
(1983) 09 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2744 of 1983

Sarwan Singh and others

APPELLANT

Vs

Gram Panchayat Balad Kalan and Others

RESPONDENT

Date of Decision : 06-09-1983

Acts Referred:

Citation : (1984) PLJ 42 : (1984) RRR 242

Hon'ble Judges : G.C.Mittal, J and I.S Tiwana, J

Advocate : Amarjit Markan, Advocates., Mr.P.K. Palli, Advocates for appearing Parties

Judgement

G.C. Mittal and I.S. Tiwana, JJ.—Descendants of Mehar Singh, who are petitioners before us, filed a civil suit in the year 1974 to challenge the order of the Assistant Collector, Ist Grade, Sangrur, dated 25.3.1974 passed under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) on the basis that they and prior to them, Mehar Singh, had been cultivating 68 Bighas 17 Biswas of land since before 1950 and as such it did not vest in the Gram Panchayat as Shamlat Deh and the order of the Assistant Collector was, therefore, null and void and prayed for permanent injunction to restrain the Gram Panchayat from executing the ejectment order or from interfering in their possession. The trial court by judgement and decree dated 16.8.1978, decreed the suit as prayed for. The Gram Panchayat went up in appeal and the appeal was dismissed by the Additional District Judge on 18.4.1979. Thereafter, the Gram Panchayat came to this court R.S.A No. 1854 of 1979 which was allowed on 19.3.1981 in view of the amendment made in section 13 of the Act, which took away the jurisdiction of the civil Court to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not Shamlat Deh or to question the legality of any action taken by the Panchayat under the Act. After setting aside the judgments and decree of the two courts below, it was ordered that the plaint be returned to the plaintiffs for presentation to the Collector having jurisdiction in the matter. On the basis of the aforesaid order, according to the petitioners, the plaint was

returned to them on 9.9.1981 and on the same date it was presented to the Collector, Sangrur, alongwith an application that it was being refiled in view of the High Court's order and the same may be entertained and suitable orders passed. The application for entertaining the suit was dismissed by the District Development and Panchayat Officer, Sangrur exercising the powers of the Collector under the Act, by order dated 6.1.1982 (Annexure P.3) on coming to the conclusion that it was not filed within limitation. The true translation of the relevant portion of order rejecting the application after noticing the arguments of both the sides is as follows:

"After hearing the counsel and going through the record, I have come to the conclusion that the application is not within limitation. Therefore, the application of the applicant is hereby dismissed. Order pronounced."

2. Thereafter the petitioners filed an application under section 11 of the Act before the District Development and Panchayat Officer, Sangrur exercising the powers of the Collector under the Act, for determination of title claiming to be owners of 68 Bighas and 17 Biswas of land on the plea that they and their predecessors in interest had been in possession thereof since before 1950 and, therefore, under section 2(g) of the Act, it did not vest in the Panchayat. In para 11 of the application, it was stated as follows:

"11. That the respondent No. 1 (meaning Gram Panchayat) on 16.5.1982, threatened to take the possession of the land in dispute from the applicants. This gave a cause of action to the applicants to file this application. Hence, this present application is within limitation from 16.5.1982 when the last cause of action arose. An affidavit in the support of this allegation is attached herewith".

Along with the application under section 11 of the Act, the petitioners filed an application for the grant of interim injunction restraining the respondent Gram Panchayat from dispossessing them till the matter of title was decided under the Act. That application was allowed vide order dated 27.8.1982 (Annexure P.5) and it was ordered that the petitioners should not be dispossessed from the land in dispute till the decision of the application under section 11 of the Act. Against the aforesaid interim order, the Gram Panchayat went up in appeal before the Commissioner, who was empowered to hear the appeal under section 11(2) of the Act. When the petitioners received notice of the appeal, they put in appearance and raised the contention that no appeal lay under section 11(2) of the Act against the interim orders and the same should be dismissed as incompetent. The learned Commissioner noticed this argument and thereafter noticed the argument of the Gram Panchayat that the earlier application filed by the petitioners under section 11 of the Act was dismissed by the Collector on 6.1.1982 and the appeal filed by the petitioners against that order was dismissed by the Commissioner on 5.5.1982 and, therefore, the Collector wrongly entertained another application under section 11 of the Act and erred in granting interim stay. The learned Commissioner side tracked the issue on maintainability of appeal under section 11(2) of the Act against the interim order but proceeded

to hold vide order dated 16.3.1983 (Annexure P.6) that in view of section 12 of the Act the Collector could not entertain another application under section 11(1) and if the Collector goes on entertaining the repeated applications like this, there could not be any finality. Thereafter it was observed as follow:

"The Collector ought to have not entertained second application. The appeal of the Gram Panchayat is accepted. Orders passed by the Collector on 27.8.1982 are hereby quashed and further all proceedings pending before the Collector under section 11 of the Act in this case are also quashed as I find they are all without jurisdiction. "

Against the aforesaid order, C.W.P. No. 2744 of 1983 has been filed in this Court.

3. It deserves to be recalled that against the order of the Collector dated 6.1.1982, referred to above, the petitioners filed an appeal before the Commissioner. The learned Commissioner vide order dated 5.5.1982, dismissed the appeal after recording a finding that the plaint was returned on 31.8.1981 and it was refiled on 15.10.1981 beyond the period of 30 days as prescribed by rule 21A of the Rules framed under the Act and as such was time barred. C.W.P. No. 3650 of 1983 was filed on 2.8.1983 during the pendency of the aforesaid writ petition (C.W.P.No. 2744 of 1983) to impugn the orders dated 6.1.1982 and 5.5.1982. Since the two writ petitions arise out of the same matter, therefore, they are being disposed of by this common order.

4. After hearing the learned counsel for the parties and going through the record we find the Gram Panchayat has been taking inconsistent stands. When order dated 6.1.1982 was being passed, the stand of the Gram Panchayat, as noticed in the order, was as follows:

"The counsel for the Panchayat pointed out that it was not the intention of the High Court that the suit was withdrawn from the civil court and be presented; rather the intention was to prefer the claim under Punjab Village Common Lands (Regulation) Act".

5. When the petitioners filed application under section 11 of the Act, the Gram Panchayat took the stand that it amounted to filing a fresh application. The Gram Panchayat cannot be allowed to approbate and reprobate. The other inconsistent stand taken by the Gram Panchayat is that when they appeared before the Commissioner in appeal and when order dated 5.5.1982 was passed, they took up the position that the plaint was actually returned to the petitioners on 31.8.1981, which was accepted by the Commissioner. In the written statement filed by the Gram Panchayat in C.W.P.No. 2744 of 1983, in reply to para 4 of the writ petition, the following stand was taken:

"Reply to para 4 is that it is correct that the Senior Sub Judge, Sangrur, returned their plaint to the petitioners on 9.9.1981."

Therefore, the order of the Commissioner that the plaint was actually returned on 31.8.1981 is obviously incorrect and holding the application to be time

barred, is obviously incorrect.

6. Section 11 of the Act is as follows:

"11. Decision of claims of right, title or interest in shamlat deh (1) Any person claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat under this Act, or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time as may be prescribed a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under subsection (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit"

7. A reading of section 11(1) shows that claims regarding right, title or interest in any land which is deemed to have vested in a Panchayat or claims that any land is not so vested in the Panchayat, have to be submitted to the Collector within such time as may be prescribed. Rule 21A has prescribed the time for filing of such claims, which is in the following terms:

"21A. Decision of claims of right, title or interest in shamlat deh. (1) Any person claiming a right, title or interest in any land vested or deemed to have been vested in the Panchayat may submit an application in the form of a statement duly signed and verified in the manner provided in the Code of Civil Procedure, 1908, supported by a copy of the revenue record within thirty days from the date of the actual cause of action to the Collector."

8. A reading of the aforesaid rule shows that the limitation of 30 days has to be calculated from the date of accrual of cause of action. A combined reading of section 11(1) with rule 21A(1) would show that the title to the property has to be decided by the Collector and not about the correctness of any order passed under section 7 of the Act and, therefore, every threatened injury to title would give a recurring cause of action. Recurring cause of action will get ceased the moment a person claiming that the land has not vested in the Panchayat, is dispossessed therefrom. From the date of dispossession, if the claim is not filed under section 11 of the Act and is filed beyond that time limit, it would obviously be time barred, otherwise it would not be time barred. When the petitioners filed civil suit to challenge the order of the Collector under section 7 of the Act, section 11 was differently worded and so was section 13. At that time, the cause of action for filing the suit was stated to be from the orders of the Collector dated 28.7.1971 and 28.3.1974 and finally from the refusal of the Gram Panchayat to admit the plaintiffs' claim dated 26.4.1974. In that suit, on merits, the petitioners were able to satisfy the civil court that they were in possession of the land in dispute before 1950 and, therefore, it did not vest in the Panchayat. This

decision on merits was upheld by the Additional District Judge. Since during the pendency of the suit, sections 11 and 13 were substantially amended so as to take away the jurisdiction of the civil court and to confer jurisdiction on the Collector under the Act under Section 11(1), this court had ordered for the return of the plaint for being presented to the proper court.

9. Shri T.S. Mangat, Advocate, appearing for the Gram Panchayat had strenuously urged that in view of the cause of action for filing the suit, as stated in the plaint presented to the civil Court, the suit was clearly time barred under section 11(1) of the Act. As already noticed, the plaint was presented at a time when section 11(1) and section 13 of the Act were differently worded and at that stage the limitation was not under rule 21A, but under the Limitation Act, 1963. In that suit, no plea of suit being time barred was raised. Under the changed circumstances and keeping in view the admitted fact that the petitioners continued in possession of the land in dispute even till today, the threatened injury of dispossessing the petitioners clearly gave a recurring cause of action to them and when they represented the plaint to the Collector, assuming it was represented on 15.10.1981, it could not be dismissed as time barred. When the Gram Panchayat took the stand that it was never the intention of this Court that the plaint should be taken back from the Civil Court and should be presented to the Collector, the petitioners filed a petition under section 11 of the Act and in that stated the cause of action which has been reproduced above, to the effect that their possession was threatened on 16.5.1982 and from that date their application was within limitation. Therefore, considering all these matters, we are clearly of the view that the plaint, which was returned by the civil Court and which was presented before the Collector, was not time barred; nor the fresh application filed under section 11(1) of the Act for determination of title, was incompetent.

10. Now, if deserves to be considered whether against interim order passed by the Collector staying dispossession of the petitioners in exercise of its inherent jurisdiction, was appealable under section 11(2) of the Act. A reading of section 11(2) of the Act, which has been reproduced above, clearly shows that appeal has been provided against an order passed under section 11(1), besides order passed under other provisions of the Act. There is no specific provision like Order 39, Rules 1 and 2 or Order 41 rule 5 of the Code of Civil Procedure, either under the Act or the Rules framed thereunder for passing interim orders. In the absence of a specific provision any statutory authority deciding the question of title or civil rights, will have inherent jurisdiction to pass interim orders. Even under the Code of Civil Procedure, it has been ruled that orders passed in exercise of inherent jurisdiction are not appealable but the orders passed within the ambit of order 41 rule 5 or order 39 rules 1 and 2 of the Code of Civil Procedure, have been made specifically appealable under order 43 rule 1 of the Code of Civil Procedure. No such provision has been made under the Act or the Rules framed thereunder providing for appeals against interim orders. Therefore, no appeal was competent before the Commissioner and he clearly exceeded his

jurisdiction in entertaining the same and in reversing the interim order passed by the Collector. In a suitable case aggrieved person may file writ. Accordingly, the order of the Commissioner dated 16.3.1983 deserves to be quashed as being without jurisdiction. The resultant effect would be that the interim order granted by the Collector dated 25.8.1982 would continue till the final disposal of the question of title between the parties.

11. For the reasons recorded above, both the writ petitions are allowed and the orders of Commissioner dated 16.3.1983 and 5.5.1982 are that of the Collector dated 6.1.1982 are hereby quashed. The Collector, who is District Development and Panchayat Officer, Sangrur, is hereby directed to decide the question of title between the parties under section 11(1) of the Act on the basis of the plaint which was returned by the Civil Court as modified by the application filed under section 11(1) of the Act in accordance with law. The parties, through their counsel, are directed to appear before the said authority on 7.10.1983. However, the parties are left to bear their own costs.