
(2005) 08 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12579 of 2003

Manohar Singh and another

APPELLANT

Vs

Commissioner (Deputy Commissioner), Ferozepur and others

RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Citation : (2006) 1 ILR (P&H) 380 : (2006) 1 PLJ 293 : (2006) 1 PLR 186 :
(2006) 1 RCR(Civil) 494

Hon'ble Judges : J.S.Narang, J and Baldev Singh, J

Advocate : Mr. K.G. Chaudhary, Advocate. Mr. Ashok Aggarwal, Addl. A.G. Punjab, with Mr. B.S. Chahal, Assistant Advocate General, Punjab., Advocates for appearing Parties

Judgement

J.S. Narang, J.—This judgment would dispose of CWP Nos. 12579, 12584, 12595, 12596 and 12597 of 2003, as common question of law and somewhat similar facts are involved. For brevity, the facts are being taken from CWP No. 12579 of 2003.

2. The Gram Panchayat i.e. respondent Nos. 3 had filed an application under Sections 4, 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, for ejectment of the respondentpetitioners from the land in their occupation. This application has been decided by the learned Collector vide order dated November 29, 1999 and respondentpetitioners have been ordered to be rejected. It has been categorically held that pursuant to Jamabandi for the year 1991/92 the land, which is subject matter, is the ownership of the Gram Panchayat and that the respondentpetitioners are in unauthorized possession. However, they have claimed themselves to be the owners of the land but no prima facie document has been produced nor the remedy permissible under law to establish the factum had been initiated. Obviously for the reason that none is in their possession. The legality of the possession as well has not been established as no document has been produced for paying any lease money as lessees as well. Thus, the status of ownership or that of lessee has not been

established before the Collector.

3. However, the case of the respondentpetitioners has been that the Additional Director, Consolidation of Holdings, Punjab, Jalandhar, had accepted the petition and that the Gram Panchayat has no right in the land in question. It is further the case of the petitioners that during the initiation of consolidation proceedings in the village, a cut was imposed on the land of proprietors and that the land in dispute is the Bachat land and that they have been cultivating the same since then. The Panchayat had never ever given this land on lease, as Gram Panchayat had no nexus with this land. He has also alleged that an appeal had been filed before the Consolidation Authority, which has been decided by holding that the Pattidars of the village, who are in separate possession of such lands, be made its owners and the land be distributed according to their respective shares. No document in this regard has been produced before the Learned Collector except that the bald `ground" set out.

4. The aforestated order of the learned Collector had been challenged by way of an appeal before the learned Commissioner, Ferozepur Division, Ferozepur, which has been dismissed vide order dated August 28, 2002. It has been categorically noticed that order of ejectment against the petitioner had been passed from the land measuring 31 Kanals 11 Marlas comprised in Killa Nos. 4M/11 (80), 5M/6 min (40), 24 min (20), 9(80), 6M/13 min (40), 16 min (511) situated within the Hadbast of village Chhanga Rai Hithar, tehsil and District Ferozepur. A reference had been made to an order October 21, 1986, passed by the learned Additional District, Consolidation of Holdings, Jalandhar, Punjab upon a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, that the land measuring 776 Kanals allegedly including the land in dispute, did not fall under the definition of Punjab Village Common Lands (Regulation) Act, 1961, therefore, the petitioners are entitled to hold this land.

5. Admittedly, the petitioners had not filed any application under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter referred to as "the Act") for determination of the title in their favour. If such application had been filed the matter relating to the status of the land in question could have been determined long back. Perhaps the petitioners were aware of the true and correct facts and, therefore, did not chose to file an application under Section 11 of the Act. In the absence of such determination and nonproduction of the documents, pursuant to order dated October 21, 1986, to establish inclusion of the land in question, learned Commissioner rejected the appeal by upholding the order of eviction of Learned Collector.

6. The petitioners have not been able to controvert the entry made in the Jamabandi for the year 199192, in which the Gram Panchayat has been recorded as the owner of the land under challenge and that the petitioners have been held to be in unauthorized possession. Dissatisfied with the order of learned Commissioner the present petition has been filed.

7. Notice of motion was issued via order dated 26.8.2003. The Gram Panchayat has filed a detailed reply and that the averments contained in the petition have been emphatically denied. During the course of hearing, learned counsel for the petitioner contended that in the Jamabandi for the year 197071, the land was recorded as ownership of Mushtarka Malkan, therefore, the authorities have erred in law and fact in passing the order of eviction under the Act. However, the change as noticed in the Jamabandi for the year 199192, the Gram Panchayat was recorded as owner, how the status of the land in question could undergo change by virtue of the Jamabandi for the year 197071, learned counsel for the petitioners had taken time to place on record copies of Jamabandi for spelling out the status of the land in the column of ownership. The order had been passed on September 16, 2004, but no compliance till date has been made. It shall be apposite to notice the order which reads as under :

"Present : Mr. K.G. Chaudhary, Advocate, for the petitioner.

Mr. C.M. Munjan, Addl. A.G. (Punjab).

Learned counsel appearing for the petitioner contends that the judgment Annexure P5 to this writ petition also relates to the same land and the judgment Annexure P4 in the case of the petitioner is an arbitrary exercise of judicial power. We hardly find any merit in this contention as apparently Annexure P5, the Jamabandi which was recorded in the year 197071 wherein the land was recorded as ownership of the Mushtarka Malkan whereas in Annexure P 4, the Jamabandi relating to the year 199192, the Gram Panchayat was recorded as owner. Be that as it may, learned counsel for the petitioner prays for time to place on record copy of the Jamabandis in this case. Let him do so.

List on 18.1.2005.

Sd/

SWATANTER KUMAR

JUDGE

September 16, 2004.

Sd/ SURYA KANT

JUDGE"

8. On written requests of learned counsel for the petitioners, the hearing of the petition was adjourned to from 18.1.2005 to May 9, 2005 and on that date, the hearing was adjourned to August 29, 2005. On the date of hearing, learned counsel had been pointed out that no compliance of order dated September 16, 2004, has been made, yet, again a request was made that some more time be granted. The perusal of the Court file shows that almost one year stood granted to the petitioners for making compliance, twice on his own request and once on September 16, 2004. It looks that the petitioners had not been able to obtain

any document for dislodging the status of the Gram Panchayat recorded as owner in the Jamabandi for the year 199192.

9. However, learned counsel for the petitioners has argued that the order dated October 21, 1986, passed by the Director Consolidation of Holdings, Punjab, had not been duly noticed by the authorities below that the right of the petitioners has not been determined correctly, copy of the aforestated order has been appended as Annexure P4.

10. We have heard learned counsel for the petitioners and have also perused the paper book as also the orders impugned before us. Learned counsel for the petitioners has not been able to spell out as to in what manner the said order is helpful to the case of the petitioners. The detail of the land affected pursuant to the proceedings held under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, does not include the land under challenge as no document to support his contention has been produced despite opportunity granted and availed by way of written requests by way of seeking adjournments. The perusal of the order further shows that the case had been remanded to the Consolidation Officer, Jalandhar, for partitioning the land according to the respective shares of the respective shareholders. The partition, if so effected, has not been indicated nor pleaded, it cannot be inferred that the aforestated order would affect the case of the petitioner in any manner whatsoever.

11. Learned counsel for the petitioners has made another miserable attempt by making reference to an order dated May 28, 1998, passed by the learned Commissioner, Ferozepur Division, Ferozepur, in some case related to some other parties, wherein reference has been made to the Jamabandi for the year 197071 as Mushtarka Malkan. As rightly observed by a Division Bench of this Court on 16.9.2004, as noted above, that the Jamabandi recorded in the year 197071, wherein, the land was recorded as Mushtarka Malkan would be of no consequence and no merit was found in the contention of the learned counsel for the petitioners. However, he had been given the opportunity to place on record for establishing the claim of the petitioners accordingly but none had been placed as none seems to be available with the petitioners.

12. In view of the above, we find no merit in the petition and the same is dismissed.