
(2009) 11 P&H CK 0036
In the Punjab And Haryana At Chandigarh

Sadhu Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 14, 18, 2, 23A, 42A
Punjab Village Common Lands (Regulation) Act, 1961 — Section 7

Citation : (2010) 2 ILR (P&H) 261 : (2010) 159 PLR 375

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Saron, J.—The present petition under Articles 226/227 of the Constitution of India has been filed seeking quashing of the notification dated 23.7.2007 (Annexure-P.9) issued by the State Government whereby Section 42-A has been added to the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ("1948 Act" - for short) and also for quashing the order dated 8.5.2008 (Annexure-P.10) passed by the Collector-cum-DDPO, Barnala in a petition u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 ("1961 Act" - for short).

2. After hearing Learned Counsel for the parties and perusing the record it may be noticed that the Gram Panchayat Moom, Tehsil Barnala (respondent No. 4) filed an application u/s 7 of the 1961 Act seeking ejectment of the petitioner from the land measuring 37 Kanals 8 Marias situated in Village Moom, Tehsil Barnala. The application of the Gram Panchayat Moom (respondent No. 4) was initially dismissed vide order dated 22.12.2005 (Annexure-P.7). Against the said order, the Gram Panchayat Moom (respondent No. 4) filed an appeal and the Commissioner under the 1961 Act vide order dated 13.7.2007 (Annexure-P.8) set aside the order of the Collector and remanded the case to the Collector for fresh decision. The Collector thereafter vide impugned order dated 8.5.2008

(Annexure-P.10) ordered the ejectment of the petitioner from the land measuring 37 Kanals 8 Marias. Aggrieved against the same the petitioner has filed the present petition.

3. It is not in dispute that against the order dated 8.5.2008 (Annexure-P.10) the petitioner has a remedy of filing an appeal before the Commissioner under the 1961 Act. However, Learned Counsel appearing for the petitioner has submitted that the petition has been filed in this Court as the Collector while passing the order dated 8.5.2008 (An-nexure-P.10) has inter alia adverted to the provisions of Section 42-A of 1948 Act to hold that "Jumla Mushtarka" land would be used by the Gram Panchayat for common purposes. Therefore, it is submitted that the petition has been filed in this Court so as to seek quashing of Section 42-A of the 1948 Act. In order to appreciate the said contentions the provisions of Section 42-A of the 1948 Act as has been added by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment Act, 2007 vide notification dated 23.7.2007 (Annexure-P.9), may be noticed. Section 42-A reads as under:

42-A. Prohibition to partition the land reserved for common purposes.- Notwithstanding anything contained in this Act or in any law for the time being in force, or in any judgment, decree, order or decision of any court, or any authority or any officer, the land reserved for common purposes whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized and continue to be utilized for common purposes.

4. A perusal of the above shows that it is the land reserved for common purposes whether specified in the Consolidation Scheme or not, is not to be partitioned amongst the proprietors of the village and is to be utilized and continued to be utilized for common purposes. This aspect is to be ascertained on the basis of the revenue records. It is to be seen as to whether the nature of the land is such which is being used for common purposes. In case the land is being used for common purposes then it is not to be partitioned amongst the proprietors.

5. The provisions of Section 42-A as added are in tact only an elucidation of the provisions of Section 23-A of the 1948 Act which provides for management and control of lands for common purposes to vest in panchayats or State Government. In terms of Section 23-A of the 1948 Act it is provided that as soon as a scheme comes into force the management and control of all lands assigned or reserved for common purposes of the village u/s 18 shall; (a) in the case of common purposes specified in Sub-clause (iv) of Clause (bb) of Section 2 of the 1948 Act in respect of which the management and control is to be exercised by the State Government, vest in the State Government; and (b) in the case of any other common purpose, shall vest in the Panchayat of that village. The State Government or the Panchayat, as the case may be, is entitled to appropriate the income accruing therefrom for the benefit of village community, and the rights and interests of owners of said land shall stand modified and extinguished

accordingly. Section 2(bb) of the 1948 Act defines "common purpose" to mean any purpose in relation to common need, convenience or benefit of the village and includes the purposes mentioned therein that is to say (i) extension of village abadi, (ii) providing income for the Panchayat of the village concerned for the benefit of village community, (iii) village roads and paths; village drains, village well, ponds or tanks, village water courses or water channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar, grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and (iv) schools and play-grounds, dispensaries, hospitals and institutions of like nature; water works or tube-wells may be managed and controlled by the State Government or not. Lands in fact can be reserved or assigned for common purposes under the 1948 Act. In terms of Section 18 (c) of the 1948 Act, the consolidation officer can if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, can assign other land for such purpose. The land so reserved or assigned may or may not be part of a scheme framed by the Government for consolidation of holdings u/s 14 of the 1948 Act. A reading of the provisions of Section 23-A and Section 18 (c) shows that it is not that only such land which is part of the scheme framed by the Government for consolidation of holdings, which is to vest with the Government or the Gram Panchayat as the case may be.

6. In fact it is any kind of land that is reserved for common purposes which is to vest in the State Government or the Panchayat as the case may be. It has been the accepted position that if such land was part of the scheme framed by the Government for consolidation of holdings then it is to vest with the Government or the Gram Panchayat as the case may. The proprietary body of the village or the proprietors were not left with any right or interest in lands that had been reserved or assigned for common purposes of the village. However, with a view to specifically include that the land reserved for common purposes whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized and continue to be utilized for common purposes that Section 42-A has been added to the 1948 Act by way of notification dated 23.7.2007 (Annexure P9). This would mean that the lands which are not reserved or assigned for common purposes or are not being utilized for common purposes would not come within the ambit of Section 42-A. In the facts and circumstances, the question of validity of the provisions of Section 42-A of the 1948 Act is not liable to be gone into at this stage and it would be open to the parties on the basis of material on record to show whether the land in question measuring 37 Kanals 8 Marias has been reserved by way of a scheme or is otherwise being utilized or used for common purposes so as to fall within the ambit of Section 42-A of the 1948 Act. This aspect is to be considered by the appellate authority i.e. the Commissioner under the 1961 Act.

7. In the circumstances, the petitioner having an alternative remedy of preferring an appeal against the order dated 8.5.2008 (Annexure-P.10), the writ petition is

premature. Accordingly, the writ petition is dismissed being premature. However, the petitioner would be at liberty to file an appeal before the Commissioner and in case the same is filed within 15 days from the receipt of copy of this order, the same shall not be dismissed on the ground that it is barred by time. The learned Commissioner shall also consider the application for stay, if any, filed by the petitioner.