
(2013) 11 P&H CK 0290

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 13145, 13147 and 13915 of 2009

Mohinder Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 174 PLR 133

Hon'ble Judges : Rakesh Kumar Jain, J; Rajive Bhalla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—This order shall dispose of three writ petitions namely, CWP No. 13145 of 2009 titled as Mohinder Singh v. State of Punjab and others (for short "1st Petition"), CWP No. 13147 of 2009 titled as "Vinay Kumar Gupta v. State of Punjab and others" (for short "2nd petition") and CWP No. 13915 of 2009 titled as "Balwinder Singh v. State of Punjab and others" (for short "3rd petition"), as they involve adjudication of a similar question of law based on identical facts. The Gram Panchayat of village Begowal, filed applications u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act"), for eviction of the petitioner in the 1st petition from land measuring 4 Kanals 9 Marlas, in the 2nd petition from land measuring 12 Kanals and in the 3rd petition from land measuring 7 Kanals 16 Marlas, pleading that the petitioners in all the aforesaid petitions, are in unauthorised possession over land belonging to the Panchayat whereas, the petitioners' stand in the written statement was that as the land in dispute has fallen within territorial limits of Municipal Council, Mukerian, by virtue of a notification issued by the Punjab Government, the Gram Panchayat is left with no right, title or interest either to file or to maintain an application u/s 7 of the 1961 Act.

2. The District Development and Panchayat Officer, Hoshiarpur, vide order dated 9.7.2007, allowed the application of the Gram Panchayat, by observing that the petitioners) have failed to produce any evidence that the land in dispute has

been included in Municipal Council, Mukerian. It was also observed that even if, it is assumed that the land has been transferred to the Municipal Council, Mukerian, but as the petitioners are in unauthorised possession, they can be evicted on an application filed u/s 7 of the Act.

3. The petitioner(s) filed a statutory appeal u/s 7(2) of the Act, before the Joint Development Commissioner, along with an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (for short CPC), to produce a copy of voter list of 2008 of Ward No. 10, copy of notification issued by Punjab State Election Commissioner handigarh, in respect of Mukerian Block.

4. The Appellate Authority, dismissed the appeal vide order dated 3.10.2008, holding that even if land in dispute has been included in Municipal Council, Mukerian, the petitioner(s), being in unauthorised possession, can be evicted on an application filed u/s 7 of the Act.

5. Counsel for the petitioner contends that with issuance of notification u/s 5(1) of the Punjab Municipal Act, 1911, read along with Section 3(4) of the Punjab Panchayati Raj Act, 1994, the Gram Panchayat ceases to exist and common land of the Gram Panchayat vests in a Municipal Council. The Collector, exercising power u/s 7 of the 1961 Act, can no longer order the petitioner's eviction or put the Gram Panchayat in possession. The impugned orders, passed by the Collector and the Appellate Authority, exercising power under the 1961 Act, are, therefore, without jurisdiction. It is further submitted that findings recorded against the petitioner(s) about their unauthorised occupation, are not based upon any evidence and may, therefore, be set aside. Counsel for the Municipal Council admits that the land, in dispute, has fallen within municipal limits and vests in the Municipal Council, but argues that as petition u/s 7 of the 1961 Act was already pending, when the notification was issued and the petitioners have no right, title or interest in the land, in dispute, the writ petitions may be dismissed.

6. We have heard counsel for the parties and perused the impugned orders.

7. Before we answer the question posed, it would be necessary to record that we are not dealing with repeal of an enactment or omission of a statutory provision but the effect on pending eviction proceedings of a notification including the sabha area of the Gram Panchayat, within municipal limits.

8. An answer to the question posed would require an appraisal of relevant facts and provisions of the Punjab Panchayat Raj Act, 1994 (hereinafter referred to as "the 1994 Act") and the 1961 Act.

9. The land, in dispute, was Shamilat Deh, that vested in Gram Panchayat of village Begowal. The Gram Panchayat filed an application, u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act") on 29.3.2005, seeking eviction of the petitioners and others. Admittedly, during pendency of this application, the State of Punjab issued a notification, dated 13.6.2005, u/s 5(1) of the Punjab Municipal Act, 1911

(hereinafter referred to as the "1911 Act"), declaring that sabha area of Gram Panchayat, Begowal shall be included within territorial limits of Municipal Council, Begowal. It is not denied that mutation No. 3325, recording change of ownership from the Gram Panchayat to the Municipal Council, Mukerian, was recorded by revenue authorities. The Collector and the Appellate Authority while ordering the petitioner's eviction, have held that as the petitioners are unauthorised occupants, the notification issued under the 1911 Act, is irrelevant.

10. A Gram Panchayat was constituted as an administrative unit, capable of holding property under the Punjab Gram Panchayat Act, 1952. The said enactment was subsequently repealed and reenacted as the Punjab Panchayat Raj Act, 1994. The "Shamilat Deh" of a village, as defined u/s 2(g) of the 1961 Act, vests in a Gram Panchayat under Sections 3 and 4 thereof. Section 7 of the 1961 Act, enables a Gram Panchayat, to seek eviction of an unauthorised occupant in possession of "Shamilat Deh", and empowers the Collector, to put the Gram Panchayat in possession of land in "Shamilat Deh". Section 7 of the 1961 Act reads as follows:--

7. Power to put panchayat in possession of shamilat deh.--(1) The Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such inquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the Collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim u/s 11 and the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim u/s 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the panchayat in possession of the land or other immovable property in the shamilat deh.

(2) An appeal against the order of the Collector under sub-section (1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against.

11. A perusal of Section 7 of the 1961 Act reveals that a Collector exercises power u/s 7 of the 1961 Act to put a "Gram Panchayat" in possession of land or other immovable property in the "Shamilat Deh" of a village which vests or is

deemed to have vested in a Gram Panchayat under the 1961 Act.

12. Upon issuance of a notification u/s 5(1) of the Punjab Municipal Act, 1911, including the sabha area of a Gram Panchayat within municipal limits, section 3(4) of the 1994 Act, comes into effect, bringing to an end the Gram Panchayat as an administrative unit and leads to a statutory vesting of its assets in a Municipal Council. Section 3(4) of the Punjab Panchayati Raj Act, 1994, reads as follows:--

13. Section 3. Establishment of Gram Sabha areas.

(1) XX XX XX

(2) XX XX XX

(3)(i) XX XX XX

(ii) XX XX XX

(iii) XX XX XX

(iv) XX XX XX

(v) XX XX XX

(vi) XX XX XX

(vii) XX XX XX

(4) If whole of the Gram Sabha area is included in an urban estate to which the provisions of the Punjab Municipal Act, 1911 or the Punjab, Municipal Corporation Act, 1976, are applicable or in a city, municipality, cantonment, or Notified Area under any law for the time being in force, the Gram Sabha and the Gram Panchayat for that area shall cease to exist and the assets and liabilities of the Gram Panchayat shall be disposed of in the prescribed manner.

14. The net result of a notification issued u/s 5(1) of the Punjab Municipal Act, 1911, read with section 3(4) of the 1994 Act is that the Gram Panchayat ceases to exist, the "Shamilat Deh" of a Gram Panchayat no longer vests in a Gram Panchayat, provisions of the 1961 Act no longer apply and, therefore, a Collector exercising power, u/s 7 of the 1961 Act, to put a Gram Panchayat in possession of land in "Shamilat Deh", that vests or is deemed to have vested in a Gram Panchayat under the 1961 Act, can no longer pass an order putting the Gram Panchayat in possession. It is true that rights of parties to a pending lis are crystallised on the date of commencement of the lis but as the Gram Panchayat has ceased to exist and can no longer be put in possession, a petition u/s 7 of the 1961 Act, cannot continue. We, therefore, hold that if during pendency of proceedings u/s 7 or 7-A of the 1961 Act, the Gram Panchayat ceases to exist as a result of the sabha area being included within municipal limits, the Collector or the Appellate Authority can no longer proceed with a petition or an appeal u/s 7 or 7-A of the 1961 Act. In view of what has been recorded hereinabove, the writ

petitions are allowed and the impugned orders are set aside with liberty to the Municipal Council, to file a petition under the Punjab Public Premises Act, 1973, for eviction of the petitioners. In case such a petition is filed, it shall be considered and decided, within three months of its presentation.