

(1983) 08 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1621 of 1973

Sarvshri Teja Singh

APPELLANT

Vs

Gram Panchayat (Gram Sabha) Halqa Boran

RESPONDENT

Date of Decision : 17-08-1983

Acts Referred:

Citation : (1984) PLJ 17 : (1984) RRR 216

Hon'ble Judges : P.C.Jain, J

**Advocate : Sanjeev Pabbi, Advocate, Anand Swaroop, Senior Advocate,,
Advocates for appearing Parties**

Judgement

P.C. Jain, J.

1. Teja Singh and others have filed this petition for the quashing of the orders of the Assistant Collector Ist Grade, Bassi, respondent No. 2 dated 7th April, 1971; the Divisional Agricultural Production Officer, Patiala, respondent No. 3 dated 24th January, 1972 and the Commissioner, Patiala Division, respondent No. 4, dated 28th March, 1973 Annexures A,B and D respectively.

2. In order to appreciate the controversy, certain salient features of the case may be noticed:

The Gram Panchayat, Halqa Boran, made an application to the Assistant Collector under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) for possession on the ground that the petitioners and some other proprietors were in unauthorised occupation of the land measuring 441 Kanals and 14 Marlas. The petition was contested by petitioners to the extent of their share in the land. The Assistant Collector, respondent No. 2, on consideration of the entire matter, found that the land was Shamilat Deh and had vested in the Gram Panchayat. Consequently, an order of ejectment was passed on April 7, 1971 (copy Annexure A to the petition). Feeling aggrieved from the order of the Assistant Collector, two appeals were preferred, one by the petitioners and the other by Tarlok Singh and others. Both the

appeals were heard by the Collector, who, vide his order dated January 24, 1972 (copy Annexure B to the petition), dismissed the same. Still dissatisfied, the petitioners and others preferred second appeal, but did not succeed, as the same were dismissed by the Commissioner, Patiala Division, Patiala vide his order dated March 28, 1973. (copy Annexure D to the petition). The petitioners, through this petition, as earlier observed, call in question the legality and propriety of the aforesaid orders.

3. In response to the notice of motion, the respondents have put in written statement in which the material controversial questions raised in the petition have been controverted and the claim put forth has been contested.

4. I have heard the learned counsel for the parties and find that this petition deserves to be allowed.

5. It is contended by Shri Anand Swaroop, Senior Advocate, learned counsel for the petitioners that the land in dispute does not fall within the definition of section 2(g) of the Act; that the land though recorded as Banjar Qadim was never used for common purposes and has always been shown in the possession of the proprietors and that the petitioners had purchased the land from the Maharaja of Patiala before January 26, 1950 with the result that the same ceased to be Shamilat Deh.

6. After giving my thoughtful consideration, I find considerable force in the contention of the learned counsel for the petitioners.

7. Section 2(g) (5) of the Act reads as under:

"lands in any village described as Banjar Qadim and used for common purposes of the village according to revenue records"

A bare perusal of the aforesaid provisions would show that it is only the land described as Banjar Qadim and used for common purposes of the village according to the revenue records, which would form part of the Shamilat Deh. In the instant case, the land in dispute is described as Banjar Qadim, but there is not an iota of evidence that the same was used for common purposes of the village according to revenue records. Reliance has been placed on 'Wajid ularz' entry, copy of which has been attached with the petition as Annexure F. According to the learned Commissioner in paragraph 2 of the entry it is recorded that each inhabitant of the village, whether he is proprietor or a nonproprietor will have grazing rights in the 'Shamilat Deh' without any payment and it is on the basis of this entry that the learned Commissioner found that the land was being used for common purposes of the village according to revenue records. But reference to document Annexure F would show that the same has been misread, as in the document there is no entry that each inhabitant of the village, whether he is proprietor or a nonproprietor will have grazing rights in the 'Shamilat Deh' without any payment. Once this document is excluded from supporting the finding of the Commissioner, then there is absolutely no other evidence to show

that the land in dispute was used for common purposes of the village according to revenue records. That being so, merely this fact that the land is recorded as Banjar Qadim would be of no consequence, nor would that entry be itself sufficient to attract the applicability of subclause (5) of clause (g) of section 2 of the Act. The entire entry in the sharat Wajidularz, when read in the correct perspective, leads to only one irresistible conclusion that the land in dispute is owned by the proprietors and is in their possession and any income arising out of this land either by the sale of the trees or by any other method would be distributed amongst all the cosharers according to the measure of their holdings. The authorities below have committed a patent illegality in applying the provisions of subclause (5) and in finding that the land in dispute falls within the definition of 'Shamilat Deh'. Further, the petitioners case is covered by subclause (iv) of clause (5) of section 2(g) of the Act which reads as under:

"having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from cosharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed; and is not in excess of the share of the cosharer in the 'shamilat deh'. A bare perusal of the aforesaid subclause makes it quite evident that if the land had been acquired by a person by purchase or in exchange for proprietary land from a cosharer in the Shamilat Deh and such an acquisition is supported by a valid deed, then such land would not be included in the Shamilat Deh. The petitioners have placed a document (copy annexure E to the petition) which clearly proves that the land in dispute was purchased by the ancestors of the petitioners from the Maharaja Patiala before 26th January, 1950. A similar contention was raised before the learned Commissioner who rejected the same on the ground that it was not shown that the Maharaja Patiala was a cosharer in the Shamilat Deh. I am afraid, I am unable to agree with this reasoning of the learned Commissioner. A bare perusal of the document Annexure E would show that the entire village bearing the name of 'Bir Sari' was the ownership of the State and its ownership was obtained by one Sadhu Singh and after acquisition of ownership, Sadhu Singh kept 1/4th share with himself and the remaining 3/4th was transferred in equal shares to his other brothers. Whether ownership was acquired on payment of Nazrana or otherwise would not make any difference, as the fact remains that the ownership was acquired by the ancestors of the petitioners. There can be no gainsaying that the Maharaja was the full owner of the village, including Shamilat rights of the entire village so transferred to the ancestors of the petitioners. Thus, even on this ground, the petitioners must succeed as they have succeeded in establishing that their ancestors had acquired this land from the Maharaja who was the full owner of the property.

8. Thus, viewed from any angle, the only irresistible conclusion that can be arrived at is that the land in dispute does not fall within the definition of Shamilat Deh; rather it stands specifically excluded in view of the provisions of subclause (iv) of clause (5) of section 2(g) of the Act.

9. No other point arises for consideration.

10. For the reasons recorded above, I allow the petition and quash the orders of the Assistant Collector, Ist Grade, respondent No. 2, the Divisional Agricultural Production Officer, Patiala, respondent No. 3, and the Commissioner, Patiala Division, Patiala, respondent No. 4 (Annexure A, B and D to the petition) respectively. However, in the circumstances of the case, I make no order as to costs.