
(1992) 07 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12337 of 1990

Sarwan Singh

APPELLANT

Vs

Gram Panchayat, Balad Kalan

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Citation : (1992) PLJ 532 : (1993) 1 RRR 540 : (1993) 1 RRR 314

Hon'ble Judges : H.S.Bedi J., J

Advocate : H.S. Dhillon, Advocate, Amarjit Markan, Advocate., Advocates for appearing Parties

Judgement

Harjit Singh Bedi, J.—The petitioners who claim to be proprietors of land situated in village Balad Kalan, Tehsil and District Sangrur, have impugned the order dated 20th June, 1990 (Annexure P1) whereby it has been held by the Director, Rural Development and Panchayats, Punjab, respondent No. 2 that the land in dispute being Shamlat Deh vested in the Gram Panchayat.

2. The facts of the case, relevant for its disposal are that after a chequered history in respect of the litigation between the parties, the matter was remanded by this Court in earlier writ petition for decision by the authorities under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") as to whether the land in question belonged to the proprietors or vested in the Gram Panchayat. The matter was taken up by the District Development and Panchayats Officer exercising the powers of Collector under the Act, who vide his order dated 5th May, 1986 (Annexure P2) recorded a finding that the land in question did not vest in the Gram Panchayat and he based this decision primarily on the fact that as per evidence produced by the petitioners/applicants before him, they had been in possession of the land prior to 1950. He also recorded a finding that the respondent Gram Panchayat had failed to produce any evidence in its favour despite the fact that about 35/40 opportunities had been given between 7th November, 1983 to 15th January, 1985 for this purpose. It appears that after the decision of the Collector, the

Sarpanch of the Gram Panchayat, who is stated to have connived with the petitioners, failed to file an appeal before the Director, Rural Development and Panchayats exercising the powers of Commissioner under the Act and ultimately, it was the Administrator, who had been appointed to look after the affairs of the Panchayat, who filed the appeal, although belatedly. The Director condoned the delay in filing the appeal and reversed the finding of the Collector holding that the Sarpanch had connived with the petitioners and, as such, had not produced any evidence and in any case the petitioners were shown in the revenue records as Chakotedars under the Gram Panchayat on the land in dispute and, as such, could not now claim to be its owners. Certain other documents were also placed on record and after perusing the Panchayat the impugned order Annexure P1 was passed.

3. It has been argued by the learned counsel for the petitioners that the decision of the case was required to be made on the basis of the definition of Shamlat Deh given as in Section 2(g) of the Act and for that purpose the definition as also the evidence produced was required to be discussed and considered. He has urged that elaborate written arguments had been filed before the Director, copy of which is Annexure P4 to the petition, but the same were not considered by the Director while disposing of the appeal. He has also urged that the finding that the petitioners were lessees on the land in dispute under the Gram Panchayat, is not based on any evidence.

4. Shri A.S. Cheema, learned Senior Advocate, appearing for the respondents in some of the cases, has urged that the fact that petitioners were Chakotedars under the Gram Panchayat, is based on evidence and, as such, should not be disturbed.

5. After hearing counsel for the parties, I find that this petition deserves to succeed. It is significant that the order of the Collector is based virtually on an appreciation of oral evidence of the respondent and it was for the first time before the Director that the question, as to whether the petitioners were in fact lessees, had been raised. It is stated that even in the earlier civil litigations between the parties the respondents had not taken the stand that petitioners were lessees on the land in dispute. There also appears to be some effort on the part of the Gram Panchayat at one stage to favour petitioners with the result the requisite and proper evidence which ought to have been produced was not placed before the Collector. The fact, however, remains that the Director has made out a completely new case which was neither pleaded in the written statement nor was taken at an early stage. It is also clear to me that the elaborate written arguments filed by the counsel for the petitioner (Annexure P4) have not been discussed and considered while passing the impugned order which is stated to have been kept reserved for a long time and thereafter pronounced.

6. In view of what has been stated above, the present petition is allowed, Annexure P1 is quashed and the case is remanded to the Director, Rural Development Panchayat, Punjab, for fresh decision. It is, however, made clear

that if the Director feels the necessity of taking evidence, he may do so himself or have it done through the Collector. No costs.

7. The parties are directed to appear before the Director on 25th September, 1992.