
(1986) 07 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 219 of 1979

Mehma Singh (deceased) by His L. Rs. APPELLANT
Vs
State of Haryana RESPONDENT

Date of Decision : 29-07-1986

Acts Referred:

Citation : (1986) PLJ 660 : (1986) RRR 45

Hon'ble Judges : I.S.Tiwana, J

Advocate : S.S. Rathore, Advocate, S.K. Goyal, Advocate., Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. The petitioner impugned two orders dated March 31, 1978 and October 10, 1978 (Annexures P.1 and P.2) passed by the Assistant Collector and Collector, Kurukshetra, respectively whereby his eviction from the suit property has been ordered under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to Haryana. The short submission raised by the learned counsel for the petitioner is that since the land in question was undisputably Abadi Deh and was not initially a part of the Shamilat Deh in view of section 2(g) of the Act which defines Shamilat Deh, he could not be ordered to be evicted from the said land under section 7 of the Act. I, however, see no merit in the stand of the learned counsel in view of the fact that vide subclause (4a) of clause (g) of section 2 of the Act which was incorporated in the Act with effect from June 23, 1973, vacant land situated in the Abadi Deh of a village which was not owned by any person, came to form part of the Abadi Deh itself and in view of that any person in unauthorised possession of vacant land situated in the Abadi Deh can be ejected therefrom.

2. It is then contended by the learned counsel that at least in 1 Kanal of land forming part of Khasra No.79, the petitioner had constructed his residential house much earlier to June 23, 1973 and that area could not be treated as Abadi Deh and thus could not vest in the Panchayat even in view of section 2(g)(4a) of

the Act. Though it is contended by the learned counsel for the respondent Panchayat that this house even was constructed by the petitioner after June 23, 1973 and therefore the site underneath it being a vacant land on that date did vest in the Panchayat, yet I find that neither of the two authorities referred to above has given any finding as to the date of the construction of the house in question. As a matter of fact neither of these authorities nor the parties appear to be conscious of this aspect of the matter when they were litigating before the said authorities. Keeping in view the fact that the petitioner has constructed a residential house on 1 Kanal of land at least. I deem it fair that he should have fullfledged trial before his ejectment from that part of the disputed land is to be ordered.

3. I, therefore, allow this petition to the limited extent so far as it relates to 1 Kanal area on which the petitioner has constructed his house in Khasra No. 79 and while setting aside the impugned orders, send the case back to the Assistant Collector with the direction that he would convert the present petition under section 7 of the Act into a suit under section 13 of the Act and after affording the parties a fair opportunity of leading evidence in support of their respective claims, would redetermine as to whether the area underneath the petitioner's house did vest in the Panchayat or not. In case he comes to the conclusion that it did vest in the Panchayat, only then he would pass an order of possession in favour of the Panchayat. For clarity's sake it may be mentioned here that with respect to the rest of the suit land, i.e., excluding 1 Kanal out of Khasra No. 79 on which the petitioner has already constructed a house, the petition is dismissed. The parties are left to bear their own costs. They are directed through their respective counsel to appear before the Assistant Collector on August 25, 1986.