
(2004) 02 P&H CK 0141
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1194 of 1984

Rochan Singh and another

APPELLANT

Vs

Joint Director Panchayats, Punjab and others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Citation : (2004) 2 LJR 783 : (2004) 2 RCR(Civil) 826

Hon'ble Judges : G.S.Singhvi, J

Advocate : Shri R.L. Sharma, Advocate. Shri P.S. Baath Advocate for Shri M.P. Singh Gill, Advocate. For the Respondent Nos. 1 to 2, None., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.—This petition is directed against orders dated 23.11.1981 (Annexure P.3) and 16.1.1984 (Annexure P.4) passed by District Development and Panchayat Officer (exercising the powers of Collector), Rupnagar (respondent No. 2) and Joint Director, Panchayats (exercising the powers of Commissioner), Punjab (respondent No. 1) respectively under the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the Act').

2. The facts necessary for deciding the writ petition are that respondent No. 3 Balwant Singh filed an application under Section 11 of the Act for eviction of the petitioners by alleging that they had encroached on the land belonging to Gram Panchayat, Lutheri which was reserved for construction of Harijans Dharamshala. He further alleged that the petitioners had constructed a wall at the site without obtaining permission from the Gram Panchayat and the Sarpanch had not taken action against them because he was personally inimical towards him.

3. On notice, the petitioners filed written statement to controvert the claim of respondent No. 3. They averred that the civil suit filed by Durga and others against their father Daya and others for mandatory injunction requiring them to demolish and remove the disputed site had been dismissed by Senior Sub Judge, Ropar vide judgment and decree dated 30.1.1968 (marked as Annexure P.1 with the writ petition) and appeal filed by the plaintiffs (one of the appellants was

represented by respondent No. 3) had been dismissed by Additional District Judge, Patiala vide judgment and decree dated 30.11.1971 (marked as Annexure P.2 with the writ petition) and in view of the concurrent findings recorded by the courts, the application filed by respondent No. 3 was liable to be rejected.

4. Respondent No. 2 vide his order dated 23.11.1981 allowed the application filed by respondent No. 3 and directed that the petitioners be evicted from the land in question. He held that the Gram Panchayat was the owner of the land and the petitioners had encroached upon the same. He discarded the judgments and decrees dated 30.1.1968 and 30.11.1971 passed by Senior Sub Judge, Ropar and Additional District Judge, Patiala respectively by observing that petitioner No. 1 was a party to the resolution passed for construction of the Dharamshala and, therefore, he was estopped from questioning the title of the Gram Panchayat.

5. The appeal filed by the petitioners against the order passed by respondent No. 2 was dismissed by respondent No. 1 vide order Annexure P.4. He concurred with the finding recorded by respondent No. 2 that the land in question belongs to the Gram Panchayat and the petitioners did not have any right over it.

6. Shri R.L. Sharma, learned counsel for the petitioners argued that the impugned orders should be quashed because the application filed by respondent No. 3 under Section 11 of the Act, which was treated by respondent No. 2 as an application under Section 7, was not maintainable, inasmuch as, he did not have the locus standi to seek ejectment of the petitioners from the land allegedly belonging to the Gram Panchayat. He further argued that the application filed by respondent No. 3 was tainted by mala fides because it was he who had prosecuted the suit and appeal in the civil courts on behalf of one of the plaintiffs and after having failed to persuade the courts of competent jurisdiction to order demolition of the construction made on the land in question, he filed application under Section 11 of the Act. Another argument of Shri Sharma is that respondents No. 1 and 2 committed a serious illegality by ignoring the concurrent findings and conclusions recorded by Senior Sub Judge, Ropar and Additional District Judge, Patiala about their right over the land in question. In support of this argument, Shri Sharma relied on the Full Bench judgment of this Court in Gram Panchayat village Bathoi Kalan v. Jogar Ram and others, 1991(1) RLR 299.

7. Shri P.S. Baath, learned counsel for respondent No. 3 halfheartedly argued that objection to the locus standi of his client should not be entertained because he was duly authorised by the Gram Panchayat to file an application under Section 7 of the Act. He then argued that the findings recorded by Senior Sub Judge, Ropar and Additional District Judge, Patiala in the suit and appeal filed by Durga and others was not binding on the Gram Panchayat because it was not a party to the suit.

8. I have thoughtfully considered the entire matter. In my opinion, the application filed by respondent No. 3 which was treated by respondent No. 2 to

be an application under Section 7 of the Act was not maintainable. Section 7(1) of the Act lays down that "the Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the Collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887."

9. A reading of the plain language of Section 7(1) of the Act shows that an application for putting the Gram Panchayat in possession can be filed by the concerned panchayat or by an officer duly authorised in this behalf by the State Government. The documents annexed with the writ petition show that in the application filed by him respondent No. 3 had neither averred that he had been authorised by the Gram Panchayat or by the State Government to file an application on behalf of the Gram Panchayat nor any material was produced to show that he had been authorised by the State Government to invoke the provisions of Section 7 of the Act. Before this Court also, no evidence has been produced to establish his locus standi to file application under Section 7. Thus, there is no escape from the conclusion that the application filed by respondent No. 3 for eviction of the petitioners or for directing them to vacate possession of the land allegedly belonging to the Gram Panchayat was not maintainable and respondent No. 2 committed a jurisdictional error by entertaining the same.

10. I also agree with Shri R.L. Sharma that respondents No. 2 and 1 committed a grave illegality by ordering eviction of the petitioners ignoring the concurrent findings recorded by Senior Sub Judge, Ropar and Additional District Judge, Patiala that they were in lawful possession of the disputed site. The Full Bench judgment relied upon by the learned counsel is directly on the point. In that case, the Court considered the question whether while deciding applications filed under Section 7 or 11 of the Act, the authority concerned can ignore the judgment and decree of the court of competent jurisdiction and held that the judgment rendered before the amendment of 1976 is binding on the authorities appointed under the Act to adjudicate the applications filed under Sections 7 and 11 of the Act.

No other point has been argued.

For the reasons mentioned above, the writ petition is allowed and quash orders Annexure P.3 and P.4. However, it is made clear that this order shall not preclude Gram Panchayat, Lutheri from availing appropriate legal remedy for securing possession of the land, provided, it proves that the land in question belongs to it and not the petitioners.