
(2012) 12 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 21195 of 2010

Rampat and Another

APPELLANT

Vs

The Commissioner, Rohtak Division and Others

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7

Citation : (2012) 12 P&H CK 0030

Hon'ble Judges : Rekha Mittal, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : Shilak Ram Hooda, for the Appellant; D. Khanna, Addl. A.G., Haryana for Respondents Nos. 1 to 3 and Mr. Hemant Sarin, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—The petitioners pray for issuance of a writ of certiorari quashing orders dated 08.10.2007(Annexure P-5), 05.11.2009 (Annexure P-6) and 16.09.2010(Annexure P-8), passed by the District Revenue Officer-cum-Assistant Collector Ist Grade, Sonapat and the Commissioner, Rohtak Division, Rohtak, respectively. Counsel for the petitioners submits that Dariyao Singh (since deceased), owner of plot No. 10, now represented by respondents No. 11 to 14, filed an application, on 09.05.1988, for eviction of respondents No. 4 to 6, u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act"). The Assistant Collector Ist Grade, Sonapat, vide order dated 26.07.1988, held that Bharat Singh son of Surat Singh, respondent No. 5, is in unauthorised occupation of 238 sq. yards of the street and, therefore, ordered his eviction. Bharat Singh filed an appeal before the Collector, Sonapat. Petitioner No. 1 and father of petitioner No. 2 also filed an appeal. Vide order dated 21.03.1989, the Collector, Sonapat, set aside the order and remanded the case to the Assistant Collector Ist Grade, Sonapat, to consider whether there was any encroachment in the ten foot wide street. The Assistant Collector Ist Grade,

vide order dated 26.06.1994, ordered eviction of Bharat Singh, respondent No. 5, from area demarcated as "ABCD". The order of eviction has been upheld upto the Hon"ble Supreme Court.

2. It is further submitted that in an execution petition, Bharat Singh connived with respondent Nos. 7 to 14 and got them to file objections to the execution petition by pleading that the demarcation is faulty as plots on the other side of the street have not been measured/demarcated. Though, the eviction order was to be executed without any variation, the Assistant Collector Ist Grade, Sonapat, appointed the Halqa Girdawar, Murthal, Halqa Patwari, Dodua and Halqa Patwari, Tajpur and Jagdish to demarcate the street. The Assistant Collector Ist Grade, thereafter, passed an order dated 08.10.2007, holding that respondents No. 7 to 14 are not in unauthorised occupation of the street, as it has been encroached by owners of plots No. 11 to 15. Zile Singh son of Hari Singh, respondent No. 4, filed a revision against this order, which was dismissed by the Commissioner, Rohtak Division, Rohtak, on 05.11.2009. The petitioners, filed an application on 01.07.2010 before the Commissioner, for re-calling order dated 05.11.2009, on the plea that they were not affording an opportunity of hearing, before the revision was dismissed. The petitioners pointed out that the Assistant Collector Ist Grade had no jurisdiction to vary order dated 26.06.1994, as he was exercising power of an executing court. The Commissioner, Rohtak Division, Rohtak, however, dismissed the application on 16.09.2010. The impugned orders are illegal and void as they are contrary to order dated 26.06.1994. The Assistant Collector Ist Grade has no jurisdiction, while executing this order, to direct a fresh demarcation and to hold that other persons, including the petitioners, are in unauthorised occupation of the street.

3. Counsel for respondent No. 5 submits that the petitioners are guilty of concealing material facts. The petitioners have not disclosed that during execution proceedings, respondent No. 5 was evicted, from the encroached area, as recorded in Rapat Roznamcha, dated 30.12.1999, Annexure R-5/2. The execution application filed by Dariyao Singh was, thereafter, consigned to record on 12.12.2001, for want of the complete plan. The legal representative of Dariyao Singh, filed a revision, Vide order dated 02.09.2005, the order was set aside and the matter was remanded. The Assistant Collector Ist Grade appointed a Local Commissioner to demarcate the alleged encroachment on the ten foot wide street. A perusal of the demarcation report, dated 18.11.2005, Annexure P-5/4, reveals that there was no encroachment on the part of respondent No. 5 as encroachment had already been removed on 30.12.1999. In April, 2006, respondent No. 5, filed a petition u/s 7 of the 1961 Act, seeking the ejectment of legal representatives of Dariyao Singh and others from the street. The petition was tagged with the execution application. Pursuant to a demarcation report, it was discovered that respondents No. 4 to 6 and respondents No. 7 to 14, have encroached upon the street. As the unauthorised occupants of the street assured the Assistant Collector Ist Grade that they would remove the encroachments, the file was consigned to records. Against this order, respondent No. 4 filed a revision

before the Commissioner, which was dismissed on 05.11.2009. The petitioners did not file a revision, but, instead filed a review application, which was rightly dismissed by the learned Commissioner, as not maintainable. It is submitted that as encroachments, referred to in order dated 26.06.1994, had already been removed and the petitioners and other respondents were found in unauthorised possession in a fresh application, filed u/s 7 of the 1961 Act, the writ petition should be dismissed.

4. We have heard counsel for the parties, perused the impugned orders as well as the paper book.

5. The petitioners have raised a plea that while executing order dated 26.06.1994, the Assistant Collector Ist Grade, Sonapat, had no jurisdiction to order a fresh demarcation and hold that persons other than respondent No. 5, are in unauthorised possession of the street. It is true that an executing court cannot travel beyond the decree/order under execution but the situation in the present case is entirely different. The petitioners have intentionally concealed relevant facts. Respondent No. 5 was ordered to be evicted from the land demarcated as "ABCD". A perusal of Rapat Roznamcha, appended as Annexure R-5/2, dated 30.12.1999, reveals that Assistant Collector Ist Grade, Sonapat (the executing authority) issued warrants of possession. A relevant extract from the entry in the Rapat Roznamcha, recorded while taking possession from respondent No. 5, reads as follows:-

Therefore, using the kassi (spade) and demolishing the wall possession was delivered to Smt. Parmeshwari Panch, Gram Panchayat Tihara Khurd. The kassi (spade) was being used by Wazir Singh son of Dhanpat and Bharat Singh Party 2 No. 1 was dispossessed from this area. This passage has been left for Plot No. 10 which is the plot of Daryao Singh. No untoward incident of any kind took place during these proceedings. The proclamation regarding proceedings of this warrant of possession was made by Same Singh Chowkidar of the village by beat of drum and speaking loudly at the spot and in the village.

6. The execution application was rendered in-fructuous but as both parties were dissatisfied, the Assistant Collector Ist Grade held that as the site plan demarcating the area of "ABCD" is not available in the original file, the application is consigned, till such time as the applicant is able to produce the plan showing the land demarcated as "ABCD". The order was challenged before the Commissioner, Rohtak Division, Rohtak, who remanded the matter for a fresh decision. In the meanwhile, respondent No. 5, filed a petition u/s 7 of the 1961 Act, for eviction of unauthorised occupants from the land, in dispute. The Assistant Collector Ist Grade appointed three revenue officers to demarcate the land. The demarcation report, dated 03.10.2007, found Ved Kaur etc., legal representatives of deceased Dariyao Singh and Vijay Kumar etc. in unauthorised possession of a part of the street. The unauthorised occupants assured the Assistant Collector Ist Grade that they will remove their unauthorised possession within one month. A relevant extract from this order reads as follows:-

The remand order has been passed by the Ld. Commissioner, Rohtak Division, Rohtak, on basis of merit and in compliance of the remand order by getting conducted the demarcation on the spot in the presence of parties and other persons according to Land Revenue Act the disputed street which is 10" wide from North to South as shown by letters ABCD in the site plan was got fixed/ located. In the aforesaid description of unauthorised possession with the names of unauthorised possessors and area encroached by them has been shown correctly and accurately. For the unauthorised possession found on the spot after measurement I hold Ved Kaur etc. LR.s. of deceased Dariyao Singh and Vijay Kumar etc. guilty of unauthorised possession. The bricks have been stored there in the form of wall. Therefore, I hold Ved Kaur etc. their selves have closed the street and by filing this petition they have leveled allegations of unauthorised possession on the other side after establishing unauthorised possession by them the owners of others plots No. 11, 12, 13, 14 and 15 have also made there unauthorised possession over the street which is evident from the measurement report and they all are hereby evicted from their unauthorised possession. All the aforesaid owners of plots have orally assured me that they would removed their unauthorised possession within one month on their own. The measurement conducted on spot and the site plan may also be considered part of this order. No further action is required to be taken in this case. The file be consigned in the record room and one copy of this order may be placed on the record of the case No. 12 of 07.04.2005 filed by Bharat Singh u/s 7 of Village Common Lands Act and the report of the Local Commission, measurement and naksha be also attached because Bharat Singh had filed this case regarding this street for removing unauthorised possession of second party, Ved Kaur etc. The order has been pronounced in presence of both the parties and their counsels, after compliance file may be consigned in the record room.

7. A perusal of the above order reveals that the petitioners and others are in unauthorised occupation of a part of the street. The order of eviction was passed in a fresh petition filed u/s 7 of the 1961 Act and not in execution proceedings, thereby negating the petitioners' plea that the executing Court has exceeded its jurisdiction. The petitioners did not file any appeal against this order but filed a review application after the revision filed by Zile Singh son of Hari Singh, respondent No. 4, was dismissed. The revision petition was also dismissed on 05.11.2009, by the Commissioner, Rohtak Division, Rohtak. The petitioners are, therefore, guilty of making a false statement that order holding them in illegal possession was passed in execution proceedings. This apart, the petitioners and other unauthorised occupants made a statement, before the Assistant Collector Ist Grade that they would remove their unauthorised possession voluntarily, but did not remove the same. In view of what has been stated hereinabove, we find no merit in the writ petition and dismiss the same, with no order as to costs.