
(1988) 02 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3355 of 1979

Nar Singh

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 04-02-1988

Acts Referred:

Citation : (1988) 1 ILR (P&H) 265 : (1988) PLJ 237 : (1989) 1 RRR 282

Hon'ble Judges : M.R.Agnihotri, J

Advocate : Shri Gopi Chand, Advocate., Advocates for appearing Parties

Judgement

M.R. Agnihotri, J. (Oral)

1. In this writ petition under Articles 226 and 227 of Constitution, petitioner Nar Singh son of Jai Lal, resident of village Gobindpura, Tehsil Jagadhri, District Ambala, has approached this Court for the quashing of order dated 9th August, 1978 (Annexure P.3), passed by the Assistant Collector, 1st Grade, Naraingarh, and the appellate order dated 17th August, 1979 (Annexure P4), passed by the Additional Collector, Ambala.

2. The grievance of the petitioner is that one Banarsi Dass, respondent No. 5 had filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, against the petitioner on the allegation that the petitioner had encroached upon the Panchayat land and the same should be got vacated by dispossessing him therefrom. In response to the notice issued to the petitioner, it was pleaded before the Assistant Collector 1st Grade, Naraingarh, that the land in dispute did not belong to the Gram Panchayat and the question of title was raised as a result whereof the jurisdiction of the Assistant Collector, 1st Grade, Naraingarh, was challenged on the ground that the provisions of the said Act of 1961 were not applicable. It was further pleaded that the applicant (Banarsi Dass) had also filed a civil suit earlier in the Court of Subordinate Judge, 1st Class, Jagadhri, which was dismissed on 12th January, 1976. During the course of evidence produced before the Assistant Collector, the petitioner had produced more than half a dozen witnesses in support of his contention that the

land in dispute was not a Shamilat Chopal belonging to the village Panchayat. However, the learned Assistant Collector, finding that except the land in dispute there was no other Chopal in village, came to the conclusion that the land in dispute was obviously being used as Shamilat Chopal and allowed the application ordering Nar Singh resident petitioner to remove his possession from the land in dispute. Against this order of the Assistant Collector dated 9th August, 1978, the petitioner went up in appeal before the Additional Collector, Ambala, but the same was also dismissed on 17th August, 1979.

3. In the present writ petition, the main plea of the petitioner is that judgments of both the Courts below are against the law laid down by a Division Bench of this Court in Tara Chand and another v. Gram Panchayat and Gram Sabha Village Atil and others, 1979 R.L.R. 30, which is to the following effect :

"When the question of title was raised by the petitioners, the appropriate procedure to be adopted by him (Assistant Collector, 1st Grade) should have been either to cover himself into a Tribunal under section 13B of the Act and proceed in accordance with the procedure laid down for determination of the title or ask the petitioners raising the question of title to move appropriate petitions before him under section 13B. He could keep the proceedings under section 7 in abeyance till the final determination of the question raised before him under section 13B."

Admittedly, the learned Assistant Collector and the Additional Collector failed to act in accordance with the aforesaid judgment. Therefore, placing firm reliance on the aforesaid judgment of this Court, the learned counsel for the petitioner has contended that both the impugned orders of the Assistant Collector, 1st Grade, Naraingarh, and the Additional Collector, Ambala, are without jurisdiction.

4. In the written statement filed by respondent No. 5, Banarsi Dass, the only plea taken is that the Assistant Collector and the Additional collector were competent to pass the impugned orders.

5. I find considerable force in the contention raised by the learned counsel for the petitioner and following the law laid down in Tara Chand's case (supra) issue a writ of certiorari quashing the impugned orders dated 9th August, 1978 (Annexure P3) passed by the Assistant Collector, 1st Grade, Naraingarh, and dated 17th August, 1979 (Annexure P4) passed by the Additional Collector, Ambala. Consequently, the writ petition is allowed with no order as to costs.