

(2011) 05 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 11572 and 11573 of 1989 (O and M)

Nikka Singh (Deceased) through his LRs.

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2, 7

Citation : (2011) 163 PLR 278

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—Applications for restoration of both the cases are allowed and they are taken up for disposal.

2. Both the appeals address the same issue relating to the tenability of the order of ejectment passed by the appellate authority u/s 7 of the Punjab Village Common Lands (Regulations) Act of 1961 (for short, "the 1961 Act"). It was an admitted fact that the property had been described in the jamabandi as shamilat deh but in the action for ejectment, the contention by the respondent was that he and his predecessors had been in possession of the property over 12 years prior to the date of coming into force of 1961 Act. The Collector held that the respondents and the predecessors had been in possession of property and made reference to the revenue records of the year 1952-53, 1982 and 1983 referring to the property as being in the alleged possession of the petitioner and his predecessors. The appellate authority reversed the finding and held that the crucial period when the issue of possession was relevant, was cultivation in the hands of the petitioner or his predecessors before 26.01.1950 and the records themselves had been filed only subsequent to the said date and none of those documents helped the petitioner to contend that the property was one of the excepted categories u/s 2(g) of the 1961 Act.

3. The learned counsel for the petitioners has at least four objections to the tenability of the order impugned in both the writ petitions: (i) In an action for ejectment made by the Panchayat, when a question of title had been involved, it ought to have been referred for an adjudication u/s 11 and a summary ejectment could not have been passed. The learned counsel refers me to the language employed u/s 7 to say that whenever any person was claiming a right, title or interest of any land vested in the Panchayat, the Collector shall have jurisdiction to decide such claim in the manner prescribed. I cannot take this language as making it compulsory for the person before whom an application u/s 7 is filed. The proviso to Section 7, on the other hand, deals with a situation of how on the receipt of an application before him if a question of right, title or interest is raised by any person and a prima facie case is made thereof, the Collector shall then direct the person, who has raised such question to submit his claim u/s 11. The further proviso is that if the person that raises the question fails to submit a claim u/s 11 within the time stipulated, then the Collector shall proceed to put the Panchayat in possession of the property.

4. Before a ground to allow for a person to raise a claim u/s 11, the Collector is bound to be satisfied prima facie that there arises a question of right, title or interest and if such a prima facie case was not made, it is unnecessary for the Collector to give an opportunity for such an adjudication u/s 11. This is not without purpose, for, every action u/s 7 could be scuttled by even an unauthorized occupant taking up a plea that he has got title to the property and requiring a long adjudication relating to the title. There was no case made except a bare assertion that he and his predecessors had been in possession even 12 years prior to coming into the force of the 1961 Act. The authority was considering all the documents which had been filed before it and there was no prima facie proof made in support of such a contention and, therefore, the appellate authority was not in error in proceeding to adjudicate u/s 7.

5. The contention also is that the petition had been filed not merely by the Panchayat-union but by the Social Education and Panchayat Officer. It must be noticed that the petition described the petitioner as Gram Panchayat Nalini and if there was an officer from the Social Education and Panchayat Office, who prosecuted the petition on behalf of the Panchayat, unless it is shown that the Panchayat itself was not duly represented or the person, who was trying to represent the Panchayat was incompetent to make such a representation, I cannot allow for this contention to be taken by a person, who was resisting an action for ejectment.

6. It is also contended that an appeal had been filed after 732 days' delay, after the Collector had passed the order and, therefore, it was not competent. The learned counsel would argue that no enquiry had been undertaken to condone such a delay. The order itself reveals that the Sarpanch was undergoing imprisonment and, therefore, there was no person competent to file an appeal. The learned counsel states that any other officer could have filed the appeal. If

an explanation is given that the person most competent to prosecute the case was in some way disabled, there will not be a cause to interfere with the discretion exercised by the authority and more so, when this Court is examining the issue of the correctness of the order under Article 226 of the Constitution.

7. The appellate authority. has directed the ejectment to be issued on the ground that mere was no proof of either of the petitioners in both the writ petitions establishing that they had been in possession of the property without any payment before 26.01.1950. The teamed counsel for the petitioners states that although the documents had not been produced, the Collector has correctly considered that he and his predecessors had been in possession of the property before 26.01.1980. An act of possession which is required to be established in the action to resist ejectment cannot merely be a matter of inference without any documentary substantiation. However, the Collector had passed an order dismissing the petition by making an inference which had no documentary foundation and the appellate authority was making an interference to hold that mere had been no proof of possession prior to the crucial cut off date. It was indeed entering a finding on a point of fact which was failed to be established by the respondent resisting an action for ejectment of a property which admittedly had been classified as shamilat deh in the jamabandi.

8. The order of eviction passed by the appellate authority, under the circumstances, was, therefore, perfectly justified and I find no reason to interfere with the same. Both the writ petitions are dismissed.