

(1970) 04 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Petition No. 100 of 1967

Mohan Singh and Others

APPELLANT

Vs

The Lt. Governor Himachal Pradesh and Others

RESPONDENT

Date of Decision : 28-04-1970

Acts Referred:

Citation : (1970) 6 DLT 317

Hon'ble Judges : Om Prakash, J; M.R.A Ansari, J

Bench : Division Bench

Advocate : Chabildas and B.Sita Ram, for the Appellant;

Judgement

Om Prakash, J.

(1) The main question, in this writ petition filed by forty-five stall-holders of village Pandoh, Tehsil Sadar, District Mandi, is whether section 163 of the Himachal Pradesh Land Revenue Act (hereinafter referred to as the Himachal Act), is violative of Article 14 of the Constitution of India. The circumstances in which this question has arisen are as under :-

(2) The Deputy Commissioner, Mandi had issued notices to the petitioners to demolish their stalls and to vacate the sites there under as they had illegally constructed the stalls on Government lands. The petitioners filed a writ petition, challenging the validity of the notices on various grounds. One of the grounds was that Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, under which according to the petitioners the Deputy Commissioner appeared to have initiated action against them was unconstitutional. In the return, filed on behalf of the respondents, it was stated that action against the petitioners had been initiated u/s 163 of the Himachal Act, and not u/s 5 of the Punjab Premises (Eviction of unauthorised Occupants) Act. Thereupon, the petitioners put in an application, under Order 6, Rule 17 Code of Civil Procedure, for amending their writ petition by including grounds, challenging the validity of the action taken u/s 163 and also the constitutional validity of the section itself.

The application was allowed by an order of the Court dated 30th November, 1967. The allegations, in the amended writ petition, are; The Beas-Sutlej Link Project is being executed at village Pandh for the last two and a half years. A market has come into existence at the site of the Project to cater for the needs of various workmen employed in the project. The market has been constructed on the lands which are vested in the Gram Sabha Majhwar and as such are under the control and supervision of the Gram Panchayat. The petitioners have constructed stalls on such lands. The leases of the lands to the various stall-holders were regularised by the aforesaid Gram Sabha and rent is being charged from the petitioners. The State Government or the Union of India has no right, title or interest in the . lands and has, Therefore, no authority to evict the petitioners from the lands. The notices, issued by the Deputy Commissioner to the petitioner, u/s 163 of the Himachal Act, for demolition of stalls and for vacating the sites, are illegal. The lands in occupation of the petitioners are village site and the provisions of the Himachal Act are not applicable to such lands. The entire proceedings have been taken behind the back of the petitioners and are thus in violation of the principles of natural justice. The lands, in dispute, are public property and vest in the Gram Panchayat and for that reason also, section 163 of the Himachal Act is not applicable. Section 163 of the Himachal Act confers an unguided direction on the Revenue ? Officer to proceed or not to proceed under that section and thus enables the Revenue Officer to discriminate between persons situated in the same position and in alike circumstances, by exercising his powers under that section against some and proceeding by way of suit against others as both the remedies, under the section and by way of suit are available to the Government.

(3) The petitioner pray that a writ or order or direction be issued against the respondents prohibiting them from demolishing the stalls or otherwise dispossessing the petitioners from the lands, in dispute.

(4) In their return to the amended writ petition ,the respondents have denied that that lands, in dispute, are vested in the Gram Sabha Majhwar or that the Grain Sabha has any control or supervision over the lands or has the right to lease out the lands or realize rent The plea of the respondents is that the lands belong to the State Government and are under its management and control. It is submitted that the market known as Pandoh Bazar, has been in existence for a long time and that the petitioners have taken forcible and illegal possession of the lands belonging to the Government only recently. The allegation of the petitioner that the entire proceedings have been taken behind their back is denied. It is pleaded that after the issue of show cause notices, the statements of the petitioners were recorded and that the petitioners had admitted that the lands belonged to the State Government. It is pointed out that the petitioners had not taken then, the plea that they had taken leases of the lands from the Gram Sabha and that the plea was an after thought, the respondents submit that the lands if dispute are neither public property nor village site and that the provisions of section 163 are applicable to the lands. The respondents, further,

submit that the Revenue Officer or the Government has no discretion to proceed against some encroachers, u/s 163, and against others by way of suit, under the ordinary law, and that there is no discrimination between persons similarly situated. Section 163, according to the respondents, does not violate Article 14 of the Constitution. It has been explained that at the time of the formation of Himachal Pradesh in 1948, it was discovered that large areas of Government land had been illegally encroached upon, during the regime of the erstwhile Rulers of the Princely States and that section 150 of the Punjab Land Revenue Act which was in force at that time was amended to empower the Revenue Officers to eject the encroachers from Government lands. The amended section 150 was incorporated in the Himachal Act as Section 163.

(5) The respondents had taken up certain preliminary objections against the maintainability of the petition ; but those were not pressed at the time of arguments. It is, .therefore, unnecessary to set forth the preliminary objections.

(6) As already stated, the main question in the writ-petition, is whether Section 163 of the Himachal Act is hit by Article 14 of the Constitution. That Section reads:-

" WHERE Government land or land which has been reserved for the common purpose of the co-sharer therein, has been encroached on by any person or any co-sharer, as the case may be, a Revenue Officer may, of its own motion or on the application of any other co-sharer eject the encroaching person from the land and, by order proclaimed in manner mentioned in Section 23, forbid repetition of the encroachment. 2. The proceedings of the Revenue officer under Sub-section (1) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction."

(7) The argument, on behalf of the petitioners, is that the aforesaid section confers an additional remedy, over and above the remedy by way of suit, on the Government, for ejectment of encroachers on Government lands and that by leaving it to the un-controlled discretion of the Government or the Revenue Officer to pick and chose and to resort to one remedy against one encroacher and to resort to the second remedy against another encroacher, the Section is open to the charge of unjust discrimination and being vocative of Article 14 of the Constitution. This argument has been controverted, on behalf of the respondents. The case of the Respondent 1s that the only remedy available to the Government for ejectment of an encroacher from Government land is to proceed u/s 163 of the Himachal Act and that the remedy by way of suit, under the ordinary law is barred in view of the provisions of section 17101 the Himachal Act. The further case of the respondents is that it is not discretionary with the Revenue Officer to proceed or not to proceed, u/s 163, and that he is bound to take action under that Section once an encroachment on Government land or on the land, reserved for common purpose, comes to his notice. The alternative case, for the respondents, is that even if it be assumed that remedy by way of suit is not barred u/s 171, and if is open to the Government to proceed

against an encroacher either by way of suit or u/s 163, that Section is not hit by Article 14 of the Constitution as the procedure to be followed, for ejectment of an encroacher, under that Section, is not more drastic or prejudicial to the party concerned than the procedure provided for the trial of a suit.

(8) Section 163 of the Himachal Act has already been quoted. It empowers a Revenue Officer, suo moto or on an application, to eject any person who had encroached upon Government land or land reserved for common purpose. Section 171 (1) bars the Jurisdiction of a Civil Court to take cognizance of a matter which a Revenue Officer is empowered to dispose of. A suit, for ejectment of an encroacher on Government land, cannot be taken cognizance of by a Civil Court, because of the provisions of Section 163(1) and Section 171(1) of the Himachal Act. Section 163 gives a cheap and speedy remedy to the Government to get the encroachments vacated from Government land. The Government will have to incur huge expenses if it were to institute suits against encroachers on Government land. It is clear that the intention underlying Section 163(1) is that the Revenue Officer should take action under that Section and should not proceed by way of suit against encroachers on Government land. In this context the word "may" in Section 163 is to be interpreted as must or shall. Thus, the Revenue Officer is not left with any discretion to proceed against one encroacher u/s 163(1) and to proceed against another encroacher by way of suit. The Revenue Officer or the Government cannot pick and choose. In this view of the matter, no question of discrimination, much less unjust discrimination, can arise and Section 163 cannot be held to be violative of Article 14 of the Constitution.

(9) Assuming for the sake of argument that the Government has the option to proceed either by way of suit, under the ordinary law, or take action u/s 163 against the encroacher, that Section will not be hit by Article 14 as the procedure prescribed under that Section approximates to the procedure prescribed for the trial of a suit and is neither more drastic nor more prejudicial. Section 18 of the Himachal Act empowers the State Government to make rules for regulating the procedure of Revenue Officers. The corresponding section of the Punjab Land Revenue Act which was in force before the Himachal Act was section 17. The State Government had formed rules u/s 17, called the "Land Revenue Rules". Those rules were made applicable to Himachal Pradesh and are still in force by virtue of the provisions of section 3 of the Himachal Act. Rules 34 to 48 provide for procedure for Revenue Officers. Rule 34 deals with statements and pleadings, made by or on behalf of the parties, to revenue proceedings. Rule 34(ii) provides that every written application or statement filed by a party to a revenue proceedings shall be drawn up and verified in the manner provided by the CPC for written statements in suits. Rule 36 lays down that in fixing dates for the hearing of parties and their witnesses, in adjoining proceedings, and in dismissing applications on default or for other sufficient reason, a revenue Officer will, so far as the nature of the case may require or permit, be guided generally by the principles of the procedure for the time being in force in Revenue Courts. Section 88 of the Punjab Tenancy Act, which was in force in Himachal Pradesh,

until it was repealed by the Himachal Pradesh Abolition of Big Landed Estate and Land Reforms Act, 1953, empowers the State Government to make rules for regulating procedure of Revenue Courts. It further provides that until rules are so made the provisions of the CPC shall so far as it may be applicable apply to all proceedings in Revenue Courts. It is not disputed that no rules have been framed u/s 88 by the State Government. The provisions of the CPC will, Therefore, so far as they are applicable, apply to all proceedings in Revenue Courts. By virtue of the provisions of rule 36 aforesaid, the provisions of the Code of Civil Procedure will also apply to proceedings before a Revenue Officer, with respect to hearing of parties and their witnesses etc. Rule 37 makes the provisions of section 75 to 78 of the CPC and or Schedule I, Order 26 in respect of commissions applicable to proceedings before a Revenue Officer. Rule 38 deals with award of expenses to the witnesses. Rule 41 makes it incumbent on a Revenue Officer to record reasons in support of the order made by him. Rule 43 provides that the orders of ejectment are to be executed and delivery of possession is to be made as provided in the Code of Civil Procedure. It is clear that the procedure, u/s 163, before the Revenue Officer, is not more drastic or prejudicial than the procedure for the trial of a suit. The discrimination would result only if out of the two procedures one is more" drastic or prejudicial to the party concerned,-vide Northern India Caterers (Private) Ltd., v. State of Punjab, " relied upon by the learned counsel for the petitioners .In that authority, section 5 of the Punjab Public premises and Land (Eviction and Rent Recovery) Act was declared as unconstitutional, being discriminatory and violative of Article 14 of the Constitution. It was held by their Lordships that the procedure prescribed u/s 5 was more prejudicial and drastic than the procedure for trial of a suit under the ordinary law and that the section left it to the arbitrary will of the Collector to adopt that procedure against some persons and to proceed by way of suit against others and that discrimination, Therefore, resulted. In the present case, the procedure prescribed by S 163 is not more drastic or prejudicial to the party concerned than the procedure for the trial of a suit. The Supreme Court case is, Therefore, distinguishable from the present case. In the Supreme Court case. Section 10 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act conferred finality to the order made by the Collector or the Commissioner. In the present case. Section 163 does not confer any such finality on the order of the Revenue Officer. On the other hand, Sub.section (2) of Section 163 makes the order subject to any order or decree of a Court. of competent jurisdiction.

(10) The learned counsel for the respondents had cited a decision of a Division Bench of this Court in C.W V. P. No. 134 of 1967, decided on the 23rd July, 1968. The question, in that writ petition, was whether section 9 of the Himachal Pradesh Ferries Act, 1956 was ultra virus of the provisions of Article 14 of the Constitution, That section was to the following effect :-

" ALL arrears due by the lessee of the tools of a public ferry on account of his lease may be recovered from the lessee or his surety, if any, by the District Magistrate of the District in which such ferry is situate as if they were arrears of

land revenue."

(11) The argument, in that case, was that section 9 infringed the provisions of Article 14 of the Constitution as it vested an uncontrolled and unguided discretion in the District Magistrate of the District to realize arrears of dues either by recourse to regular Civil Courts or to the drastic procedure provided u/s 9. This argument was rejected by the Division Bench. It was observed : -

" IN short ,recourse to summary measures will not result in, depriving the debtors of their right to have their liabilities fully adjudicated upon by the Civil Court. Discrimination in such cases may arise only where an option is given to the executive to have recourse to a drastic and more prejudicial remedy against one and follow the ordinary procedure of recourse to Civil Courts against another equally situate and circumstanced. If a more drastic remedy is resorted to, the debtor concerned loses all benefits to have his rights determined by a Civil Court and basically it is this denial which may destroy the validity of the classification. If, on the other hand, the only distinction brought about by a statute is that in one case the Government must file a suit for recovering the amount while in the other the debtor should go to a Civil Court and establish that he has no liability in the matter, such statute cannot be struck down as violative of Article 14."

(12) As already stated, in the present case. Section 163 itself lays down that the order of the Revenue Officer will be subject to an order or decree of a Court of competent jurisdiction. The party, aggrieved by the order of the Revenue Officer, can approach a Civil Court for appropriate relief.

(13) For all the reasons stated, above, it is to be held that Section) 168 of the Himachal Act does not contravene the provisions of Article 14 of the Constitution and that it is valid. I

(14) It was, next, contended by the learned counsel for the petitioners that the lands in possession of the petitioners were not lands within the meaning of Section 163 as the lands were village site and the petitioners could not be proceeded against under that section. The learned counsel referred to section 5 of the Himachal Act. This section lays down that nothing in the Act applies to land which is occupied as the site of a village and is not assessed to land revenue. The expression "village site" has not been defined in the Himachal Act. But it is well-known that village site is that area which is known as Abadideh and over which the houses of the residents of the village are situated, together with small plots attached in which cattle are penned and manure is stored. Such area is given one Khasra No. The lands occupied by the petitioners are comprised in different Khasra Nos. They are not located in Abadideh. The lands do not fall within the meaning of the expression "village Site" as used in section 5 of the Himachal Act. The provisions of section 163 apply to the lands occupied by the petitioners.

(15) Another contention of the learned counsel for the petitioners was that Section 163 of the Himachal Act was not applicable to the lands in dispute as

they were public property and not Government lands and vested in the Gram shbha u/s 39 of the Himachal Pradesh Panchayat Raj Act. The respondents have produced copies of Jamabandi relating to the lands in dispute .These copies are annexures A to E. The lands are recorded as owned by the Government in the Jamabandis. The entries in the Jamabandi are presumed to be correct. It is, Therefore, to be held that the lands, in dispute, are Government lands. In a popular sense and in common parlance, Government land may be called as public property. But in law Government is distinct and separate from the public and Government property is not public property. The Government is a legal entity. It can own property, enter into contracts and sue or to be sued The Government property in law, belongs to the Government and not to the public at large. The lands, in dispute were Government land and not the public property. They did not vest in the Gram Sabha which, Therefore, had no power or authority to grant leases of the lands to the petitioners, assuming without deciding, that the Gram Sabha had. in fact," granted leases to the petitioners The provisions of Section 163 were applicable to the land in dispute which were Government lands.

(16) The last contention, urged, on behalf of the petitioners, was that the proceedings u/s 163 of Himachal Act had been taken behind back of the petitioners and thus the principle "of natural justice that nobody should be condemned unheard had been violated. The original record of the proceedings, u/ s 163, was sent for. The record shows that show cause notices had been issued .to the petitioners and they had appeared before the Revenue officer and made statements. The petitioners had admitted that the lands in dispute belonged to the Government. They had requested that may be allotted alternative sites. It is clear that the petitioner had been afforded a reasonable opportunity of presenting their cases, and that there was no violation of any principle of natural justice.

(17) All the contentions, urged, on behalf of the petitioners, fail. The writ-petition is dismissed with costs. Lawyer"s fee is at Rs. 100.