
(1984) 01 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1367 of 1978

Pehlad and another

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 17-01-1984

Acts Referred:

Citation : (1984) ILR (P&H) 325 : (1984) PLJ 108 : (1984) RRR 336

Hon'ble Judges : I.S.Tiwana, J

Advocate : Mr. G.S. Gandhi, Advocates., Advocates for appearing Parties

Judgement

I.S. Tiwana, J.(Oral)

1. The petitioners impugn the appellate order of the Collector dated January 10, 1978 (Annexure P.2) whereby he has upset the order of the Assistant Collector dated December 7, 1973 (Annexure P.1) passed under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the Act) upholding the possession of the petitioners on the suit land. The following facts furnish the background of the case.

2. On January 19, 1973, the respondent Panchayat filed an application under section 7 of the Act for the ejectment of the petitioners. This, however, was dismissed by the Assistant Collector vide his order dated December 7, 1973 (Annexure P.1) with the conclusion that the petitioners were in possession of that land prior to the year 1953 and it was not in excess of their share in the Shamilat land. After about four years of the passing of this order Durga Parshad and others (now respondents 4 to 9), preferred an appeal against the same before the Collector with the plea that subsequent to the passing of the abovenoted order by the Assistant Collector, they had got the suit land from the Panchayat in exchange for some other land of theirs and that exchange had been approved by the Government vide its memo No. SI(DP76/152296, dated December 22, 1976. The Collector, brushing aside the objection of the petitioners to the effect that neither the appeal before him was within time nor Durga Parshad and others had any locus standi to prefer the appeal, concluded the matter against them in the

following manner:

"After hearing learned counsel of both the parties and after going through the file of the lower court carefully I have come to this conclusion that the exhibit 1 to 23 which have been filed were not presented before the Assistant Collector First Grade, besides the exhibit which are marked they were marked by the Court of SubJudge. Hence the Gram Panchayat was not afforded any opportunity to lead evidence. This is correct that Durga Parshad at that time was not party to the case, but now he has taken the land in dispute in exchange from the panchayat in pursuance of the order of the Government and the mutation of this land has also been sanctioned in his favour. Hence his interest is also involved in the disputed land. Hence in the interest of justice, think it is necessary that the appellants should also be heard in this case. Hence I remand this case to the Assistant Collector with the order that both the parties should be given full opportunity of being heard to lead evidence and after that the case should be decided. Both the parties are directed to appear in the Court of Assistant Collector Ist Grade, Narnaul on 2.2.1978

3. After hearing the learned counsel for the parties I find that the impugned order, Annexure P. 2 is nothing but a perverse order. Under the Act, the Collector has no jurisdiction to put a particular individual Durga Parshad and others in the instant case in possession of any land on the basis of his title. It is patent that the Panchayat who admittedly had claimed some interest in the suit land neither made any grouse against the order of the Assistant Collector (Annexure P.1) nor preferred any appeal against the same. It rather having failed to secure the possession of the land in question before the Assistant Collector, transferred this land by way of exchange to Durga Parshad and others though with the approval of the Government as required by the relevant rules. This, however, did not mean that either Durga Parshad and others were not successors in interest of the Panchayat so far as this land was concerned or were not bound by the order, Annexure P.1. The observations made by the Collector that " the Gram Panchayat was not afforded any opportunity to lead evidence" and copies of the revenue record on the file of the case were not produced before the Assistant Collector, are patently baseless and against the record. As already pointed out, the Gram Panchayat at no stage made any grouse of the fact that it had been afforded no opportunity to lead any evidence. Further, it is amply clear from the contents of order Annexure p.1 that the petitioners produced copies of the Khasra Girdawaris relating to the period 1994 Bk. to 1973 AD besides Khatauni Istemal and other records of the consolidation proceedings before him in support of their case and it was on the basis of that material on record that he nonsuited the gram Panchayat. Thus order Annexure P.2 clearly suffers from nonapplicability of mind and is totally without jurisdiction.

4. In the light of the discussion above, I quash Annexure P.2. Since I have come to the conclusion that the said order is palpably unsustainable on account of nonapplicability of mind and lack of jurisdiction on the part of the Collector (Shri

T.D.Jagpal), I am of the view that the costs of this litigation should be borne by him personally. This order of his has not only been the cause of unnecessary harassment to the petitioners but has also cost quite a bit to the State exchequer in defending this petition. I determine the costs at Rs. 300/.