
(2010) 10 P&H CK 0235

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 24576-M of 2007

Sadhu Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 148
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 7

Citation : (2010) 2 RCR(Civil) 761

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—Counsel for the petitioners has referred to order dated 14th October, 1996 (Annexure P-4), wherein the petition filed u/s 7 of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred to as, "the Act") for evicting the petitioners from the shamlat land described therein, was dismissed in default. Learned Counsel has further referred to the order dated 30th May, 1997 (Annexure P-5) passed by the Collector, Sub Division, Samana, District Patiala, wherein request of the Gram Panchayat to redeem the land was declined, as the same was time barred and the redemption was 30 years old. Counsel for the petitioners has further referred to order dated 15th January, 2003 (Annexure P-6), wherein the civil suit filed by the Gram Panchayat was dismissed on the ground that the Civil Court had no jurisdiction and the matter can only be adjudicated upon under the Act. Learned Counsel has further drawn my attention to order dated 19th December, 2005 (Annexure P-7) wherein the application filed u/s 11 of the Act was dismissed as withdrawn.

2. Referring to these documents, counsel for the petitioners has submitted that there was no justification for the police to submit Calandra dated 31st October, 2005 (Annexure P-1) u/s 145 Code of Criminal Procedure and respondent No. 2-Sub Divisional Magistrate, Samana, District Patiala had erred by invoking Section 146 Code of Criminal Procedure to attach the land and appoint Naib Tehsildar, Patran as a Receiver.

3. On 27th November, 2007, a Coordinate Bench of this Court had stayed the further proceedings and had passed the following order:

Mainly, the submission made by counsel for the petitioner is with reference to Sections 145 and 148 Code of Criminal Procedure. The order has been made after the Gram Panchayat remained unsuccessful before the Civil and Revenue Court.

Counsel submits that in these circumstances, the proceedings under Sections 145 and 146 Code of Criminal Procedure cannot be continued. The submission made by the counsel has some substance.

Admitted.

Further proceedings are stayed.

4. I have heard counsel for the parties.

5. This Court is of the opinion that in view of the litigation pending in the Civil and Revenue Courts, the Sub Divisional Magistrate ought not to have attached the land and appointed a Receiver at the first instance. The documents relied upon by counsel for the petitioners, prima-facie, are sufficient to show that at the relevant time, they were in possession of the land.

6. Thus, order dated 13th April, 2006 (Annexure P-2), so far as it orders the attachment of the land and appointment of Receiver, is quashed. However, respondent No. 2-Sub Divisional Magistrate, Samana is directed to proceed with the Calandra u/s 145 Code of Criminal Procedure and decide the matter finally, taking into consideration the litigation pending between the parties before the Civil and Revenue Courts. The Sub Divisional Magistrate, Samana shall conclude the proceedings arising out of Calandra u/s 145 Code of Criminal Procedure within a period of three months from the date of receipt of a certified copy of this order. Both the parties shall be permitted to project their case and submit written submissions, if necessary.

7. With the observations made above, present petition is disposed of.