
(2013) 05 P&H CK 0211
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3759 of 1987 (O and M)

Mani Ram and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

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

Citation : (2013) 3 RCR(Civil) 932

Hon'ble Judges : Rekha Mittal, J;Rajive Bhalla, J

Bench : Division Bench

Judgement

Rekha Mittal, J.—By way of this order, we shall dispose of Civil Writ Petition No. 3759 of 1987 titled "Mani Ram and others v. State of Punjab and others" and Civil Writ Petition No. 3 795 of 1987 titled "Dev Singh v. State of Punjab and others" as these arise out of same set of facts. For the sake of convenience, facts are taken from CWP No. 3759 of 1987. The petitioners pray for issuance of a writ of certiorari quashing orders dated 23.1.1984 (Annexure P-1) and dated 5.8.1986 (Annexure P-2) passed by the Collector/DDPO, Ropar and the Joint Director, Punjab (exercising the powers of Commissioner) dismissing their claim of ownership with regard to the land in dispute.

1A. As per averments of the petition, the petitioners are in possession of land measuring 5 kanals comprised in Khasra No. 264 situated in village Mullanpur Garibdas, Tehsil Kharar, before 26.1.1950. The Gram Panchayat of village Mullanpur Garibdas filed an application u/s 7 of the Punjab Village Common Lands Act, 1961 (hereinafter referred to as "the 1961 Act") for eviction of the petitioners. The application for eviction of the petitioners was allowed in favour of the Gram Panchayat. The petitioners filed a petition u/s 11 of the 1961 Act claiming title to the land in dispute by alleging that they are in cultivating possession of the land through their predecessors prior to 26.1.1950. The Collector/DDPO, Ropar, vide order dated 23.1.1984 dismissed the petition u/s 11 of the 1961 Act. The petitioners filed an appeal against the order of the Collector

before the Joint Director, Panchayat, Punjab. The Appellate authority dismissed the appeal of the petitioners vide order dated 5.8.1986 without providing an opportunity of hearing. The petitioners filed a review petition before the Appellate Authority which was dismissed vide order dated 4.11.1986. Respondent Nos. 2 and 3 failed to appreciate the evidence on record and wrongly recorded a finding that the petitioners have failed to establish their possession before 26.1.1950.

2. The Gram Panchayat, in reply has averred that as the petitioners failed to adduce any evidence much less a revenue document to establish their plea of cultivating possession prior to 26.1.1950, the Collector rightly dismissed the petition and the Appellate Authority dismissed the appeal filed by them.

3. We have perused the pleadings of the parties, the impugned orders and a copy of khasra girdawari (Annexure P-4).

4. A perusal of averments of the petition as well as orders passed by the authorities would reveal that the petitioners claim their title to the land in dispute on the plea that they are in possession through their predecessors prior to 26.1.1950, therefore, the land is excluded from shamlat deh. To claim ownership on the basis of cultivating possession prior to 26.1.1950, a person in possession can invoke either Section 2(g)(iii) or Section 2(g)(viii) of the 1961 Act. The petitioners have not raised a plea that the land in dispute was partitioned amongst the co-sharers and the co-sharers came in individual cultivating possession thereof, to claim exclusion u/s 2(g)(iii) of the 1961 Act. As a necessary corollary, the petitioners claim their ownership by resorting to the exclusionary clause u/s 2(g)(viii) of the 1961 Act.

5. To claim ownership of shamlat deh by virtue of Section 2(g)(viii) of the 1961 Act, the petitioners have to prove (i) cultivating possession of land prior to 26.1.1950; (ii) land in dispute being assessed to land revenue; and (iii) land in possession of petitioners not in excess of their share in such shamlat deh. The petitioners have failed to adduce any evidence much less tangible, cogent and convincing to establish their cultivating possession of the land, in dispute, through their predecessors prior to 26.1.1950. The petitioners have placed on record copy of khasra girdawari for the period October 1946 to March 1950. No presumption of truth is attached to entries in khasra girdawari. In the khasra girdawari, the land has been described as shamlat deh and in the column of possession as "possession of right holders" and the nature of land is banjar qadim. Banjar qadim is uncultivated land that has remained fallow for eight or more harvests. The document produced by the petitioners belies their contention that they are in cultivating possession of the land in dispute through their predecessors prior to 26.1.1950. The petitioners have miserably failed to produce any evidence to satisfy the requirements of Section 2(g)(viii) of the 1961 Act in order to seek exclusion of land in dispute from shamlat deh or to establish their title to the land in dispute.

6. The plea of the petitioners that they were not provided an opportunity of being heard by the Appellate Authority, is misconceived as the Joint Director, Panchayats while disposing of the appeal vide order dated 5.8.1986 perused the written arguments submitted by the parties and has discussed the relevant evidence as well as the revenue record produced during evidence in support of their respective pleas. The application for review filed by the petitioners was also rightly dismissed by the Appellate Authority as there is no provision in the 1961 Act conferring power upon the Appellate Authority to review its order. That being so, we find no error of law or of jurisdiction in the orders passed by the authorities rejecting the claim of the petitioners that they are the owners of the land in dispute. In view of what has been discussed hereinabove, finding no merit, the petitions are accordingly dismissed. No order as to costs.