

(1983) 07 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2959 of 1976

Mehla and others

APPELLANT

Vs

Assistant Collector and Others

RESPONDENT

Date of Decision : 13-07-1983

Acts Referred:

Citation : (1984) PLJ 37 : (1984) RRR 235

Hon'ble Judges : S.S.Kang, J

Advocate : A.L. Jain, Advocate., Advocates for appearing Parties

Judgement

1. Briefly stated the facts are that the petitioners had been allotted certain lands by the State Government in 1955. The lands were banjar and were not being cultivated. By putting massive efforts and incurring huge expense, the petitioners made these cultivable. The lease was for 20 years.

2. The petitioners were not summoned by the Assistant Collector, Panipat, nor any proceedings for their eviction/ejectment were taken in their presence. The petitioners were surprised to know about orders dated 28th April, 1976, passed by the Assistant Collector, Panipat purporting to exercise powers under section 7 of the East Punjab Utilisation of Lands Act (for short 'the Act') ordering the issuance of warrants of possession against the petitioners regarding the lands, in dispute.

3. Aggrieved, the petitioners filed Civil Writ Petition No. 2959 of 1976. Anticipating an objection that a joint writ petition was not maintainable, the petitioners have filed the remaining three writ petitions individually.

4. The State has chosen to file return only in Civil Writ Petition No. 2959 of 1976. However, the privaterespondents have not put in return in any of the writ petitions.

5. It has not been denied that no notice was issued to the petitioners and they were not heard before passing the impugned orders or ejectment.

6. The petitioners have categorically denied that the State had let out the lands to the petitioners pursuant to the provisions of the Act. Under Section 7 of the Act, the Collector can, no doubt, embark upon adjudication of questions of right in and title to the property regarding which proceedings are taken under section 7 of the Act. 7. Nevertheless, the Collector in these proceedings has to determine the source and extent of his power and jurisdiction where the same are questioned, and if so done he has to decide whether the Act relied upon by the applicants before him could be applied to the cases in hand. Where there are conflicting assertions and which are difficult to reconcile, proceedings under the Act could not be taken against the alleged lessees so long as it is not decided that lands in their possession are still governed by the provisions of the Act. (see in this connection *M/s Prem ExServiceman Coop. Tenant Farming Society Ltd. v. State of Haryana and others*, A.I.R 1974 Supreme Court 1121).

8. In view of the above position of law, it was incumbent on the Collector to hold an enquiry as to whether the land had been leased out pursuant to the provisions of the Act. From the above provisions, it follows that the Collector had to associate the petitioners with this inquiry though for a limited purpose. The Collector can exercise jurisdiction only in those cases where the land has been leased out under the provisions of the Act. Unless the persons who are in occupation of the land, in dispute, are associated with that enquiry, the Collector cannot correctly determine the question of jurisdiction. Since the petitioners have not been associated at all with the proceedings, the impugned orders of ejectment are patently illegal. I allow these writ petitions (Civil Writ Petitions Nos 2959, 3187, 3188 and 3189 of 1976) and quash the impugned orders dated 28th April, 1976. In view of the peculiar circumstances of the case, there shall be no order as to costs. Petition accepted.