
(1983) 09 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 110 of 1978

Ram Chander (Died) Through LRs.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-09-1983

Acts Referred:

Citation : (1984) PLJ 76 : (1984) RRR 283

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

Advocate : Mr. Ashok Jain, Advocate for A.G. (Haryana)., Harsh Kumar, Advocates., Mr. N.K. Khosla, Mr. R.S. Mital, Senior Advocate, Advocates for appearing Parties

Judgement

K.S. Tiwana, J. (Oral)

1. Village Nandnaur, Tehsil and District Sonapat in the State of Haryana, being situated on the bank of the Yamuna, is subject to river action. Some land conforming to the provisions of section 2(g)(i) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short the Act), as in force in Haryana and amended from time to time, exists in that village. Respondent No.4, which is Gram Panchayat Nandnaur filed an application under section 7 of the Act for the ejectment of the petitioners from that land, because of their being in unauthorised occupation, before the Assistant Collector 1st Grade, Sonapat. The claim of the respondents was that the land under possession of the petitioners vests in the Gram Panchayat being Shamilat Deh. The petitioners, in reply to the notice issued by the Assistant Collector, controverted the claim of respondent No.4, stating that it was not Shamilat Deh. After enquiry under section 7 of the Act, the Assistant Collector 1st Grade, Sonapat, vide his order (Annexure P.1), holding the land to be Shamilat Deh, which vested in the Gram Panchayat, and describing the petitioners as trespassers, ordered their ejectment. In appeal before the Collector, Sonapat the petitioners did not succeed.

2. The present petition has been filed by the petitioners under Articles 226/227 of the Constitution of India, challenging the validity of the proceedings and the

impugned orders (Annexures P.1 and P.3) of the Assistant Collector 1st Grade, Sonapat and the Collector, Sonapat respectively. The Gram Panchayat, respondent No.4, in its return, reiterated its claim before the revenue authorities and maintained that the land in question was Shamilat Deh and vested in it and defended the impugned orders. The State of Haryana, also in the reply, took the same plea.

3. Shri R.S. Mittal, Senior Advocate referred to the definition of 'Shamilat Deh' in the Act and stated that the land in question does not vest in respondent No.4. He relied on a part of this definition which is:

"'Shamilat Deh' includes 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... ..".

According to the learned counsel, the land in question, at the most, can be said to have been reserved as Shamilat in village Nandnaur subject to river action and not Shamilat Deh. He has denied the title of the Gram Panchayat about the ownership of the land in question. His argument is that the Assistant Collector should have first determined the title before passing order of ejectment. In this context, he derives support from *Tara Chand and Fateh Singh v. Gram Panchayat and Gram Sabha, Atail and others*, 1979 PLJ 1, wherein it has been held that the Collector, acting under section 7 of the Act, is a Tribunal of limited jurisdiction as compared with section 13B of the Act. When a party before the Assistant Collector denies title, then he has first to take proceedings under section 13B and not under section 7 of the Act, because unless the title is determined, eviction under section 7, which presupposes the land to be Shamilat Deh cannot be appropriately ordered. In the instant case, the moment the petitioners denied the claim of the Gram Panchayat to be the owner of the land in question, on the basis that it was not Shamilat Deh, the learned Assistant Collector should have stayed his hands from summarily proceeding under section 7 of the Act. A passage from *Tara Chand's* case (supra) can be quoted here for the guidance of the Assistant Collector and Collector. In exactly the same situation, it was held in that case:

"The Assistant Collector 1st Grade conducting proceedings under section 13B is a Tribunal of wider jurisdiction as compared with the same officer under section 7. The latter is a Tribunal of comparatively limited jurisdiction. The Tribunal of limited jurisdiction cannot oust the jurisdiction of a Tribunal with wider jurisdiction even if both the Tribunals are manned by the same person. The separate statutory provisions are made for achieving the interest of justice and the parties cannot be denied their right to have their claims adjudicated from the proper forum by the officers manning such Tribunals, by adopting shortcut methods of summary enquiry. In the case in hand, the Assistant Collector 1st Grade, Sonapat, while passing orders Annexure P.2 to the petition under section

7 for the eviction of the petitioners from the land in dispute, travelled beyond the scope of his jurisdiction under that section to determine the question of title which was raised before him. When the question of title was raised by the petitioners, the appropriate procedure to be adopted by him should have been either to convert himself into a Tribunal under section 13B of the Act and proceed in accordance with the procedure laid down for determination of the title or ask the petitioners raising the question of title to move appropriate petitions before him under section 13B. He could keep the proceedings under section 7 in abeyance till the final determination of the question raised before him under section 13B. Such a procedure is to further the purpose of the amendment of the Act by avoiding unnecessary delay in the proceedings as has been occasioned in the case in hand. He could not opt for an easier course for the sake of convenience to try the case in a summary manner. The rights of the petitioners have been prejudiced by denial to try their case under section 13B in accordance with the provisions of Civil Procedure Code and this has resulted in failure of justice.

"The Assistant Collector did not resort to this procedure, but, in spite of firm denial by the petitioners of the right of the Gram Panchayat, proceeded to pass the impugned orders, presuming that the land was Shamilat Deh. The learned Collector, while dealing with the appeal, also fell in the same error to notice this.

4. Tara Chand's case (supra) completely covers this case and in the light of the ratio of that judgment, the impugned orders (Annexures P.1 and P.3) are hereby quashed. No order as to costs.

5. The learned Assistant Collector 1st Grade, Sonapat should first determine the character of the land in question, whether it is Shamilat Deh, or not, since this has been contested by the petitioners. The Gram Panchayat can have recourse to proceedings under section 7 of the Act only if these proceedings under section 13B culminate in its favour. The parties are directed to put in appearance before the Assistant Collector 1st Grade, Sonapat on the 5th day of October, 1983, who shall decide the case in the light of the principles laid down in Tara Chand's case (supra).