(1971) 12 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : C.W. No. 1730 of 1968

Mam Chand and another APPELLANT

Vs

State of Haryana and others RESPONDENT

Date of Decision : 02-12-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1971) 12 P&H CK 0007

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Advocate : B.S. Gupta, for the Appellant; S.C. Kapoor for Respondent Nos. 1 to 3, Mr. H.L. Sarin with Mr. M.L. Sarin for Respondent Nos. 4 to 15 and Mr. R.N. Narula for Respondent Nos. 4, 16 and 17, for the Respondent

Final Decision : Allowed

Judgement

A.D. Koshal, J.—The facts giving rise to this petition under Articles 226 and 227 of the Constitution of India are these. An area measuring 7110 bighas 1 biswa comprising more than 150 khasra numbers in part of the shamilat deh of the revenue estate of Arangpur (also called Anangpur) in Tahsil Ballabgarh, District Gurgaon. Except for 3 or 4 of the said khasra numbers, of which the total area works out to be less than 5 bighas, the description of the area first mentioned as given in the revenue records is "Ghair Mumkin Pahar''''. Prior to the year 1953 the shamilat deh was owned by the proprietors of the estate who, in the year 1946, leased out the said are measuring 7110 bighas 1 biswa (hereinafter referred to as the disputed land) to the Arangpur Co-operative Society Limited for a period of 20 years against a rental of Rs. 1800/- per annum. On the 26th of December, 1953, the Punjab Village Common Lands (Regulation) Act (Punjab Act No. 1 of 1954) came into force and under the provisions thereof the Panchayat of village Arangpur (hereinafter referred to as the Panchayat) became owner of the shamilat deh land including the disputed area. By then the Arangpur Co-operative Society Limited had fallen into arrears with regard to the payment of rent and had in fact been declared insolvent. In order to protect their interest, the Panchayat cancelled the lease above mentioned and granted a lease of the disputed land to two persons named Jagdish Parshad and Bahadur Singh for a period of 20 years through a registered deed of lease executed on the 3rd of May, 1954, the rental again being Rs. 1800/- per annum. The terms of the lease in so far as they are relevant to the controversy before me were:

(1) The period 20 years for which the lease was granted would commence from the date when the lessees obtained actual possession of the disputed land.

(2) The lessees were entitled to exploit the disputed land for extraction of chalk, stone, rori and shisha and for that purpose to work mines, dig pits and carry out other necessary operations.

(3) The lessees would be entitled to exploit the lease either by themselves or through their agents, servants, partners or sub-lessees.

(4) The lessees would not be entitled to extract any Badarpur sand from the disputed land. Such right would vest only in the Panchayat.

Punjab Act I of 1954 was replaced by the Punjab Village Common Lands (Regulation) Act (Punjab Act 18 of 1961 and hereinafter called the 1961 Act) under which the Panchayat continued to enjoy the ownership of the shamilat deh.

Jagdish Parshad and Bahadur Singh bad to resort to litigation in order to obtain possession of the disputed land which they did through court on the 20th of February, 1963. Bahadur Singh transferred his share in the lease to others whose successors are Mam Chand petitioner No. 1 (to the extent of 40 per cent) and Brij Lal petitioner No. 2 (to the extent of 60 per cent). One-fifth of the half share of Jagdish Parshad in the lease was also purchased by Brij Lal in January, 1965.

On the 22nd of February, 1966, the Collector, Gurgaon, cancelled the lease granted on the 3rd of May, 1964, by the Panchayat to Jagdish Parshad and Bahadur Singh, u/s 10-A of the 1961 Act and his decision was upheld in appeal on the 24th of January, 1967, by the Commissioner who however, allowed a sum of Rs. 5400/- as compensation to Jagdish Parshad. To those proceedings the petitioners were not made parties and challenged the order of the Collector in a civil suit instituted by them against the Gram Sabha of village Arangpur on the 26th of February, 1966. The suit ended in a decree in favour of the petitioners which was maintained in appeal by the District Judge, Gurgaon, on the 14th of June, 1968, it being held that the petitioners had acquired the status of joint lessees with Jagdish Parshad and the proceedings before the Collector in so far as they affected the petitioners, were without jurisdiction for the reason that they were hell without notice to them.

On the 19th of April, 1968, the Director of Industries, Haryana, issued a notice (Annexure "A" to the petition) declaring for the information of the general public that minor minerals consisting of road metal and building stones in various villages including Arangpur would be auctioned in the office of the Senior District

Industries Officer, Gurgaon, on the 21st of May, 1968, at 11 A.M. This is the notice which is impugned in the petition on the ground that none of the minerals which the petitioners had the right extract from the disputed land under the terms of the lease created in their favour by the Panchayat, belonged to the Government. The prayer made by the petitioners is that that notice be quashed and that a writ in the nature of mandamus restraining the Government and its officers as well as the Panchayat from interfering with the rights of the petitioners in the disputed land be issued.

2. During the course of the pendency of the petition, the Government of Haryana, purporting to act as owner of minor minerals in the disputed land, granted certain rights in respect thereof to Cleamax (India) Pvt. Limited (whose Managing Director is respondent No. 16) and the Anangpur Sand Company, Anangpur, a partnership firm (respondent No. 17). Thereupon the petitioners put in applications stating that respondents Nos. 16 and 17 had started mining operation in the disputed land and had thus partially dispossessed the petitioners and praying that these respondents be made parties to the petition. The applications were accepted.

3. Learned Counsel for the parties are agreed that the rights to minerals will have to be determined in accordance with the relevant short of the wajib-ul-arz prepared in relation to village Arangpur read with section 42 of the Punjab Land Revenue Act which runs thus:

42. (1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belongs to the landowners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government it shall be presumed to belong to the landowners.

(3) The presumption created by sub-section (1) may be rebutted by showing-

(a) from the record or report made by the assessing officer at the time of assessment, or

(b) if the record or report is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist, any forest or quarry, or any such land or interest,

that the forest, quarry, land or interest was taken into account in the assessment of the land-revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government.

In the present case copies of wajib-ul-arz prepared during three different settlements for village Arangpur have been produced by the petitioners. The first (Annexure "B/2" to the petition) relates to the year 1877 and states, inter alia:

There is no mine having stone metal, coke or sand containing gold. However, there is a chalk mine and a billaur mine in this very village. The billaur mine is lying abandoned while the chalk mine is being worked. Till now the proprietors extract chalk from that mine and sell it and the resultant income is divided amongst them in proportion to the land possessed by them. In future if the Government needs it, it is authorised (to exploit the mine). Besides no kankar mine is known. However, kankar is available in the cultivated area of the village. If Government needs it, it is authorised to extract it. We shall not claim the price thereof but shall be entitled to compensation for any damage occasioned to the surface of the land by reason of the extraction of kankar. Further, when we need kankar for our use, we can also extract it after informing the Head of the District.

The relevant shart wajib-ul-arz appearing in the settlement records prepared for the village in the years 1908-1909 (Annexure ''B/1" to the petition) and 1940-41 (Annexure "B" to the petition) is couched inidentical language from a perusal of which it is quite clear that no mineral rights are expressly stated in the wajib-ul-arz prepared during any of the three settlements to belong to the Government On the other hand, the manner in which chalk and kankar are dealt with in the short which appears in all the three settlements negatives the ownership of the Government even to chalk and kankar both of which commodities are stated to be available for extraction either by the Government or by the proprietors according to their respective needs. There is the further fact that till the year 1939-40 the proprietors were extracting the chalk to serve as a source of income for themselves which negatives any right of ownership of that mineral vesting in the Government. Although that was not the case in relation to kankar, the position of the Government in regard thereto is no better in view of the absence of any express statement in the wajib-ul-arz that it belonged to the Government. According to section 42 of the Punjab Land Revenue Act, the shart, if it appears is a wajib-ul-arz prepared after the 18th of November, 1871, has to be interpreted so as to raise a presumption that rights in minor minerals belong to the landowners unless the shart expressly provides that they belong to the Government. All the three settlements in which the relevant shart-wajib-ut-arz appears were carried out after the year 1871 and sub-section (2) of section 42 ibid is fully applicable to them. As the shart does not expressly provide that the minor minerals belong to the Government, a presumption must be raised that they belong the landowners. The Government and its officers (respondents Nos. 1 to 3) as well as respondents Nos. 16 and 17 (who seek interference with the exploitation of the disputed land by the petitioners under cover of title derived from the Government) have no legal right to the extraction of any mineral from the disputed land which the petitioners have shown to be in their possession under the lease created by the Panchayat in their favour. The Panchayat also cannot have any light to interfere with the possession of the petitioners over the disputed land so long as the lease subsists, as it is itself the author thereof.

4. On behalf of respondents Nos. 16 and 17, the following four contentions have been raised:

(a) It is Cleamax (India) Private Limited and not respondent No. 16 who is extracting sand from the disputed land under authority from the Government. It is that company, therefore, and not respondent No. 16 who should have been impleaded as a respondent. In the absence of that company from the array of parties the petition cannot proceed.

(b) The petitioners had failed to prove their title as co-lessees and were, therefore, not entitled to any relief. Even if they had proved such title, they could not claim rights in the whole of the disputed land but only in respect of their 3/5th share in it.

(c) The petitioners were not given any right under the lease executed by the Panchayat in their favour to extract sand. The extraction of sand by respondents Nos. 16 and 17, under authority from the Government cannot, therefore, be restrained at the instance of the petitioners.

(d) Respondents Nos. 16 and 17 had admittedly taken possession of some portion of the land. A mere mandamus could not, therefore, be a sufficient remedy for the petitioners who must sue for possession of that part of the land which respondents Nos. 16 and 17 had taken possession of.

5. In relation to contention (a) it is sufficient to say that the Court can always grant an appropriate relief in favour of or against any of the parties arranged before it. When the petitioners impleaded respondent No. 16 as a party all that they appear to have known was that it was respondent No 16 who had been granted certain rights by the Government inasmuch as it was respondent No. 16 who was meddling with the disputed land without perhaps disclosing that he was representing a limited company. In so far as he is concerned, there is no impediment in the way of this Court granting such relief to the petitioners to which they may be found entitled. He has meddled with the disputed land under authority from the Government who do not own any rights therein and who cannot, therefore, grant any to others. Respondent No. 16 can, therefore, be restrained from interfering with the disputed land in derogation of the rights of the petitioners. Later on, if the company which he represents, as such meddles with the disputed land, the petitioners may seek such relief against it as to which they are then entitled. In this view of the matter I do not find any merit in contention (a).

6. Contention (b) is also without substance. The title of the Panchayat as owner of the disputed land has not been challenged before me by any of the parties. As between the Panchayat (represented by the Gram Sabha) and the petitioners it has been finally determined by a competent civil court that the petitioners have acquired the status of co-lessees with Jagdish Parshad. That status is not open to

attack by third parties so long as those parties accept the title of the Panchayat as owners. For the purpose of the present controversy, therefore, the petitioners must be held to be co-lessees with Jagdish Parshad under the Panchayat in respect of the disputed land.

It cannot be denied that the petitioners have only a 3/5th share in the lease but then they are two of the three joint lessees and each of them has the right to exploit every inch of the land so long as the lease subsists in their favour. The cancellation of the lease by the Collector in so far as Jagdish Parshad is concerned, may not have been set aside by the civil court in the suit decreed in favour of the petitioners by the District Judge on the 14th of June, 1968, but then with regard to the petitioners such cancellation was annulled. Accordingly, while Jagdish Parshad may not be able to claim any right with regard to the disputed land, the rights of the petitioners therein as his co-lessees have not yet been negatived and they have, therefore, the right to continue in possession of the entire disputed land.

7. There is no force in contention (c) either. It is true that the Panchayat, while granting to the petitioners a 20-year lease, reserved to itself the right to extract sand from the disputed land but I do not see how the fact can be construed so as to give third parties who have no title or interest in the disputed land to meddle with it. As already stated, the Government of Haryana are not the owners of the land or of any of the minor minerals available therein Then how can they confer on respondents Nos. 16 and 17 any rights with regard to the extraction of any minerals including sand? Any authorisation issued by the Government in favour of respondents Nos. 16 and 17 to extract sand will not cloth the latter with a right to do so for the simple reason that the Government themselves had no such right. Under the lease also such a right was reserved by the Panchayat to itself and not to be exercised by the Government who or whose licensees can, therefore, be lawfully restrained by the petitioners from meddling with the disputed land.

8. While impleading respondents Nos. 16 and 17 as parties to the petition, the petitioners did state that those two respondents had taken possession of some portions of the disputed land and had started mining operations therein, but that is no reason why respondents Nos. 16 and 17 cannot be restrained by a writ of mandamus from discontinuing those operations and removing whatever machinery, etc., they might have installed in the land. It is to be noted that practically the whole of the disputed land is ''''Ghair Mumkin Pahar'''' having an area of thousands of bighas. If respondents Nos. 16 and 17 have started some operations in a few bighas, it does not mean that they have ousted the petitioners from those few bights in the accepted sense of the word and their possession as mentioned by the petitioners in their applications for impleading respondents No. 16 and 17 as parties cannot be construed to mean such established possession to vacate which the petitioners must go to a civil court and ask for dispossession of respondents Nos. 16 and 17. Their entry on a very

small portion of the disputed land being without the authority of law a mandamus granted to the petitioners would, in my opinion, be quite an appropriate remedy. Contention (d), is, therefore, also repelled.

9. On behalf of respondents Nos. 1 to 3 the only point taken, apart from the one in relation to the interpretation of the entries in the wajib-ul-arz was that the matter had been decided against the petitioners in a regular civil court instituted by them which operated as res-judi-cata. However, neither the plaint nor the judgment in that suit has been produced for the inspection of the Court nor have their contents been so much as mentioned by respondents Nos. 1 to 3 in their pleadings. The Court has been left compleately in the dark as to what the nature of the suit was and the point raised must, therefore, be held to be without substance.

10. The only contention raised by Mr. Sarin on behalf of respondents Nos. 4 to 15 is the same as is covered by contention (d) put forward on behalf of respondents Nos. 16 and 17 which I have already turned down.

11. For the reasons stated, the petition succeeds and is accepted with costs. Although the impuged notice need not be quasi ed inasmuch as the period of one year, for which the rights to be auctioned under it could be exercised, has expired and the relief claimed in respect of the notice has, therefore, become infructuous the petitioners are entitled to a writ of mandamus, which is hereby issued, restraining respondents Nos. 1 to 4 and 16 and 17 from interfering with the rights of the petitioners in the disputed land as co-lessees with Jagdish prashad under the lease executed by the Panchayat on the 3rd of May, 1954, and mentioned above, during such period as the lease subsists.