
(2012) 04 P&H CK 0128
In the Punjab And Haryana At Chandigarh
Case No : CWP-5845 of 2010

Sanjiv Kumar and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 2, 2(g)(i)

Citation : (2012) 3 RCR(Civil) 111

Hon'ble Judges : Rakesh Kumar Jain, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : Mahavir Sandhu, for the Appellant; Shruti Jain, A.A.G. Haryana For the Respondent Nos. 1 to 3 and Mr. P.L. Singh, Advocate For the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—The petitioners pray for issuance of a writ of certiorari, quashing order dated 31.3.2008 (Annexures P-8) passed by respondent No. 3, order dated 29.5.2009 (Annexure P-9) passed by respondent No. 2 and order dated 13.1.2010 (Annexure P-10) passed by respondent No. 1. The only point that arose for consideration before the Collector, the Commissioner and the Financial Commissioner, was whether the land in dispute which is, admittedly, Shamilat deh, Hasab Rasad Jare Khewat recorded in possession of Maqbooja Malkan, is excluded from Shamilat deh by virtue of Section 2(g)(i) of the Punjab Village Common Lands.(Regulation) Act, 1961, as applicable to the Haryana (hereinafter referred. to as "the Act") as it is subject to river action.

2. The petitioners approached the Collector by way of a petition filed u/s 13A of the Act, praying that as the land in dispute is subject to river action, it is excluded from Shamilat deh by virtue of Section 2(g)(i) of the Act.

3. The Collector, Panchkula rejected the petitioners' contentions primarily on the ground that the Collector, has already passed an order on 23.9.2000 under the

Mines and Minerals Act, 1957, holding that the Gram Panchayat is owner of the land in dispute. The appeal and the revision filed by the petitioners were also dismissed on the same ground.

4. Counsel for the petitioners submits that the order passed by the Collector, under the Mines and Minerals Act, 1957, has no bearing upon proceedings u/s 13A of the Act, as the only authority, statutorily conferred with jurisdiction to determine whether land is Shamilat deh or not, is the Collector, exercising powers u/s 13A of the Act. It is further submitted that the Collector was required to consider the question whether the land is subject to river action and decide it on the basis of the revenue record.

5. Counsel for the Gram Panchayat, on the other hand, submits that the impugned orders are legal and valid as the petitioners have failed to prove their ownership much less adduce any record that the land in dispute is effected by river action and is, therefore, excluded from Shamilat deh. It is further contended that as the Collector has already held that the land in dispute belongs to Gram Panchayat, reference by the Collector to the said order cannot be said to be illegal or without jurisdiction.

6. We have heard counsel for the parties and perused the impugned orders.

7. A perusal of impugned orders, leaves us with no option but to hold that the Collector, the Commissioner and the Financial Commissioner, have erred, while exercising jurisdiction under the Act as they have failed to determine the dispute, raised by the petitioners, namely, whether the land in dispute is a Shamilat deh or is excluded therefrom by virtue of Section 2 (gam the 1961 Act. The petitioners raised a plea that the land in dispute is created by river action and is Shamilat deh reserved in a village subject to river action. A perusal of the impugned orders reveals that this plea has been negated without reference to the revenue record, much-less its perusal. The Collector, has based his order upon an order passed under the Mines and Minerals Act, 1957 holding that the Gram Panchayat is owner of the land in dispute. We would clarify that the only authority empowered to determine whether land vests or does not vest in a Gram Panchayat, is the Collector, exercising powers u/s 13A of the Act. An order passed by any other authority under any other enactment holding that the land vests or does not vest in a Gram Panchayat, is not binding upon the Collector, exercising powers u/s 13A of the Act. The order passed by the Collector, in the exercise of powers under the Mines and Minerals Act, 1957, was, therefore, irrelevant for deciding the controversy u/s 13A of the Act.

In view of what has been stated above, we allow the writ petition, set aside the impugned orders and remit the matter to the Collector, Panchkula, to decide the petition afresh and in accordance with law within three months from parties putting in appearance on 29.5.2012.