to his own abadi land, therefore, the provisions of Section 2(g) (v) (vi) of the Punjab Village Common Lands (Regulation) Act, 1961 will apply and it has to be treated that the land under his occupation is not included in shamilat deh and he further contended that he raised the question of title and it is mandatory on the part of Assistant Collector Ist Grade, Kaithal to decide the question of title in the first instance before the passing of order of eviction. He also submitted that the petitioner is ready to pay the market price of the land in his occupation.

5. The order of Assistant Collector clearly shows that the land in Khasra No. 118 is the land of Gram Panchayat and in Jamabandi which is marked as Annexure A1, the Gram Panchayat was shown as the owner. Thus, there cannot be any doubt that the land in question belongs to the Gram Panchayat. The order of Assistant Collector also shows that the petitioner has constructed a pucca house and boundary wall in the Gram Panchayat land. The order also shows that the land in question is adjacent to the old house of the petitioner. Thus the land under the occupation of the petitioner was adjacent to his old house, the total extent under the occupation of the petitioner is 14 marlas of land. u/s 2(v) (vi) of the Act, if the shamilat deh lies outside the abadi deh and was being used as gitwar, bara, manure pit, a house or for cottage industry immediately before the commencement of the Act, it cannot be included in shamilat deh. Thus, the user of the land before the commencement of the Act, is the criteria to decide whether the land is to be included in shamilat deh or not after the commencement of the amended Act No. 2 of 1961. It can be seen from the order of the Assistant Collector Ist Grade, Kaithal that the petitioner was using the land by constructing a house and also by constructing a pucca compound yard. Under Sub-clause (c) of Section 2 of the Act, house includes a court yard whether walled or not. Therefore, it is clear that the petitioner has been in possession of the land even prior to 1976 by constructing a house and a compound wall. When the petitioner had been in possession of the land since more than 20 years, I do not think that this is a fit case, where he should be ordered to be evicted from the land. It is not the case of the Gram Panchayat that the Gram Panchayat requires land for any common purpose. In the circumstances of the case, I am of the opinion that the petitioner may be allowed to be continued in possession of the land by paying the present market price of the land to the Gram Panchayat. The Assistant Collector Ist Grade. Kaithal is directed to fix the present market price of the land within two months from the date of receipt of this order and intimate the same to the petitioner and the petitioner shall deposit the amount

within two months thereafter, after receipt of the intimation. In case of failure of the petitioner to pay the market price as determined by the Assistant Collector Ist Grade within the period aforesaid the writ petition shall stand dismissed automatically.

6. The writ petition is disposed of accordingly. No costs.