

(1981) 02 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1017 of 1980

Pritam Singh

APPELLANT

Vs

The Collector Sirsa and Others

RESPONDENT

Date of Decision : 16-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Village Common Lands (Regulation) Act, 1961 — Section 4(1), 4(2), 4(3), 7

Citation : (1981) 2 ILR (P&H) 375

Hon'ble Judges : J.V. Gupta, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : T.S. Sangha, for the Appellant; H.N. Mehtani, for the Respondent

Judgement

J.V. Gupta, J.—This writ petition has been filed under Articles 226 and 227 of the Constitution for quashing the orders of the Assistant Collector, Grade I. Dabwali, dated September 25, 1979 (Annexure P. 1) and the Collector, Sirsa; dated January 18, 1980, (Annexure P. 2); directing the ejectment of the Petitioner u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter called the Act) from the land measuring 12 kanals and 5 marlas comprising killa Nos. 4/2 (019), 7/2(6-0) and 14/2 (5-6), situated in village Khokhar, Tahsil Dabwali, District Sirsa.

2. The facts, in this case, are not in dispute. The Petitioner, who is in cultivating possession of the land, in dispute, claims himself to be in possession thereof since the year 1938-39 continuously without payment of rent, and consequently, claims that he is entitled to the protection u/s 4(3)(ii) of the Act, as by virtue of the said provision, the land does not vest in the Gram Panchayat, Respondent No. 3 Section 4(3)(ii) of the Act is reproduced below:

Vesting of rights in Panchayats and non-proprietors.

1. Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any

decree or order of any Court or other authority, all rights, title and interests whatever in the land.

(a) which is included in the shamilat deli of any village and which has not vested in a Panchayat under the shamilat law shall, at the commencement of this Act, vest in a Panchayat constituted for such village, and, where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted.

(b) * * * * *

2. Any land which is vested in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under this Act.

3. Nothing contained in Clause (a) of Sub-section (1) and in Sub-section (2) shall affect or shall be deemed over to have affected the--

(i) * * * * *

(ii) rights of persons who were, in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953, or the PEPSU Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cess payable thereon.

(iii) * * * * *

In the impugned order, (Annexure P. 2), the Collector has rejected the claim of the Petitioner with the following observations,--

Under Section 4(3)(ii) of the Act, any person who is in possession of land without payment of rent for the last 12 years before the Act came into force, that is, 26th December, 1953, such person cannot be ejected from shamilat. From the perusal of the above-said documents, it is clear that the Appellant was in possession of the land since the year 1942-43. But as per Exhibit D-6, copy of jamabandi for the year 38-39, Nand Singh is shown in possession. Counsel for the Appellant has argued that Nand Singh was father of the Appellant and this possession should also be counted as the Appellant's possession. I regret that as per ruling 1977 PLJ 388, the Appellant cannot be given benefit of this possession. He will be considered in possession since 42-43 only and he cannot get protection of Section 4(3)(ii) of the Act.

3. At the time of the motion hearing, Mr. Mahtani, the learned Counsel for the Gram Panchayat, relied upon a Single Bench judgment of this Court reported in Atma Ram alias Atti. v. Gram Sabha Diwana 1977 Pb. Law Journal 388. Since its correctness was doubted, the case was admitted to DB.

4. The only contention raised by the learned Counsel for the Petitioner, is that the word "persons" in Section 4(3)(ii) of the Act includes the predecessor-in-interest

as well of a person who is in cultivating possession of the land at the relevant time, that is, December 26, 1953. In order to attract the said provisions, the person concerned must be in cultivating possession of shamilat deh on the date of commencement of the 1953 Act, and he must be in such cultivating possession for more than 12 years on such commencement without payment of rent or on payment of charges not exceeding the land revenue and cess payable thereon. Though it has been found as a fact that the Petitioner has been in possession since the year 1942-43, yet he has been denied the protection of Section 4(3)(ii) of the Act, on the ground that he was not in cultivating possession for more than twelve years at the time of the commencement of the Act. In any case, the Petitioner claims that the possession prior to the year 1942-43, has been that of his father, Nand Singh, since the year 1938-39, as evidenced by jamabandi for the year 1938-39 and, therefore, his possession will also be deemed to be the possession of the Petitioner; he being his successor-in-interest. If that is so, then the possession of the Petitioner will be for more than 12 years as required under the provisions of Section 4(3)(ii) of the Act. The correctness of the following observations made in Atma Ram's case (supra) have been challenged by the learned Counsel for the Petitioner,--

Mr. Harbhagwan Singh, learned Counsel for the Appellant, has, however, contended that the period for which the predecessors-in-interest of the Appellant were in possession, as shown in the revenue record, may also be added for this purpose. There is no warrant for this course being adopted. The concession granted in this behalf is only to persons who are in cultivating possession of the shamilat deh.

5. In support of his contention, the learned Counsel for the Petitioner, further submitted that even if a person claims title by way of adverse possession, the possession of his predecessor-in-interest can be tacked in order to complete his title by adverse possession and relied upon Johan Uraon (Ekka) and Another Vs. Sitaram Sao (Bhagat) and Others, and Rajagopala Naidu and Others Vs. Ramasubramania Ayyar and Others, . Reference has also been made to the Halsbury's Laws of England, Third Edition, Volume 24, page 255 paragraph 490, which reads:

Position of person in adverse possession. A person who is in possession of land without title has while he continues in possession, and before the statutory period has elapsed, a transmissible interest in the property which is good against all the world except the rightful owner, but an interest which is liable at any moment to be defeated by the entry of the rightful owner and if such person is succeeded in possession by one claiming through him, who holds till the expiration of the statutory period, such a successor has then as good a right to the possession as if he himself had occupied for the whole period.

In the Corpus Juris Secundum, Volume 2, page 686, Section 129, also this matter has been dealt with and it has been provided inter alia that the privity required for the tacking of adverse possessions into one continuous possession is

only privity of possession, not necessarily privity of title. This privity may also exist where the successor receives his possession from his predecessor by operation of law as well as by the act of the predecessor, provided there is such continuity of possession as will prevent even the constructive intervention of the true owner.

6. After hearing the learned Counsel for the parties, we are of the considered opinion that in order to find out the cultivating possession of the persons at the commencement of the 1933 Act u/s 4(3)(ii) of the Act, the earlier possession of their predecessors-in-interest, if any, can also be taken into consideration while calculating the period of 12 years, provided it has been continuous and without any interruption. This will be in consonance with the purpose of the Act under which the exemption has been granted to those persons who were in cultivating possession at the commencement of the Act, and are generally either non-proprietors or small landowners. Moreover, under the common law as well, even a trespasser is entitled to tack the possession of his predecessor-in-interest to perfect his title by adverse possession, provided it has been continuous and uninterrupted, as held in Johan Uraon's case (supra) and Rajagopala Naidu's case (supra) Reference to Halsbury's Laws of England and the Corpus Juris Secundum, as mentioned above, is also quite relevant in this behalf.

7. In this view of the matter, the view expressed in Atma Rain's case (supra), is held to be erroneous.

8. For the reasons recorded above, this writ petition succeeds and the orders of the Assistant Collector and the Collector, Annexures P. 1 and P. 2 are hereby quashed. However, the parties will bear their own costs.

B.S. Dhillon, J.

9. I agree.