
(2003) 10 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10978 of 2001

Maghar Singh

APPELLANT

Vs

The Joint Development Commissioner and Others

RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 4, 5
Punjab Village Common Lands (Regulation) Act, 1961 — Section 7

Citation : (2004) 136 PLR 375 : (2004) 1 RCR(Civil) 127

Hon'ble Judges : V.K. Bali, J; Jasbir Singh, J

Bench : Division Bench

Advocate : O.P. Nagpal, for the Appellant; R.K. Joshi, Addl. A.G., Pardeep Goyal and H.S. Masuta, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Challenge in this petition filed under Article 226 of the Constitution of India is to order dated 20.11.1995, Annexure P4 passed by the District Development and Panchayat Officer exercising the powers of the Collector, Sangrur as also order dated 9.2.2001, Annexure P-6, passed by the Joint Development Commissioner, Punjab, Chandigarh, dismissing the appeal filed by the petitioner against order dated 20.11.1995, ordering eviction of the petitioner from the land, subject matter of dispute u/s 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 read with Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961.

2. The admitted facts of the case reveal that Gram Panchayat, Bhari Mansa, Tehsil Malerkotla, District Sangrur, third respondent herein, vide deed dated 20.2.1987, Annexure P1, exchanged land of the Gram Panchayat with that of petitioner and possession of the exchanged land was also handed over to the respective parties in June, 1987. Despite the fact that there was indeed an exchange of land of the Gram Panchayat with that of the petitioner, evidenced

vide Annexure P1, respondent-Gram Panchayat sought eviction of the petitioner under the provisions of the two Acts, referred to above and succeeded in securing an order of eviction against the petitioner which has since been confirmed by the Appellate Authority.

3. With a view to appreciate the controversy raised in the matter, it would be useful to reproduce operative part of order passed by the learned Commissioner, Annexure P6. Same reads thus;-

"After hearing the arguments and going through the record placed on the file, I have come to the conclusion that no proposal for exchange of Panchayat land with the appellant was sent to the Government for approval which is required under the Punjab Village Common Lands (Regulation) Act and Rules made there under without approval of the Government, exchange made by the Gram Panchayat is not valid. No title of the suit land has been claimed by the appellant before the competent authority as such I dismiss the appeal and uphold the order of Collector dated 20.11.1995".

4. It is in the context of the pleadings made by the parties as also operative part of order, Annexure P6, that we have mentioned in the earlier part of the judgment that exchange of Gram Panchayat land with that of the petitioner is an admitted fact. The only question in view of the admission of exchange of land that thus, arises is as to whether the petitioner could be evicted in the proceedings initiated under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 and Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961. The clear answer to the question, it appears to us would be in negative. It is too well established and has not been even disputed that resort to the provisions of the two Acts aforesaid can be made only if the initial entry of an occupant of the land on the premises belonging to the Government or the Gram Panchayat, is unauthorised." or the initial entry, which may be authorised, becomes unauthorised on account of violation of terms and conditions under which the land/property was occupied. Surely if the petitioner entered into the land, subject matter of exchange, his initial entry can not be said to be unauthorised. Nothing at all was stated by the Gram Panchayat as to how, only on account of the fact that the exchange was not sanctioned for the Government, initial entry of the petitioner, which was authorised would become unauthorised." It is under an exchange of land of petitioner which it is conceded during the course of arguments, is still occupied by the Gram Panchayat, that petitioner entered into the land, subject matter of dispute. The respondent-Gram Panchayat has not handed over the possession of land occupied by it on dint of exchange deed dated 20.2.1987 and has yet claimed possession of the land given to the petitioner by way of exchange in the eviction proceedings resorted to against him. Legality or competence of the proceedings under the provisions of the two Acts aforesaid apart Gram Panchayat was wholly unjustified in seeking eviction of the petitioner without surrendering land of the petitioner.

5. Before we may part with this order, we would like to mention that learned counsel for the petitioner has placed reliance upon a judgment of this Court in *Gurdial Singh and Ors. v. The State of Punjab and Ors.* 1985 P.L.J. 278, wherein it has been held that failure to obtain prior approval does not affect validity or legality of transfer and in such a case, Panchayat may be liable, in accordance with law for some disciplinary action and non-compliance of Rule 13 by itself does not in any way affect legality or validity of transfer". The judgment of this Court, relied upon the learned counsel for the petitioner does lend support to the case of petitioner. However, we do not wish to go into this issue as even if it is assumed that sanction of the Government was required for exchange of the Gram Panchayat land, petitioner can not be summarily evicted as his initial entry into the land in dispute as mentioned above, was not unauthorised which is sine-qua-non for initiation of proceedings under the provisions of the two Acts, as mentioned above. Further, it would be too iniquitous to evict the petitioner from the land till such time respondent Gram Panchayat surrenders vacant possession of land which has since been taken possession of by it and which admittedly belongs to the petitioner.

In view of the discussion made above, the impugned orders, Annexure P4 and P6 are set aside. This petition is allowed with costs quantified at Rs. 2000/-.

Sd/-

Jasbir Singh, J.