
(1993) 03 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3149 of 1981

Sarwan Singh and Others

APPELLANT

Vs

Gram Panchayat and Gram Sabha and Another

RESPONDENT

Date of Decision : 15-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (1993) 104 PLR 230

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : Nemo, for the Appellant; R.S. Cheema, A.A.G., for the Respondent

Judgement

G.R. Majithia, J.—This petition is directed against the order of the Joint Director Panchayats, Punjab (exercising the powers of Commissioner) dated May 22, 1981. Facts :

Respondent No. 1 filed an application u/s 7 of the Punjab Village Common Lands Regulation Act, 1961 (for short the Act), against the petitioners for their eviction from land comprised in killa No. 25/19 measuring 1 kanal 2 marlas situated in revenue estate Gurugarh, Tehsil Samrala. The Collector found that the land is a part of Shamlat deh and the petitioners failed to establish that they are entitled to remain in possession of the same. He ordered eviction. The order was challenged in appeal before Joint Director Panchayats, Punjab, exercising the powers of Commissioner. The appellate authority endorsed the finding of the Collector. He found that the petitioners had failed to establish that they were in possession of the disputed site for the last more than 30 years. Aggrieved against this order, the petitioners have come in writ petition to this Court. During the pendency of writ petition, petitioner No. 2 died and his legal representatives were brought on record.

2. In the jamabandi for 1958-59, the disputed khasra number is shown to be Gair Mumkin bouse and petitioner No. 2 is shown to be in possession without

payment of rent being a Kammi. In the petition, it was specifically pleaded that the petitioner No. 2 had built a house on the disputed site in the year 1949 and since then had been living with petitioner No. 1. In the written statement filed on behalf of the Gram Panchayat, the plea in the petition has not been specifically controverted. It will be useful to reproduce para No. 3 of the writ petition and the corresponding reply to this para in the written statement filed on behalf of the Gram Panchayat.

Para No. 3 of Writ Petition Para No. 3 of Reply That petitioner Ishar Paragraph No. 3 of the writ Singh has been in possession petition is also denied for want of land measuring 1 kanal 2 of knowledge. The petitioner marlas situated in village Ishar Singh has not been able to Gurugarh since the year, prove that he has been in the 1949. Petitioner No. 1 was possession of the land in dispute recorded to be in possession since the year 1949. in the year 1978 and the petitioners are also non- proprietors in the village. Petitioner, Ishar Singh had constructed a house on the dispute site in the year 1949 and has been living therein with petitioner No. 1, his son, in that house.

Reading of the reply in unequivocal terms suggests that petitioners plea that they had constructed a house in the year 1949 and had been living since then had not been controverted. Reply to the averment in the petition has to be specific and not evasive. If a particular plea has not been denied, it will be presumed that the same was admitted inference was deducible that the petitioners' plea that they had built up the house in the year 1949 and have been living there since then, has not been controverted and the same will be deemed to have been admitted The land which is under the site of a house ceased to be Shamilat deh. Section 2(g) (1) of the Act says that Shamilat deh will include that land which is described in revenue records as Shamilat deh excluding abadi deh. The disputed land is not shown as Shamilat deh in the jamabandi for the year 1958-59 Presumption of truth attaches to the entries in the record of right and in the absence of any rebuttal it has to be presumed that the entries are correct. The disputed land had not been shown as Shatnilat deh in the revenue records. To the contrary, it is shown to be under a house site and the house site is in the possession of the petitioners without payment of rent. The petitioners allege that they have built the house in the year 1949 and this plea of their remains uncontroverted. The disputed site cannot be treated to be Shamilat deh within the meaning of Section 2(g) (I) of the Act. If the land is not Shamilat deh, it will not vest in the Panchayat. The Panchayat was not competent to file the petition u/s 7 of the Act. The order of the Collector ordering eviction of the petitioners from the disputed site is without jurisdiction. Further-more, the Civil Court has given categorical finding in its judgment and decree dated March 6, 1980 that the property in dispute does not fall within the purview of Apt and the Gram Panchayat is not the owner of the same. It has not been brought to my notice that the finding so recorded by the trial judge was disturbed in appeal. The decision given by the Civil Court to the effect that the disputed land was not the shamilat land attained finality.

3. For the reasons stated above, writ petition succeeds, the order of the Collector dated January 1, 1986 and appellate order of the Joint Director dated May 22, 1981 are quashed with no order as to costs.