

(1996) 11 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1229 of 1980

Mohinder Singh and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13, 7

Citation : (1997) 115 PLR 704 : (1997) 2 RCR(Civil) 593

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : K.S. Doad, for the Appellant; P.S. Chhinna Sr. Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Mohinder Singh and others have filed the present writ petition under Articles 226/227 of the Constitution of India for the issuance of the directions for the quashment of the impugned orders (Annexure P1, P3 to P6) against the State of Punjab, Gram Sabha/Gram Panchayat, Chharbar, Tehsil Rajpura, District Patiala, and District Development and Panchayat Officer, Patiala alleging that they are the residents of village Chharbar and in continuous possession of the land measuring 4 Bighas 15 Biswas, comprised in Khasra Nos. 206/217 situated in the revenue limit of village Chharbar, Tehsil Rajpura. In the year 1973 the Gram Panchayat (respondent No. 2) tried to take forcible possession of the land in dispute treating it as a Shamilat Deh. The petitioners approached the Civil Court, which vide judgment Annexure P1 held that the petitioners could not be dispossessed except in due course of law. After the decision of the Civil Court the Gram Panchayat instituted the proceedings u/s 7(2) Punjab Village Common Lands (Regulations) Act 1961 (hereinafter referred to as "the Act") for the eviction of the petitioners from the Shamilat land and the Assistant Collector Grade-I, Rajpura, after accepting the evidence, came to the conclusion that the petitioners are in possessions of the land in dispute from

1948 to Rabi 1974 as reported by the Patwari. The Patwari reported that the share of the petitioners comes to 32 Bighas and 8 Biswas in the Shamilat land. Therefore, the Assistant Collector ordered that the petitioners are in cultivating possession of the land measuring 32 Bighas and 8 Biswas prior to 26th January, 1950 and the application u/s 7 of the Act was rejected vide order Annexure P2. against the order dated 27th February, 1975 (Annexure P2) both the Gram Panchayat and the petitioners filed an appeal before the collector, who vide order dated 12th June, 1975 (Annexure P-3) accepted the appeal of the Gram Panchayat. The petitioners then filed a revision before the Commissioner, who dismissed the same vide order dated 5th December, 1977 (Annexure P4). Thereafter the petitioners filed an application u/s 11 of the said Act, claiming right in the Shamilat land but their application was rejected vide judgment dated 22nd August, 1979 (Annexure P5) passed by the District Development and Panchayat Officer, Patiala. The petitioners filed an appeal before the Joint Director, Panchayats, Punjab, who vide Judgment dated 7th March, 1980 (Annexure P6) rejected the appeal of the petitioners. It is alleged by the petitioners that the orders Annexures P1, P3 to P6 are illegal, unconstitutional and against the principles of natural justice because the copies of the Jamabandis and the revenue records clearly show that the petitioners are in continuous possession of the land in dispute since Rabi 1950 and even prior to that. In support of this contention the petitioners have relied upon Annexures P7 to P10.

2. According to the petitioners the land in dispute does not fall within the definition of Section 2(g) of the Act; rather it comes within the exception as the petitioners are in individual cultivating possession before the appointed date, i.e. 26th January, 1950. It has also been averred that the judgment of the Civil Court (Annexure P1) could not determine the rights of the petitioners in the Shamilat Land as the jurisdiction of the Civil Court was barred u/s 13 of the said Act. The land in dispute is in the possession of the petitioners since 1948 and as such the judgment of the Civil Court, which has been relied upon by the different authorities, cannot be acted upon. Hence the writ petition.

3. Contest to the writ petition has been given by the respondents, who have relief upon the judgment (Annexure P1) by stating that the petitioners have concealed the material facts. They have been held to be trespassers and in these circumstances they are not competent to invoke the provisions of Articles 226/227 of the Constitution of India. On merits it was stated by the respondents that the petitioners were not in continuous possession of the land since 1948; rather the land is a Shamilat Deh as defined in Section 2(g) of the Act. The petitioners themselves approached the Civil Court and now they cannot turn round to challenge the jurisdiction of the Civil Court. The impugned orders are legal and in accordance with the provisions of law. It is proved on the record that the petitioners are not in possession of the land in dispute prior to the year 1950 and the findings given by the different authorities are based on evidence, which cannot be interfered at this juncture.

4. I have heard Shri K.S. Doad, Advocate, on behalf of the petitioners, and Shri P.S. Chhinna, Senior Deputy Advocate General, Punjab, on behalf of the respondents, and with their assistance have gone through the record of this case.

5. In this case facts are not disputed. Both the parties are relying upon various documents/annexures placed by the petitioners on record. A perusal of the judgment dated 17th May, 1973 (Annexure P1) passed by the Additional District Judge, Patiala, shows that Sarvshri Mohinder Singh and others filed a suit for injunction against the Gram Panchayat, praying that the defendants be restrained from interfering with their possession with regard to the land measuring 43 Bighas 12 Biswas comprised in Khasra Nos. 206 and 216 and it was the categorical stand of the petitioners in the suit that the land in dispute had fallen to their share and they are cultivating the same since 26th January, 1950 and that the defendant-Gram Panchayat had nothing to do with it and could not auction the sale of the trees standing on this land. This claim of the plaintiffs was specifically denied by the defendants. Issue No. 1 of the suit was to the effect whether the plaintiffs were in cultivating possession of the suit land as co-owners. The Court of the Additional District Judge in appeal vide judgment dated 17th May, 1973 while disposing of issue No. 1 categorically held that the plaintiffs (now petitioners) are in possession of the land, but not as co-owners. It was also held by the Civil Court that the petitioners cannot be evicted from the land in question except in due course of law, and as a result of that the appeal of the present petitioners was allowed. The findings of the Additional District Judge with regard to the co-ownership went against the plaintiffs (now petitioners) and the plaintiffs did not challenge the judgment (Annexure P1) in the second appeal. After the passing of the judgment, the Gram Panchayat, rather adopted the legal method u/s 7 of the Act and vide order dated 27th February, 1975 (Annexure P2) it was held by the Assistant Collector Ist Grade, Rajpura, that the petitioners were liable to be evicted from the land measuring 15 Bighas 7 Biswas out of the total area of 47 Bighas and 15 Biswas. The present petitioners produced copies of the Khasra Girdawaris for the year 1948-49 to Rabi 1974 and after considering all these factors on record, the above findings were given vide order dated 27th February, 1975 (Annexure P2).

6. Both the parties were not satisfied with the order dated 27th February, 1975 (Annexure P2) and they came up in appeal, which was disposed of vide order dated 12th June, 1975 (Annexure P3) passed by the Collector, Patiala, who categorically held that by placing reliance on the judgment of the Civil Court that it has been proved that the petitioners are in possession of the land from the year 1967 to 1971; meaning thereby that their claim with regard to the possession prior to 26th January, 1950 was duly considered and was rejected. In this regard I am inclined to refer to the operative portion of the order dated 12th June, 1975 (Annexure P3), which runs as follows:-

"I have heard the parties at length and gone through the record and find that in Civil Appeal No. 329 of 9/11/1972 decided on 17/5/1973 by the Additional

District Judge (I), Patiala. Sarvshri Mohinder Singh, Sohan Singh, Pala Singh and Bhajan Singh were found to be in possession of land from the year 1976 to 1971 and were found to be trespassers, who could be ejected through the procedure laid down by law. The learned A.C. Ist Grade has over looked the judgment of the Civil Court on the ground that Sarvshri Mohinder Singh, who had failed to produce any evidence pertaining to their cultivation on or before 26/1/1950 to 1957-58 before the Civil Court had produced before him the record relating to Panchayat land under their cultivation on or before 26/1/1950 and so he decided the case on the basis of the evidence produced before him. The learned A.C. Ist Grade failed to detect that the copies of Girdawari were forged. The claim of possession prior to 1950 fails and the respondent seems to have abetted offence of forgery. The Civil Court judgment in favour of Gram Panchayat is based on correct appreciation of record and the Assistant Collector Ist Grade should not have ignored the same. The Patwari who gave wrong copies should be brought to book. In order to curb this tendency amongst the field staff, such cases could be dealt with firmly. The A.C. Ist Grade should look into the conduct of the concerned Patwari on this particular case and send a report within two weeks."

This order was again challenged by the present petitioners before the Additional Commissioner, Patiala, who vide judgment dated 5th December, 1977 (Annexure P4) affirmed the findings of the Collector. The petitioners did not further challenge the order Annexure P4 in any writ petition. Rather, they adopted a remedy which was uncalled for by moving an application u/s 11 of the Act. In fact, the prayer contained in the application u/s 11 was a defence which was availed of by the present petitioners in the proceedings u/s 7 of the Act filed by the Gram Panchayat. Their claim of right, title or interest in the disputed land had already been adjudicated by the Collector and the Additional Commissioner vide Annexures P3 and P4, respectively, and to some extent vide Annexure P2. The application u/s 11 of the Act also failed vide order dated 22nd August, 1979 (Annexure P5) and the appeal also failed vide order dated 7th March, 1980 (Annexure P6).

7. In the light of the aforesaid background, the present writ petition is also liable to be dismissed because once the rights of the parties have been adjudicated in a correct manner by the competent authorities in the proceedings u/s 7 of the Act. those findings cannot be disturbed unless it is pointed out that there is a patent illegality or error of jurisdiction committed on the part of the authorities, who passed the various orders. The case of the present petitioners throughout was that they were in possession of the entire land prior to 26th January, 1950 in the capacity of co-owners and this aspect of the case was declined after proper appreciation of the evidence. Support has been derived by the learned counsel appearing on behalf of the petitioners from the documents Annexure P7, Khasra Girdawaris for the years 1950-51 to 1955-56; Annexure P8, Jamabandi for the year 1956-57; and Annexure P9, Khasra Girdawaris for the years 1962-63 to 1965-66, in order to establish the continuous possession of the petitioners prior to 26th January, 1950. This evidence was discussed by the Collector, who

categorically held that the copies of the Girdawaris relied upon by the petitioners were forged and the claim of possession prior to 1950 also failed. So much so, the authorities under the Act could not wash out or supersede the findings which were recorded by the Civil Court. Before the Civil Court the petitioners were categorical in their stand regarding their individual possession on the basis of ownership and it was held only that they were trespassers but in established possession. Their plea of title which was discussed under issue No. 1 of the judgment of the Civil Court was totally declined. Now it is being contended before me that the Civil Court had no jurisdiction to entertain the matter in view of Section 13 of the Act. This plea of the petitioners cannot be accepted because it is a settled law that the question of title can always be adjudicated upon by the Civil Court. The petitioners were filing the suit for injunction on the basis of their title and possession. Their plea of ownership failed. Secondly, the petitioners cannot be permitted to blow hot and cold in the same breath. They themselves approached the Civil Court and did not think it proper at the first instance to move the application u/s 11 for the determination of their right, title or interest, if any, in the land in dispute. Once the finality has been given to the order dated 5th December, 1977 (Annexure P4), the petitioners cannot legally avail the remedy u/s 11 of the Act once they have availed it in their defence u/s 7 thereof. Assuming for the sake of argument, the petitioners were permitted to file the application u/s 11 of the Act, still their claim, if any, with respect to the land in dispute has been rightly considered and rejected both by the Collector as well as by the appellate authority, i.e., the Additional Commissioner. The petitioners have failed to prove that their case is covered under the exception to Section 2(g) of the Act.

8. In view of the concurrent findings of the different authorities under the Punjab Village Common Lands (Regulation) Act, 1961, that the land in dispute is a Shamilat Deh and it vested in the Gram Panchayat/Gram Sabha, the present writ petition is bound to fail and is hereby dismissed with no order as to costs.