
(2009) 02 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16665 of 2007

Molu Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7

Citation : (2012) 4 RCR(Civil) 436

Hon'ble Judges : Tirath Singh Thakur, C.J.;Jasbir Singh, J

Bench : Division Bench

Advocate : C.B. Goel and Mr. Nitin Jain, for the Appellant; Rameshwar Malik, Addl. A.G. Haryana, Mr. Rahul Sharma, Advocate for Respondent No. 6 and Mr. Sudhir Mittal, Advocate for Respondent No. 7 to 79, for the Respondent

Judgement

Jasbir Singh, J.—Petitioners are the residents/proprietors of the village Karah district Kurukshetra and they have filed this writ petition with a prayer to issue directions to the official respondents to lease out shamlat deh land, (which is under the ownership of the Gram Panchayat), through open auction. It is their averment that respondents No. 7 to 79 are in unauthorized occupation of shamlat land measuring 3 72 acres. Inaction, on the part of the Gram Panchayat, in not evicting them, from the land in dispute, has been averred. It has further been stated that in routine, one acre of land will fetch minimum Rs. 6000/- towards lease amount per year. The private respondents are not paying any rent to the Gram Panchayat. Briefly, it is case of the petitioners that the above said land was leased out in favour of respondents No. 7 to 79 in the year 1955 for a period of 20 years i.e. upto 1975. However, the private respondents, on expiry of lease period, did not vacate the land, in dispute. Efforts, to evict them, through process of law, were initiated in the year 1979. They were ordered to be ejected by order dated 30.1.1979. Appeals filed by respondents No. 7 to 79 were dismissed on 8.5.1979. Above said orders have attained finality. Even after lapse of more than 32 years, the private respondents are still continuing with their unauthorized occupation of the land, in dispute and the gram Panchayat has

made no effort to lease out the same in open auction. By stating as above, a prayer has been made to direct respondents No. 2 to 6 to lease out 372 acres of shamlat land in open auction.

2. Upon notice, two separate replies have been filed by respondent No. 6 and respondents No. 7 to 79, wherein, by making reference to the past litigation, inter-se the Gram Panchayat and respondents No. 7 to 79, it has been stated that in three earlier rounds of litigation, the Gram Panchayat had failed to prove that the above said respondents were in unauthorized occupation on the land, in dispute. The private respondents have also stated that the Gram Panchayat has further failed to prove that initially land in question was leased out to them for a period of 20 years only. Copies of the orders allowing writ petitions filed by the private respondents, on three earlier occasions have been placed on record as Annexures R7/1 to R7/3. A prayer has been made that this writ petition, having no substance, be dismissed.

Counsel for the parties heard.

3. Admittedly, land measuring 372 acres, is shamlat land under ownership of the Gram Panchayat. The same was leased out in favour of respondents No. 7 to 79, by the State government, under the national "Grow More Food Scheme". The land was however remained uncultivated and was leased out, @ Rs. 5/- per acre per year, to the private respondents. In the previous litigation, and even now, it is the case of the respondent-Gram Panchayat that the lease period was 20 years and the same had expired in the year 1975. It has also come on record that after the year 1975, the Gram Panchayat did not accept the lease amount, however, the private respondents, for some period, deposited the lease amount in the account of the Gram Panchayat in Cooperative Bank at Cheeka. It was the contention of the private respondents that when land was leased out to them, subject to their making it cultivable, a promise was made that they shall remain in possession till such time they continue to pay the lease money. It has come on record that the Gram Panchayat had initiated ejectment proceedings against the private respondents which culminated in an ejectment order against them on 30.1.1979. They were also directed to pay damages for use and occupation of the land in question. Their appeals were dismissed on 8.5.1979. They came to this Court by filing various writ petitions, which were allowed vide order dated 14.11.1979 (R7/1). This Court on a question of fact, found that the Gram Panchayat had failed to prove that the lease in favour of the private respondents was for a period of 20 years and the same had expired in the year 1975. This Court held that the Gram Panchayat had failed to show that at what point of time, did the possession of the private respondents become unauthorized. However, vide judgment, referred to above, the Gram Panchayat was given liberty to initiate eviction proceedings against the private respondents as per law.

4. The Gram Panchayat then made another attempt for ejectment of the private respondents by asserting that their lease period had come to an end in the year 1975 and that they were sitting over the land, in dispute, without any

authorization. Their ejectment was ordered. The private respondents came to this Court by filing CWP No. 3486 of 1981, which was allowed vide order dated 6.11.1990 (R7/2) for those very reasons, which were the basis of passing an earlier order, in their favour, in CWP No. 1707 of 1979 on 14.11.1979.

5. The third attempt, to eject the private respondents, was again made by the Gram Panchayat in the year 1993. To the application filed against them, for their ejectment, they raised preliminary objections, that the application was not maintainable. Their objections were rejected vide order dated 19.6.1993. An appeal filed by them was also dismissed, which resulted in their filing CWP No. 9785 of 1993. In the said writ petition, it was averred by the private respondents that in view of the two earlier orders passed by this Court, a third application for their ejectment, was not maintainable being barred by the principles of res-judicata. In this Court, it was specifically averred by the private respondents that they were not in unauthorized occupation of the land, in dispute, as they were occupying the land in question as lessees. The Court, vide order dated 5.4.1994 (R7/3), noted the earlier litigation between the parties and other facts, as mentioned in earlier part of this order and observed as under:-

Admittedly there is no written instrument of lease. The alleged lease was created by the State government before coming into force of the Punjab Village Common Lands (Regulation) Act, 1961 and framing of Rules thereunder particularly relating to those governing lease granted by the Gram Panchayat. It has been held in the various decisions to which reference has already been made that the petitioners are in possession as lessees and the lease in their favour has not been determined according to law. This finding has become final between the parties. If the Gram Panchayat wants to proceed for the eviction of the petitioners, it is necessary for them :-

- (a) to ascertain the terms of the lease granted by the State Government.
- (b) to ascertain whether the State Government was competent to grant lease in respect of the land vesting in the Gram Panchayat; and
- (c) to determine the lease in accordance with law before applying for ejectment of petitioners u/s 7 of the Punjab Village Common Lands (Regulation) Act.

Unless the Gram Panchayat takes action as spelt out above, the decisions rendered by this Court will continue to operate as resjudicata and it will not be possible for the authorities under the Punjab Village Common Lands (Regulation) Act to evict the petitioners. The present petition is accordingly disposed of with the above observations making it clear that it is open to the Gram Panchayat to determine the lease according to law and then take further appropriate action in accordance with the provisions of the Punjab Village Common Lands (Regulation) Act, 1961.

6. It is common ground that nothing was done by the Gram Panchayat after the above. It is a case of total inaction on the part of the members of the Gram

Panchayat, including Sarpanch etc. not to make any effort to safeguard the interest of the Gram Panchayat. By order dated 5.4.1994, it was specifically observed by this Court that after ascertaining terms of the lease granted in favour of the private respondents, whether the State government was competent to grant lease in regard to land of the Gram Panchayat and after terminating the lease in favour of the private respondents as per law, the Gram Panchayat may move an application for their ejectment. No effort was however made in that regard. It has also come on record that without paying any rent, whatsoever the private respondents are occupying over the land, in dispute, since the year 1975.

7. Contention of counsel for the private respondents, that the lease is for unlimited period, cannot be accepted. The private respondents have failed to place on record the terms and conditions of the lease deed in their favour, which are not even known to the Gram Panchayat. It is an admitted fact that possession of the land, belonging to the Gram Panchayat, was transferred to the private respondents by the then State of Punjab under the "grow more food campaign".

8. In the circumstances, therefore, we feel that it is a case where directions are required to be issued to the Deputy Commissioner, Kurukshetra to look into the matter and to ascertain as to what were the terms and conditions under which possession of the land was transferred in favour of the private respondents and whether State government was justified in transferring by way of a lease of land, which was under the ownership of the Gram Panchayat, to the private respondents. After ascertaining the facts, if the Deputy Commissioner is satisfied that a lease was created in favour of the private respondents, he shall ask the Gram Panchayat to terminate/determine that lease in accordance with the provisions of law. After terminating the lease, if any, the Gram Panchayat be directed to file an ejectment application against the private respondents. This exercise be started by making a reference to the official documents in possession of the State government. The private respondents be also directed to produce any document in proof of creation of the lease in their favour. The Deputy Commissioner is directed to do the needful within a period of" three months from the date of receipt of a copy of this order.

9. Gram Panchayat and the private respondents, through their counsel, are directed to appear before the Deputy Commissioner concerned on 12.3.2009. Registry is directed to send a copy of this order, alongwith a copy of the writ petition, to the Deputy Commissioner who is directed to depute a responsible officer, preferably the Block Development and Panchayat Officer of the block concerned, to monitor the ejectment proceedings.

With these observations, this writ petition is disposed of.

No costs.