

(1965) 05 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 62 of 1964

Ram Sukh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 14-05-1965

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1965) 05 P&H CK 0052

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : Shamair Chand and Parkash Chand Jain, for the Appellant; D.N. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Shamsher Bahadur, J.—This petition under Article 227 of the Constitution of India is directed against the order of the Collector, Kangra, passed on 20th of September, 1962, remanding the case to the Assistant Collector and the consequential order of the Assistant Collector of 10th of December, 1962, directing the ejectment of the petitioners from the land in dispute.

2. The three petitioners. Ram Sukh, Mahant and Jonda are the descendants of Abokhu who was in possession forty years ago of land measuring 41 kanals 15 marlas in village Tappa Glora of Hamirpur tehsil. It is common ground that this land belonged to shamilat tika and was purchased by Pirthi Singh, the fifth respondent, from Malha Singh and Bhagwan Singh under a registered sale-deed of 29th of April, 1954. Pirthi Singh claiming to be a small land-owner sought ejectment of the petitioners from the land which he had purchased u/s 9 of the East Punjab Security of Land Tenures Act, 1953, before the Assistant Collector Ist Grade, Hamirpur. The Assistant Collector holding that the land in dispute being shamilat had vested in the village panchayat under the Punjab Village Common Lands (Regulation) Act 1953, enacted with effect from 9th of January, 1954, and could not in consequence be claimed by the fifth respondent as a landowner for

ejection of his tenants. The Collector, to whom an appeal was preferred by the fifth respondent, however, on the authority of a decision given by the Financial Commissioner on 5th of July, 1962 was of the opinion that as the petitioners were tenants on the land which even as shamilat had vested in the Panchayat could be ejected at the instance of the third respondent there being between them a relationship of landlord and tenant. This appellate order passed on 20th of September, 1962, directed the Assistant Collector to proceed with the merits of the case and the Assistant Collector to whom the proceedings were remanded passed an order for ejection against the petitioners on 10th of December, 1962. Without resorting to the further remedies available to the petitioners by way of appeal and revision to the Commissioner and the Financial Commissioner they have sought the aid of this Court in writ proceedings under Article 227 of the Constitution.

3. So far as I comprehend the legal position it admits of no difficulty. The Punjab Village Common Lands (Regulation) Act, 1961, has included shamilat tika in shamilat deh under clause (g) of section 2 and retrospective operation has been given to this definition which takes effect from the enactment of the Punjab Village Common Lands (Regulation) Act, 1953. Section 3 of the 1961-Act says that the Act shall apply to all shamilat land retrospectively and despite any agreement, instrument, custom or usage, all rights, title and interest in the shamilat deh shall vest in the village Panchayat. In *Khiali Ram v. Mast Ram and others* (1964) 66 P.L.R. 629, I had occasion to say that the Panchayat in whom the proprietary rights now vest in pursuance of section 4 of the Punjab Village Common Lands (Regulation) Act, alone has the right to possession of the shamilat land and the proprietors under the decree which was passed before the Act have ceased to have any right in the shamilat tikka and the proprietor's right under the decree to obtain possession also vests in the Panchayat. If this ruling is correct, I feel bound to say that Pirthi Singh could not claim his right of possession as a landlord against the petitioner-tenants. It is well to observe that the Panchayat has never sought its right as a proprietor of the land to seek ejection of the petitioners from the land in dispute. In *Khiali Ram's* case, I said that even if a decree is passed it would be in-executable as the true ownership now vests in the Panchayat. The reasoning of this decision applies with full force to the legal position which has been set up on behalf of the petitioners by Mr. Shamair Chand.

4. The learned counsel for the respondents without making any attempt to combat the legal position has made two submissions. In the first place, it is urged that the petition should be dismissed on ground of delay. Although the final order of the Assistant Collector was passed on 10th of December, 1962, the petition under Article 226 was filed as late as 26th of November, 1963. It is well settled that the enforcement of fundamental rights by way of writ proceedings is not to be fettered by reasons of delay. Mr. Aggarwal submits that the period of one year taken by the petitioners to come to this Court is indicative of their satisfaction with the order passed by the Assistant Collector on the directions of the appellate

order of the Collector. As the case involves the implementation of a fundamental right of possession I do not think that the petition can be defeated on ground of undue delay.

5. The next submission made by the learned counsel for the petitioner is concerned with the failure of the petitioners to take proper proceedings in the regular hierarchy of tribunals set up under the Act. It is submitted that the petitioners should have gone in appeal to the Collector and again to the Commissioner and also to the Financial Commissioner in the revision. It is manifest that the Collector in the order of remand passed by him was governed by the view of law which had prevailed with the Financial Commissioner. Mr. Shamair Chand is right, therefore, in saying that it would have been futile for the petitioners to have sought their remedies before the Collector, the Commissioner and the Financial Commissioner in view of their preconceived notions of the law. Support is sought from a Division Bench authority of Chief Justice Chagla and S.T. Desai, J. in *Glaxo Laboratories (India) Private Ltd. Vs. A.V. Venkateswaran and Another*, where it was said by Chief Justice Chagla thus:

But whether the petitioner should be disentitled to maintain the petition or not is a matter of discretion with the Court and if the Court is satisfied that the petitioner will not get justice from the appellate tribunal or that he would have no confidence in the decision of the Tribunal or that the appeal would be nothing more than an appeal from Caesar to Casear, then the Court is not bound to accede to the submission that it should not hear the petitioner and the petitioner should be referred to the appellate tribunal set up under the Act.

It can acceptably be urged that the formality of appeal and revision would have been, as observed by Chief Justice Chagla, an appeal from Caesar to Caesar as the revenue authorities were bound by the decision of the Financial Commissioner. It is, therefore, of fundamental importance to see whether the legal position taken by the Collector is tenable. In my opinion it is not. The Punjab Village Common Lands (Regulation) Act says clearly that the property in all shamilat deh, which the land admittedly is, vests in the Panchayat and it is that body alone which can enforce its rights of ejectment. However unfortunate it may be for the fifth respondent that he is unable to assert the right which he acquired through a sale deed, such a situation being the creation of statute has scrupulously to be observed.

6. In the circumstances, I feel constrained to allow this petition and set aside the order of the Collector and the Assistant Collector holding that the Village Panchayat alone as proprietor has the right to enforce ejectment of tenants. I would, however, make no order as to costs.