
(1995) 11 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1427 of 1994

Puran	Vs	APPELLANT
Financial Commissioner (Appeals)		RESPONDENT

Date of Decision : 16-11-1995

Acts Referred:

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

Citation : (1996) 112 PLR 523

Hon'ble Judges : T.H.B. Chalapathi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : G.S. Nagra, for the Appellant; A.S. Cheema and D.S. Chanan, for the Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Aggrieved by the order dated 1.8.1991 passed by the Financial Commissioner (Appeals), Punjab, on a petition filed by the respondents Nos. 4 and 5 u/s 15(1) of the Punjab Package Deal Properties (Disposal) Act, 1976, the petitioner has filed this petition and has prayed for quashing of the impugned order.

2. Case of the petitioner is that he purchased land measuring 58-kanals 2-marlas in village Hothian, Tehsil and District Kapurthala, on 30.9.1975 in a restricted auction held by Tehsildar (Sales), Kapurthala. The sale was confirmed by the competent authority on 14.11.1975 and the petitioner got possession of the property. After about five years, the respondents 4 and 5 filed a petition u/s 10 of the 1976 Act before the Chief Sales Commissioner for cancellation of the sale made in favour of the petitioner. This petition was dismissed by the Chief Sales Commissioner on 25.6.1981. Appeal filed by the respondents 4 and 5 against the order dated 25.6.1981 was accepted by the Commissioner, Jalandhar Division, Jalandhar, who remanded the case to the Chief Sales Commissioner for fresh decision. Once again the Chief Sales Commissioner passed order dated 9.11.1982 and dismissed the petition filed by the respondent Nos. 4 and 5. The

appeal filed by the respondent Nos. 4 and 5 against the order dated 9.11.1982 was dismissed by the Commissioner, Jalandhar Division, Jalandhar, vide order dated 14.10.1985. However, the revision petition filed by the respondent Nos. 4 and 5 has been accepted by the Financial Commissioner (Appeals) who held that the land in dispute did not belong to the Rehabilitation Department and it was the property of Gram Panchayat being Shamilat Taraf Jattan and on that premise the Financial Commissioner (Appeals) set aside the orders passed by the Chief Sales Commissioner and the Commissioner, Jalandhar Division, Jalandhar.

3. The petitioner has pleaded that the Financial Commissioner (Appeals) has no jurisdiction to set aside the sale made in his favour in the year 1975 because the same has never been challenged by any body before the competent authority. The petitioner's further contention is that the sale was effected after following the procedure prescribed in the Act of 1976 and as the respondent Nos. 4 and 5 did not raise any objection to the restricted auction of the property, they are estopped from questioning the legality of the sale. Another contention of the petitioner is that the land in dispute was not being used for the benefit of the village community and it was not a part of Shamilat Deh and, therefore, the Financial Commissioner (Appeals) has committed a serious illegality in holding that the property belongs to the Gram Panchayat. Yet another contention of the petitioner is that any dispute relating to the auction held by the Rehabilitation Department could be decided by the said Department and by none else.

4. Respondent Nos. 4 and 5 have opposed the writ petition by pleading that the land is entered as Shamilat Taraf Jattan in the Khasra Girdawari and Jamabandi and such land could not have been put to auction by the Rehabilitation Department and further that any action taken by the Rehabilitation Department is not binding on them. These respondents also pleaded that they are co-sharers of the village proprietary body and, therefore, feeling aggrieved by the action of the Rehabilitation Department, they had filed petition for protecting the property belonging to the Gram Panchayat.

5. We have heard learned counsel for the parties and have perused the record of the case.

6. One of the arguments of the learned counsel for the petitioner is that by virtue of the amendment made in the Punjab Village Common Lands (Regulations) Act, 1961 by the Amendment Act of 1995, the sales effected by the Rehabilitation Department have received statutory recognition and, therefore, on this ground alone the impugned order should be quashed. Learned counsel for the respondent Nos. 4 and 5 argued that the amendment of 1995 cannot affect the lands of the Gram Panchayat and only those transfers have been validated which were effected by the Rehabilitation Department in respect of the land not covered by Section 2(g).

7. Sections 2(g), 3(2) and (3) of the Punjab Village Common Lands (Regulation) Act, 1961, as they stand after amendment by the notification dated 8.5.1995,

reads as under:-

"2. Definitions:-

(g) shamilat deh includes -

(1) lands described in the revenue records as Shamilat Deh or Charand excluding the abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat, tarafs, patties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, drinking wells, schools or ponds situated with the sabha area as defined in Clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government u/s 23-A of the aforesaid Act;

(4a) vacant land situate in abadi deh or gora deh not owned by any person;

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;

but does not include land which: -

(i) becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi-permanent basis to a displaced person;

(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985;

(iii) has been partitioned and brought under cultivation by individual land-holders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co sharer in the shamilat deh is so recorded in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamilat, taraf, patties, pannas, and tholas and not used according to revenue records for the benefit of the village community or a part thereof for common purposes of the village;

(vi) lies outside the abadi-deh and was used as gitwar, bara, manure pit or house or for cottage industry immediately before the commencement of the Act:

(vii) is shamilat deh of village included in the fourteen revenue estates called Bhoies of Naraingarh Tehsil of Ambala District;

(viii) was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950;

(ix) is used as a place of worship or for purposes subservient thereto;

3. Lands to which this Act. applies

(2) Notwithstanding anything contained in Sub-section (1) of Section 4:-

(i) Where, any land has vested in a Panchayat under the shamilat law, but such land has been excluded from the shamilat deh under Clause (g) of Section 2 other than the land so excluded under Sub-clause (ii-a) of that clause, all rights, title and interest of the Panchayat in such land as from the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1995, shall cease and all such rights, title and interest shall vest in the person or persons in whom they were vested, immediately before the commencement of the shamlat law;

(ii) Where any land has vested in a Panchayat under this Act, but such land has been excluded from shamilat deh under Sub-clause (ii-a) of Clause (g) of Section 2, all rights, title and interest of the Panchayat in such land, as from the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1955, shall cease and all such rights, title and interest shall on or before the 9th day of July, 1985 revert in the person or persons to whom the land so excluded has been allotted or otherwise transferred by sale or by any other manner whatsoever, subject to the condition that -

(a) any sum of money realised by the Rehabilitation Department of the Government of Punjab as a result of allotment or transfer of such land shall alongwith interest at the rate of three per cent payable from the date of such allotment or transfer; or

(b) where no money was relizable by the Rehabilitation Department of the Government of Punjab as a result of allotment or transfer of such land, the amount of compensation in respect of such land as determined by the Collector, of the District in which such a land is situated along with interest at the rate of three per cent payable from the date of allotment or transfer, as the case may be;

shall be paid by the Rehabilitation Department of the Government of Punjab to the Department of Rural Development and Panchayats for on ward disbursement to the Panchayat to which such shamlat deh belonged.

(3) As soon as may be, on the commencement of the Punjab Village Common

Lands (Regulation) Amendment Act, 1995, the Department of Rural Development and Panchayats shall make a reference to the Collector of the District to determine the amount of compensation under Sub-clause (b) of Clause (ii) of Sub-section (2) and the Collector of the District shall, keeping in view the market value of the shamlat deh at the time it was allotted or transferred, determine the amount of compensation."

8. A look at the order passed by the Deputy Commissioner-cum-Chief Sales Officer, Kapurthala, shows that respondents Nos. 4 and 5 have challenged the sale of land made in favour of the petitioner on the ground that the land in dispute was a composite property and the Tehsildar should have ascertained the correct facts before auctioning the land and should have followed a different procedure. The learned Deputy Commissioner took note of the fact that the properties in question were transferred by the Central Government to the Punjab Government in the year 1960 before the coming into force of the Punjab Package Deal Properties (Disposal) Act, 1976, and the same used to be disposed of as per the Government instructions by way of restricted auction. The Commissioner, Jalandhar Division, Jalandhar, agreed that the properties transferred by the Central Government could be auctioned by way of restricted auction. The Financial Commissioner reversed both the orders only on the ground that the property has been entered as Shamilat Taraf Jattan in the revenue record. No other reason has been assigned by the Financial Commissioner for setting aside the sale in favour of the petitioner. From these orders" one thing is evident that the sale made in favour of the petitioner was not questioned by the respondents Nos. 4 and 5 before the authority constituted under the Administration of Evacuee Property Act, 1950 or the Rules framed thereunder and that the sale has not been set aside by any competent authority. Therefore, the petition filed by the respondents after 6 to 7 years of the finalisation of the bid given by the petitioner could not have been made the basis for indirectly nullifying the sale made in favour of the petitioner.

9. A look at the provisions of Section 2(g) shows that shamilat deh includes - lands described in the revenue records as shamilat, tarafs, patties, pannas and tholas and which are used according to the revenue record for benefit of the village community or a part thereof or for common purposes of the village. The revenue record does not contain any entry showing that the land described as shamilat, taraf jattan was being used for the benefit of the village community or a part thereof or the same was being used for the common purposes of the village. Therefore, it cannot be said that the property vested in the Gram Panchayat. Logically, it must be held that after transfer by the Central Government for disposal the Rehabilitation Department was fully justified in disposing of the property by restricted auction.

10. Argument of the learned counsel regarding the applicability of 1995 amendment made in the Act of 1961 also needs consideration. By virtue of the amendment in Section 2(g), Clause (ii-a) has been added and it has been

provided that the property which was shamilat deh, but has been allotted on quasi-permanent basis to a displaced person, or has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of 1961 Act, but on or before the 9th day of July, 1985, shall stand excluded. By virtue of Section 3(2), the land excluded from the definition of shamilat deh ceases to vest in the Gram Panchayat and the rights, title or interest in such property vests in the persons in whom they were vested soon after the commencement of the shamilat law. Similarly, land excluded u/s 2(g) (ia), right, title and interest of the Panchayat in such land shall cease and shall vest in the persons who have been allotted and to whom the land has been sold. The only condition subject to which this sale has been recognised is that the money realised from the sale shall be deposited by the Rehabilitation Department with the Department of Rural Development and Panchayats for onward disbursement to the Panchayat concerned. It , is thus, clear from the amended provisions of the 1961 Act that the Legislature has recognised the sales effected by the Rehabilitation Department even in respect, of shamilat land and by virtue of a deeming provision the defect, if any, in the action of the Rehabilitation Department to transfer the property by way of sale etc. have been removed. On that account also the sale of land made in favour of the petitioner way back in the year 1975 will be deemed to have been legally effected.

11. In view of the above discussion, the writ petition is allowed. The order dated 1.8.1991 passed by the Financial Commissioner (Appeals) is set aside. Consequently, the petition filed by the respondent Nos. 4 and 5 shall stand dismissed.

12. Parties are left to bear their own costs.