

(2002) 08 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 18387 of 2002 and Civil Writ Petition No. 7751 of 2002

Ram Singh Lambardar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A

Citation : (2002) 4 RCR(Civil) 195

Hon'ble Judges : V.K. Bali, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : Sanjiv Gupta, for the Appellant; Sanjay Vashishth, D.A.G. for Respondent No. 1 and C.B. Goel, for the Respondent

Judgement

V.K. Bali, J.—Taking advantage of CWP No. 5877 of 1992 pending adjudication before the Full Bench of this Court and by briefly tracing the history as to how Full Bench came to be constituted in the matter aforesaid, petitioners secured order of admission of this writ petition which was ordered to be listed for hearing after decision of CWP No. 5877 of 1992 as also status quo re: possession by making it look like as if questions involved in this case were the same as were under adjudication in CWP No. 5877 of 1992.

2. Gram Panchayat, Sirsla, District Kurukshetra, arrayed as third respondent in the petition, takes serious exception to the admission order and vide civil miscellaneous application in hand filed u/s 151 of the CPC seeks recalling of the said order and dismissal of writ petition. It has, inter-alia, been pleaded in the application aforesaid that as a matter of fact petitioners have filed the present writ by concealing true and correct facts which were within their knowledge. They had already filed suits u/s 13-A of the Punjab village Common Lands (Regulation) Act, 1961 (for short "the Act") in May, 2001, for setting aside mutation No. 701 dated August 8, 1964 and for declaring them as owners as also for delivering them the possession of the land in dispute. Copies of suits filed by

petitioners 1,2,3 and 5 and real brothers of Jagat Ram, petitioner No. 4, namely, Subhash and Suresh, have been enclosed with the application as Annexures A-1 and A-2. It is the case of applicant-Gram Panchayat that petitioners were never in possession of land in dispute on 17.5.2001 even when civil suits were filed by them and for that they had sought a decree for possession as well in their suits, referred to above. That being so, there was no question for them to have obtained order of status-quo from this Court when they filed present petition on 17.5.2002. It has further been pleaded in the application aforesaid that the Gram Panchayat is owner in possession of the land in dispute and has been leasing out the same by public auction which is conducted every year and it is always the higher bidder who is in possession. For this year, auction was conducted in the month of May, 2002 and the persons, who had given highest bids were given possession as lessees, particulars of whom as also the area leased out as also the lease money deposited by them for one year would be depicted from Annexure A-3. A total sum of Rs. 5,46,314/- was received by the Gram Panchayat which included a sum of Rs. 38,675/- on account of electricity bills. The auction was conducted in the presence of Sarpanch, Panches besides District Development and Panchayat Officer, Block Development and Panchayat Officer and Social Education and Panchayat Officer. The proceedings of the auction have been annexed with the application as Annexure A-3. The land is being leased out for the last 40 years which would be evident from the lease/bid register maintained by the Gram Panchayat. Copy of revenue record from 1980-81 till date would demonstrate possession of respective le-sees. A copy of Jamabandi for the year 1980-81 till date would demonstrate possession of respective lessees. A copy of Jamabandi for the year" 1980-81 and the latest Jamabandi for the year 2000-01 have also been annexed with the application as Annexures A-4 and A-5. It is then pleaded that Panches of the Gram Panchayat, Sirsla, who were directly related to some of the petitioners and in connivance with them, tried to project their possession and interfere with the peaceful possession of lessees by destroying their crops which had been sown by them for which even an FIR was lodged against them. The names of Panches and their relations with the petitioners have been detailed in para No. 7 of the application. The petitioners in collusion with the Panches, who are related to them, tried to create lawlessness on account of which auction could not be conducted properly. The Gram Panchayat, in these circumstances, had to make a request to the Deputy Commissioner to provide police help. The Deputy Commissioner acceded to the request of the Gram Panchayat and provided police help. The auction was conducted on May 2, 2002 and the persons mentioned in para No. 9 of the application are stated to be the highest bidders for different parcels of land. All the lessees were put in possession and they had sown saplings of paddy and Jawar but the petitioners, who had obtained order of the status-quo on May 17, 2002, though were not in possession of the land, taking law into their own hands, destroyed the saplings sown by the lessees, who approached the police and lodged an FIR No. 254 dated June 1, 2002. It is then pleaded that mutation in favour of the Gram Panchayat was sanctioned way back in 1964 as would be

evident from the suits filed by the petitioners u/s 13-A of the Act and yet vires of Act No. 9 of 1992 were challenged simply with a view to mislead this Court and obtain order of status-quo.

3. On the facts aforesaid, prayer is made to recall order of admission and dismiss the writ petition with costs.

4. In response to notice issued by this Court in the application aforesaid, petitioners have filed reply wherein it has, inter-alia, been pleaded that vires of Act No. 9 of 1992 have been assailed as the land in dispute pertains to shamlat Patti and petitioners are proprietors. In fact, land in dispute was mutated in favour of the Gram Panchayat only on the basis of the letter and in view of the judgment of this Court in Mohinder Singh v. Commissioner, Ferozepur. The land, it is asserted, belongs to proprietors of the Patti and Gram Panchayat has sufficient land for its income and as such land comes within the definition of Bachat. Filing of suits u/s 13-A of the Act has not been denied. However, it is stated that since the present case is the one wherein the petitioners are claiming land being proprietors and the Gram Panchayat has absolutely no right, they have filed the present petition. The lease of land, it is stated, confers no right on the Gram Panchayat which has not been reserved for common purposes and, thus, could not even be leased out. The alleged lease given from time to time, as stated in the application, is stated to be matter of record. It is stated that the illegality which is being perpetuated cannot be legalised and the Gram Panchayat has no right over the land in dispute. Challenging mutation of the year 1964 in the suits u/s 13-A of the Act is admitted. It is, however, pleaded that the land in dispute belonged to shamlat Patti and has been transferred in the name of Gram Panchayat on the basis of letter of the year 1992.

5. The prayer in the reply is to dismiss the application filed on behalf of the Gram Panchayat for recalling order and dismiss the writ petition.

6. We have heard learned counsel for the parties and, with their assistance, gone through the records of the case. The burden of the petition primarily is that the petitioners, who are proprietors of village Sirsla, are in occupation of the land in dispute since long. They are co-sharers and enjoy the ownership of land in dispute without any hurdle from any quarters whatsoever. Despite the facts that petitioners are proprietors and owners of the land in dispute, Government of Haryana introduced amendment in the Act vide Act No. 9 of 1992 by virtue of which Bachat land, lying in various villages in the State of Haryana, was ordered to vest in the Gram Panchayat. It is then only the history of case as to how the challenge to Act No. 9 of 1992 came before a Full Bench and how the case has been remanded by the Hon'ble Supreme Court and is pending disposal before the Full Bench of this Court.

7. With a view to show the petitioners are proprietors, all that has been done is to annex with the petition Jamabandi, Annexure P-1 which is for the year 1960-61. It is not clear from the Jamabandi aforesaid as to whether the same

pertains to land in dispute. There is no description of property given in the body of petition. Be that as it may, Jamabandi, Annexure P-1 is of 1960-61 and it is case of petitioners themselves that land in dispute came to be mutated in "favour of the Gram Panchayat in 1964. The official respondents, who filed separate written statement, have placed on record Jamabandi for the year 1990-91 which clearly shows that the land is owned by the Gram Panchayat and is in possession of lessees. A copy of Jamabandi, Annexure R-2 has also been annexed with the written statement aforesaid which again depicts Gram Panchayat to be owner and lessee in possession. Mutation of the year 1964, as mentioned above, has been challenged by the petitioners by way of civil suits filed u/s 13-A of the Act which are pending disposal before the concerned authorities and yet vires of Act No. 9 of 1992 have been challenged in the present petition, by virtue of which land, recorded in the ownership of proprietors was to vest with the Gram Panchayat. It is in view of provisions contained in the Act aforesaid that mutation s were sanctioned in favour of Gram Panchayat. CWP No. 5877 of 1992 was filed challenging vires of Act No. 9 of 1992 by virtue of which, land vesting in the proprietors, as mentioned above, was to vest with the Gram Panchayat. In the present case, property came to vest with the Gram Panchayat. way back in 1964. Therefore, vires of Act No. 9 of 1992, in our view, have nothing at all to do with the present case, yet, by misleading the Court and by concealing material facts, petitioners obtained an order of the admission and status-quo with regard to possession on 17.5.2002. Surely, if it was a simple case of challenge of vires of Act No. 9 of 1992, no necessity at all would have arisen for the petitioners to have filed suits u/s 13-A of the Act challenging mutation of 1964. Further, petitioners were never in possession of the land in dispute which, it is proved on records, is leased out by the government to various lessees for the last 40 years. The petitioners yet maintained in this writ that they were in possession and after obtaining order of status-quo took law into their own hands by even destroying the crops sown by the lessees on the land in dispute. The petitioners not only endeavored by foul means to gain undue advantage but even misled the court in believing as if the petitioners are indeed proprietors and the land vesting with them is now threatened to be taken over by the respondent-State on the dint of provisions contained in Act No. 9 of 1992.

8. Every citizen has a right to approach the Court and if Court might find infringement of fundamental or civil rights of such citizen, it is duty bound to come to his rescue. The courts in this country, right from the court of Subordinate Judge to the Apex Court, are open to all. This fundamental right of a citizen to have access to all legal forums constituted in the country can not, however, be permitted to be abused. Whereas, the court is duty bound to interfere at all levels, when fundamental or civil rights of a citizen are infringed, it is also duty bound, in our view, to show a citizen, who abuses the process of law, the exit door and also to mulct "him with heavy costs. Reference in this connection may be made to Division Bench judgment of this court in *Jawan Khan and Ors. v. Mewa Singh and Ors.*, LPA No. 1166 of 1988, decided on March 28,

2001 as also a reasoned order, on identical facts in Nathu Ram and Ors. v. State of Haryana and Ors., CWP No. 16496 of 2001, decided on July 10, 2002. The present is a case where petitioners need such a treatment. In the garb of challenging the vires of the Act No. 9 of 1992, a totally made up and concocted cause of action has been projected.

9. In view of what has been said above, we recall order dated May 17, 2002 of listing this petition after decision of CWP No. 5877 of 1992 and dismiss the same with costs quantified at Rs. 25,000/- which shall be payable by petitioners to the Gram Panchayat in equal proportion. If the costs are not paid within two months from today, the Deputy Commissioner (Collector), Kurukshetra shall recover the same as arrears of land revenue.

A copy of this order be sent to the Deputy Commissioner (Collector), Kurukshetra, forthwith.

Sd/- Satish Kumar Mittal, J.