
(2004) 01 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1990 of 1984

Mukhtiar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13

Citation : (2004) 137 PLR 734 : (2004) 2 RCR(Civil) 575

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Arun Jain and C.B. Goel and Vijay Dehiya, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Challenge in the present petition filed under Article 226 of the Constitution of India is to order, Annexure P-2 dated 13.3.1984 passed by the Collector, Kurukshetra vide which appeal preferred by the petitioner herein against the order dated 25.11.1983 was dismissed and even though not specifically stated, the suit of the Member Panchayat of Gram Panchayat Baleri filed u/s 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") was decreed.

2. Brief facts of the case would reveal that Gram Panchayat Bhaleri filed a title suit u/s 13-A of the Act seeking a decree for declaration that it was the owner of the land, subject matter of the dispute. During the currency of the suit, the Gram Panchayat maintained an application for grant of stay. Learned Assistant Collector, before whom the matter came up for hearing on 16.12.1983, granted stay only with regard to the land measuring 5 kanals 2 marlas and not regarding the remaining land, subject matter of suit. Aggrieved, the petitioner herein filed an appeal before the Collector with the result already indicated above.

3. Mr. Jain, learned counsel representing the petitioner, vehemently contends that the appeal filed by the petitioner was only against the interim order dated

16.12.1983, granting stay to the respondent-Gram Panchayat pertaining to the land measuring 5 kanals 2 marlas and the scope of the appeal could not go beyond the relief asked for in the appeal whereas in the present case, the suit of the Gram Panchayat has been decreed. On the first blush, argument raised by learned counsel, as noted above, not only looks to be attractive but also unassailable, but when the facts are examined in some detail, the contention aforementioned, would pale into complete insignificance. It appears from the records of the case, and in particular Annexure P-2, that during the pendency of the appeal, Naib Tehsildar, Ladwa, SDO Incharge, Social Education and Panchayat Officer, Ladwa, Kanungo, Incharge, Revenue Patwari, Incharge, Lambardar Shri Babu Ram, Shri Telu Ram, Sarpanch, Bhaleri, Shri Raghbir Singh, Sarpanch, Halapur and other respectable people went to the spot. Sarvshri Telu Ram son of Haranam, Inder son of Hukum, Joginder Singh son of Nagina, Rassala and Mukhtiaras sons of Nagina, Tara Singh son of Kapoor Singh and Megh Raj son of Sia Ram were also present when the spot was inspected. There appears to be some mistake in the translation of vernacular of Annexure P-2 as in the order, where the presence of these persons has been mentioned, word "statement" has also been mentioned, but at the end of the sentence, there is no mention "was recorded". However, the fact remains that at the time of spot inspection, the petitioner and respondents No. 6 and 7 herein were also present alongwith other persons. The persons claiming their share in the Gair Mumkin stream earlier and in the disputed land, accepted the Panchayat as owner and submitted that because the Gair Mumkin stream has become dry, they accepted the land as Shamlat Deh. They further submitted that they are prepared to take the Shamlat land on lease next year at the rate of Rs. 200/-per acre per annum. On the basis of this development, during the pendency of appeal, the Collector, in the operative part of the order, observed thus:-

"The learned counsel for both the parties were in full agreement with this decision and when they were told by the Court that because of the stream becoming dry and this gair mumkin nadi becoming cultivable such land vests in the Panchayat as Shamlat Deh, they raised no objection."

4. It is thus apparent from the reading of the entire order, Annexure P-2, with the back ground, as mentioned above, that Annexure P-2 is conceded order. Mr. Jain, however, on the basis of the pleadings made in paragraph 3 of the petition, states that no concession was made before the concerned authority. Contention of Mr. Jain cannot possibly be accepted as not only that the official acts done, be it judicial or quasi-judicial, which has been carried out in discharge of their duties, are presumed to be true, in the present case sufficient material is available on the records that would show that concession was, indeed, made before learned Collector. In the circumstances as mentioned above, it is clear that number of persons, including the petitioner, collected at the spot, where almost every officer/official, who was concerned with the case, was present. It is significant to mention that nothing has been mentioned in the petition that there was no spot inspection in presence of so many persons, officers/officials and the

petitioner which fortifies the view of the Court that concession was, indeed, made before learned Collector. Once, it is held that the impugned order is a conceded order, no occasion at all arises to interfere with the same.

5. Finding no merit in this petition, the same is dismissed, leaving the parties to bear their own costs.