
(1992) 10 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3106 of 1980

Krishan Singh

APPELLANT

Vs

Assistant Collector Ist Grade

RESPONDENT

Date of Decision : 21-10-1992

Acts Referred:

Citation : (1994) 1 LJR 117 : (1993) PLJ 671 : (1993) 1 RRR 258

Hon'ble Judges : G.R.Majithia, J

Advocate : Chandra Singh, Advocate., Advocates for appearing Parties

Judgement

G.R. Majithia, J.—The petitioner has assailed the order of the Assistant Collector I Grade, Mohindergarh dated July 30, 1980, in this petition under Articles 226/227 of the Constitution of India.

2. Rati Ram, father of the petitioner, sought declaration from Assistant Collector, I Grade, Mohindergarh to the effect that he was the exclusive owner in possession of the disputed land it did not vest in the Gram Panchayat. The Assistant Collector I Grade, on examining the evidence produced before him, came to the conclusion that Rati Ram and prior to him, his father, had been in cultivating possession of the disputed land. However, relying upon the ratio of the judgment in Atma Ram v. Gram Sabha, Diwana, 1979, P.L.J. 238, he held that a landowner cannot take the benefit of possession of his predecessor in interest. The possession of the predecessor in interest cannot be counted for determining the 12 years continuous cultivating possession prior to the commencement of the Pepsu Village Common Lands (Regulation) Act, 1954 (for short, the Act). He however, held that Rati Ram succeeded in establishing his possession on the land measuring 6 Kanals for more than 12 years prior to the commencement of the Act and from the remaining land he was liable to be ejected.

3. The view taken by the Assistant Collector, I Grade cannot be sustained at law. In Pritam Singh v. The Collector, Sirsa and others, 1981 P.L.J. 173, a Division Bench of this Court, after interpreting the identical provisions of Section 4(3) (ii) of the Punjab Village Common Lands (Regulation) Act (18 of 1961) held that in

order to find out the cultivating possession of the persons at the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 under Section 4(3) (ii) of the 1961 Act, the earlier possession of their predecessorininterest, if any, could also be taken into consideration while calculating the period of 12 years, provided it had been continuous and without any interruption. In para 6 of the judgment, the Division Bench observed thus :

"After hearing the learned counsel, we are of the considered opinion that in order to find out the cultivating 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 predecessorsininterest, 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 nonproprieters or small landowners. Moreover, under the common law as well, even a trespasser is entitled to take 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 Corpus Juris Secundum, as mentioned above, is also quite relevant in this behalf."

In the light of the aforementioned judgment, the order of the Assistant Collector, I Grade, Mohindergarh cannot be sustained.

4. For the reasons stated above, the impugned order of Assistant Collector, I Grade, Mohindergarh is set aside and he is directed to decide the case afresh in the light of the finding recorded in his order dated July 30, 1980 admissions made by the official respondents in para 9 of their written statement and the legal position settled by this Court in Pritam Singh's case (supra). In the circumstances of the case, I make no order as to costs.