
(2002) 10 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10901 of 1997

Om Parkash

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Citation : (2003) 2 ICC 875 : (2003) 2 LJR 426 : (2003) 3 LLR 424 : (2003) 3 LLR 407 : (2003) 2 LLR 407 : (2003) 1 PLJ 17 : (2003) 1 PLR 662 : (2003) 2 RCR(Civil) 3

Hon'ble Judges : Swatanter Kumar, J and S.S.Saron, J

Advocate : Mr. Ashish Aggarwal, Adv., Mr. Sanjiv Gupta, Adv., Mr. Adarsh Jain, Advocate and Mr. Satish Chaudhary, Advocate. Mr. Girish Agnihotri, Additional Advocate General, Haryana., Advocates for appearing Parties

Judgement

Swatanter Kumar, J.—By this judgment we propose to dispose of above seven writ petitions as common question of law arises for consideration in these writ petitions. For the purpose of convenience, we are referring to the facts of Civil Writ Petition No. 10901 of 1997.

2. Petitioners in all these petitions approached the High Court under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction to the respondents and declaring that land in question vests in the right holders and proprietors of the village and does not vest in the Gram Panchayat. They challenged the vires of Section 13 of the Punjab Village Common Land (Regulation) Act, 1961 for the reasons and grounds stated in their writ petitions. Petitioners claim to be proprietors and right holders in the respective villages of the land in question. In the Jamabandis for the years 194546 and 195051, they claimed that petitioners or their predecessor in interest are recorded to be owners. On 8.5.1956 consolidation of holdings took place in the village. As per the scheme of the consolidation, the land in question was reserved under Section 18 read with Section 23A of the Consolidation Act, 1948 after imposing prorata cut upon the holdings of the right holders. According to the petitioners under Section 23A only the management and control of the land in question vests in the Gram

Panchayat and ownership rights continue to remain with the proprietors. Upon amendment of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 scope thereof was sought to be enlarged and such land was sought to be vested in the Gram Panchayat. A Full Bench of this Court in the case of *Jai Singh v. State of Haryana and others*, 1995(1) RCR(Civil) 623 (P&H) (FB) : 1995 PLJ 83 struck down the amendment of Section 2(g) of the Act to be ultravires.

3. According to the respondents the land vests and is under the control and management of the Gram Panchayat under Section 23A of the Consolidation Act and they were proposing to hold auction of the land in question. Petitioners approached this Court at this stage and prayed for quashing of such steps as well as revesting/redistribution of the land back to the proprietors. The writ was admitted but stay was declined by the order of the Court dated 22.12.1997. The writ was contested by the respondents particularly Gram Panchayat who claim their action to be correct. According to them case was covered under the unamended Act and as such land would vest with the Gram Panchayat. During the pendency of these petitions, Section 13A and 13AA was inserted by an amendment to the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1999 (Haryana Act No. 9 of 1999). The said provisions read as under :

"13A. Adjudication : (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under the Act, may file a suit for adjudication, whether such land or other immovable property is shamlat deh or not and whether such land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated :

Provided that no suit shall lie under this Section in respect of the land or other immovable property, which is or has been the subject matter of the proceeding under Section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under subsection (1) shall be the same as laid down by the Code of Civil Procedure, 1908 (5 of 1908).

13AA. Appeal and revision. (1) Any person, aggrieved by an order passed under subsection (1) of Section 13A, may within a period of thirty days from the date of such order, prefer an appeal to the Commissioners in such form and manner, as may be prescribed, and the Commissioner may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

(2) The Financial Commissioner may, suo motu or on an application made to him

by any person aggrieved by an order passed under subsection (1), call for the record of any proceedings pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit :

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard."

But obvious result of these amendment is that a statutory alternative remedy is available to the petitioners of presenting their claim and having it adjudicated by a specified forum under the provisions of special enactment. Power vested in the original authority, appellate or revisional are of wide nature and there is no occasion for this Court to adjudicate upon the merits of this writ petition. The procedural amendments providing forum of adjudication would obviously apply to the pending cases.

4. Similar view was taken by another Division Bench of this Court in case of Om Parkash v. State of Haryana and others, 1998(3) RCR(Civil) 311 (P&H) : Civil Writ Petition No. 18744 of 1998 decided on 29.9.1999 where the Gram Panchayat and Government both conceded to this proposition.

For the reasons aforesated, we dispose of all these petitions while relegating the petitioners to the remedy provided under Sections 13 A/13AA. Petition(s) filed shall be dealt with and dispose of in accordance with law and expeditiously.

No order as to costs.