
(1995) 03 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2756 of 1981

Mehta Shri Ram and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11(1)

Citation : (1995) 110 PLR 403

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Y.K. Sharma, for the Appellant; D.S. Bali Subhash Aggarwal and Manjit Singh, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The petitioners filed this writ petition for issuance of a writ of certiorari to quash the order of the Collector, Patiala dated 29.12.1980, which was confirmed by the Joint Director Panchayats, in his order dated 24.4.1988 (Annexure P3).

2. The Gram Panchayat, Bhagwasi filed an application before the Collector, Patiala u/s 11 of the Punjab Village Common Lands (Regulation) Act. 1961 (for short "the act") for declaring that the Gram Panchayat is the owner of the land measuring 194 Bighas 12 Biswas in Khasra No. 1 to 50 situated in Village Bhagwasi, Tehsil Rajpura, District Patiala. The said application was allowed by the Collector under Annexure P2. The petitioner, who was respondent namely Shri Ram Mehta filed an appeal u/s 11(2) of the Act to the Joint Director, Panchayats Punjab who was exercising the powers of Commissioner under the Act. By his order dated 24.4.1981, the Joint Director Panchayats, Punjab confirmed the orders of the Collector. Challenging the same, the writ petitioner Shri Ram Mehta filed this writ petition. During the pendency of the writ petition, the petitioner died. His legal representatives have been brought on record.

3. The main ground urged by the learned counsel for the petitioner is that the application filed by the Gram Panchayat u/s 11 of the Act is not maintainable and, therefore, the orders of the Collector as confirmed by the Joint Director Panchayats are liable to be quashed.

4. Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 reads as follows:-

"(11) Decision of claims of right, title or interest in shamilat deh.

(1) Any person or a Panchayat claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat under this Act, or claiming that any land has not so vested in a panchayat, may submit to the Collector, within such time as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit."

Under Sub Section (1), any person who is claiming a right, title or interest in the land vested in the Gram Panchayat or any person claiming that the land has not vested in the Gram Panchayat, may submit to the Collector, a statement of his claim in writing. Thus, the right to approach the Collector is given to a person who claims a right in the property vested in the Panchayat or to any other person who claims that such land has not so vested in the Gram Panchayat. A reading of sub section (1) of Section 11 of the Act shows that no right is given to the Gram Panchayat to approach the Collector for declaration of its title or that the land has been vested in it. The learned counsel for the respondent-Gram Panchayat contended that under subsection (2) of Section 11 of the Act, the Gram Panchayat is given a right of appeal which shows that the Gram Panchayat may also approach the Collector under sub Section (1) of Section 11 of the Act. But I am not in a position to agree with this contention. u/s 11(1) of the Act, only a person has been given a right to approach the Collector for determination of his right. Thus, it is clear that the applicant must be a person who is either interested in sustaining the right of the Gram Panchayat or who is interested in disputing the title of the Gram Panchayat. In such proceedings, the Gram Panchayat must necessarily be a party respondent. If the decision is given by the Collector against the Gram Panchayat, then the Gram Panchayat can be left with no remedy if no right of appeal is given to Gram Panchayat. Sub Section (2) of Section 11 of the Act takes care of such a situation by providing a right of appeal to the Gram Panchayat. Therefore, it cannot be said, merely because right of appeal is given to the Gram Panchayat, the Panchayat can also approach the Collector for declaration of its title or that the land has been vested in it. This

view of mine also finds support from decision of this Court, Gurnam Singh v. The District Development Officer (Collector) Patiala (1989) 95 P.L.R. 188 wherein it was held that the Panchayat has no right to take proceedings u/s 11 of the Act. The learned counsel for the respondent-Gram Panchayat drew my attention to the decision of the Supreme Court in Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others, . But that case cannot help the Gram Panchayat. In the case before the Supreme Court, a suit has been filed by the plaintiffs against the Gram Panchayat for declaration of their title. In that suit, the Gram Panchayat who was the defendant, took a plea that the land is shamilat deh and as such vested in the Gram Panchayat and, therefore, the civil court had no jurisdiction to try the suit and the remedy to the defendant was to approach the Collector u/s 11 of the Act. The Supreme Court took the view that the remedy to the plaintiff is to approach the Collector u/s 11 of the Act and that the jurisdiction of the civil court was barred under the provisions of the Act. In fact, the decision of the Supreme Court supports the contention of the learned counsel for the petitioner. The Supreme Court did not say that the Gram Panchayat can approach the Collector for declaration of its right in the land.

5. In this view of the matter, I am of the opinion that the orders of the Collector and the Joint Director Panchayats, Punjab (Annexures P2 and P3) are liable to be set aside.

6. Accordingly, the writ petition is allowed and the orders of the Collector and the Joint Director Panchayats, Punjab (Annexures P2 and P3) are hereby quashed. However, it is made clear that this order will not come in the way of the Gram Panchayat from taking such remedies as are open to it for recovery of the land in accordance with law, if so advised. There will be no order as to costs.