
(1993) 01 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4252 of 1980

Ram Rakha Singh

APPELLANT

Vs

Joint Director Panchayats, Punjab, Chandigarh and others

RESPONDENT

Date of Decision : 28-01-1993

Acts Referred:

Citation : (1993) 3 LJR 620 : (1993) PLJ 589 : (1993) 2 RRR 71

Hon'ble Judges : Ashok Bhan, J

Advocate : R.L. Sharma, Advocate., Advocates for appearing Parties

Judgement

Ashok Bhan, J. (Oral)

1. This order shall dispose of C.W.P. Nos. 4252, 4615, 4616, 4617, 4618 and 4619 of 1980, which arise out of the same order.

2. The basic facts leading to the passing of the order of ejectment against the petitioners are the same. The facts are being taken from CWP No. 4252 of 1980. Shortly stated, the facts are

Collector, Anandpur Sahib, District Ropar, respondent No. 2 issued notice Annexure P1 to the petitioner under SubSection (1) of section 4 of the Public Premises and Land (Eviction and Recovery) Act, 1973 on the premises that the petitioner was in unauthorised occupation of the public premises mentioned in the schedule of the same notice. The ground for eviction mentioned in the notice, Annexure P1, is reproduced below :

"You have entered into possession of the land otherwise than under and in pursuance of any allotment, lease or grant."

3. In pursuance of the notice, Annexure P1, petitioner filed reply, copy of which has been attached as Annexure p2. The petitioner basically took four points in his reply, which are reproduced below :

(1) That the land in dispute was such Shamlat Deh which was not liable for its

vesting in the Gram Panchayat. The same was exempt from vesting in the Gram Panchayat, in view of Section 2(g) (5) (i) to (ix) of the Punjab Village Common (Regulation) Act No. 18 of 1961.

(2) The cultivating possession of the respondents is for more than 30 years, without payment of any rent to anybody and is protected from eviction.

(3) That the respondents are occupancy tenants and are recorded in such status by custom and otherwise. At any rate the respondents are in possession for the last more than 30 years without payment of any rent to anybody.

(4) That the possession and existing right, title and interest of the respondents is protected from eviction under section 4(3) of the Punjab Village Common Lands (Regulation) Act No. 18 of 1961."

Collector, Anandpur Sahib, finally disposed of file matter in dispute vide its order dated September 1, 1979 (Annexure P3) and held that the land in dispute had been mutated in the name of Gram Panchayat and the petitioner was in unauthorised possession thereof; that the petitioner was not paying any land revenue or rent of the land to the Panchayat and as such would be deemed to be in unauthorised possession of the land, The question of title was not decided. The question as to whether the petitioner was protected from eviction under Section 4(3) of the Punjab Village Common Lands (Regulation) Act, 1961 was also not decided.

Petitioner filed an appeal against the order Annexure P3 again specifically alleging in paragraph 6 of the grounds of appeal (Annexure P4) that according to jamabandis produced on record as Annexures R1 to R6, pertaining to the years 193940, 194344, 195253, 195657, 196667 and 197172, the petitioner was in cultivating possession of the land in exercise of his occupancy rights and his possession was protected under Section 4(3) (ii) of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Regulation Act), Section 4 of this Act is reproduced below

4. Vesting of rights in Panchayat and Now proprietors: (1) Notwithstanding anything to die 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, title and interests whatever in the land;

(a) which is included in the shamlat dell of any village and which has not vested in a Panchayat under the shamilat law shall, at commencement of this Act, vest in the Panchayat constituted for such village, vest in a Panchayat on such date as a Panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a nonproprietor shall, on the commencement of the shamilat law, be deemed to have been vested in such nonproprietor.

(2) Any land which is vested in a panchayat under the shamilat law shall be

deemed to have been vested in the panchayat under the Act.

(3) Nothing, contained in clause (a) of subsection (1) and in subsection (2) shall affect or shall be deemed ever to have effected the :

(i) existing rights, title or interests of persons who though not entered as occupancy tenants in the revenue records are recorded a similar status by custom or otherwise, such as Dholdars, Bhonderdars, Butimars, Basikhuopahus, Sunjidars, Mugararidars;

(ii) rights of persons in cultivating possession of shamilat deh for more than twelve years immediately preceding the commencement of this Act, "without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."

The appeal was decided by the Joint Director for Panchayats, Punjab, exercising the powers of Commissioner, on July 24, 1980, copy of which is annexed to the writ petition as Annexure P5. The appellate authority dismissed the appeal filed by the petitioner. It was held that since the land stood mutated in the name of the Gram Panchayat and according to Jamabandis for the year 1971/72, the owner of this land is Gram Panchayat and therefore the petitioner was in unauthorised possession of the land without paying any compensation to the Gram Panchayat. The question of adverse possession was not decided. The petitioner aggrieved against the orders, annexure P3 and P5, has filed the present writ petition.

No written statement has been filed by the respondents. The main contention of the counsel for the petitioner is, that Section 4 of the Regulation Act deals with vesting of rights in Panchayat and nonproprietary. Subsection (3) of section 4 provides that nothing contained in clause (a) of subsection (1) and subsection (2) would affect or shall be deemed to have affected the rights of persons in cultivating possession of Shamlat Deh for more than 12 years immediately preceding the commencement of this Act without payment of rent or by payment of charges not exceeding land revenue and cesses payable thereon. Petitioner claims, that he has been in cultivating possession over the land in dispute for more than 12 years immediately preceding the commencement of this Act and without payment of any rent and in support of this plea, petitioner produced copies of Jamabandis for the years 1939/40, 1943/44, 1952/53, 1956/57, 1966/67 and 1971/72 wherein the petitioner or his predecessors in interest have been recorded as occupancy tenants over the land. The authorities under the Act without deciding this question of fact have ordered the ejectment of the petitioner from the land in dispute holding him to be in unauthorised possession of the land in dispute of which the Gram Panchayat was found to be the owner. The question of title, which has been raised by the petitioner, was also not decided.

I have heard learned counsel for the parties and find force in the submission of the learned counsel for the petitioner. Petitioner had produced on record, jamabandis (Annexures R1 to R6) for the years 193940, 194344, 195253, 195657, 196667 and 197172 wherein the petitioner or his predecessors in interest have been recorded as occupancy tenants over the land. If that be so, under subclause (ii) of subsection (3) Section 4 of the Regulation Act, the land in his possession could not be deemed to have vested in the Panchayat. This fact has been noticed by the Collector in its order, Annexure P3 but after recording the fact the Collector did not proceed to record a finding on this point. The Appellate did not advert to this fact at all although in ground No. 6 of the grounds of appeal, the petitioner has specifically taken this point. It was incumbent upon the authorities to decide the point as to whether in view of the provisions of subclause (ii) of subsection (3) of section 4 of the Regulation Act, the Gram Panchayat could be held to be the owner of the land in dispute or not. Since, no findings have been recorded by the authorities under the Act on this point, the orders passed by them, annexure P3 and P5 are set aside and the case is remitted back to the Collector, Anandpur Sahib, to redetermine the matter afresh and record a finding as to whether land in dispute could vest in Gram Panchayat in view of provisions of subclause (ii) of subsection (3) of section 4 of the Regulation Act and the averments made by the petitioner regarding the possession over the land in dispute for over twelve years preceding the commencement of the Act. Petitioner shall also be entitled to raise other pleas which have been raised by him in the writ petition, to which I am not adverting to at this stage as I am remitting the case for redetermination, and the Collector shall be entitled to redetermine all the questions raised before him by either of the parties.

The parties, through their counsel are directed to appear before the Collector, Anandpur Sahib, District Ropar on 15.2.1993. No costs.