
(2012) 04 P&H CK 0139

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 2250 of 2011 (O and M)

Sham Pal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A(1), 13B, 13B(1), 13B(2), 2(g)

Citation : (2013) 169 PLR 398

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : Rakesh Nagpal, for the Appellant;

Judgement

Satish Kumar Mittal, J.—Legal representatives of Karan Singh have filed the instant Letters Patent Appeal against the order dated 18.7.2011 passed by the learned Single Judge, whereby the writ petition (CWP No. 8469 of 2010) filed by Karan Singh challenging the order dated 30.9.2005 passed by the Assistant Collector, 1st Grade, Sonapat; order dated 26.10.2006 passed by the Collector, order dated 5.9.2008 passed by the Commissioner, Sonapat Division, Sonapat as well as the order dated 10.3.2010 passed by the Financial Commissioner, Haryana, has been dismissed. Though this appeal is barred by limitation, and along with the appeal, the appellants have filed an application (CM No. 6067 of 2011) for condonation of 46 days" delay in filing the appeal, yet without taking the said delay into consideration, we have heard the learned counsel for the appellants on merits and gone through the impugned order passed by the learned Single Judge.

2. In this case in the year 1994 the Gram Panchayat of Village Kumashpur filed an application u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 [As Applicable to Haryana] (hereinafter referred to as "the Act") for eviction of Karan Singh from the land in dispute alleging therein that the said land vested in the Gram Panchayat and the possession of said Karan Singh was illegal and

unauthorized. Twice, the Assistant Collector 1st Grade dismissed the said application and, twice, those orders were set aside by the Collector and the matter was remanded. Finally, the Assistant Collector 1st Grade vide his order dated 30.9.2005 allowed the application of the Gram Panchayat and ordered the eviction of Karan Singh (since deceased) from the land in question after coming to the conclusion that as per the revenue record the land in question belonged to Shamlat Thola Haridhan and Khana and was being used by the proprietors and non-proprietors as Banjar Kadim Charand, therefore, in view of the provisions of Section 2(g)(3) of the Act, such land was Shamlat Deh and vested in the Gram Panchayat. By finding the possession of the predecessor of the appellants as illegal and unauthorized the Assistant Collector 1st Grade ordered his ejectment from the land in question.

3. Feeling aggrieved against the aforesaid order, the predecessor of the appellants filed an appeal before the Collector. The said appeal was dismissed on 26.10.2006 and the order of the Assistant Collector 1st Grade was confirmed. The predecessor of the appellants filed a revision before the Commissioner challenging the order of the Collector. The Commissioner dismissed the revision in view of Proviso to Section 13-B(1) of the Act on account of non-deposit of amount of penalty. He also observed that on merits also the predecessor of the appellants was having no case because as per the entries in the Shart-wazibul-arz and as per Jamabandi for the year 1956-57 the land in question was reserved for common purposes of the village community as Charand, therefore, as per Section 2(g)(3) and (5) of the Act such land vested in the Gram Panchayat. It has also been observed that the possession of the predecessor of the appellants on the land in question was unauthorized and illegal, thus he had rightly been ordered to be evicted by the Collector from the said land. It is pertinent to mention here that in view of Section 13-C of the Act, the order of the Commissioner was final.

4. Thus, feeling aggrieved against the aforesaid orders dated 26.10.2006 and 5.9.2008 passed by the Collector and the Commissioner, respectively, the predecessor of the appellants filed CWP No. 7276 of 2009 which was dismissed as withdrawn on 14.5.2009 with liberty to avail the alternative remedy. The order passed reads as follows:-

The Collector and Commissioner have currently recorded a finding of fact that the land is described as a "Charand" in the revenue record and have made reference to the jamabandi for the year 1956-57. In this jamabandi entry, the land is described as Banjar Kadim Charand. Reference is also made where it is noticed that the land in dispute was reserved for common purposes of the village community. As per the entries in the Shart-Wahibularz, this was to be used for Biswedars and Non-Biswedars. Counsel for the petitioner, however, contends that earlier it was found that the land is described as Thola and thus would not fall within the definition of shamlat for the panchayat to make an application in this regard. This finding of fact has subsequently been reversed in the impugned

order. The Writ Court certainly would not be an appropriate forum to re-appreciate the evidence and facts to come to any different conclusion. I am, thus, not inclined to interfere in the impugned orders passed by the Collector and the Commissioner.

At this stage, counsel for the petitioner seeks permission to withdraw this writ petition as he has an alternative remedy to approach the Financial Commissioner against the impugned order.

Dismissed as withdrawn with liberty as prayed for.

5. From the aforesaid order, it is clear that the learned Single Judge of this Court had almost decided the writ petition on merits and came to the conclusion that the impugned orders passed by the Collector and the Commissioner are not liable to be interfered with, but at that stage, counsel for the petitioner sought permission to withdraw the writ petition with liberty to avail the alternative remedy to approach the Financial Commissioner against the impugned orders, though no such revision petition was maintainable.

6. Thereafter, a revision was filed before the Financial Commissioner which was dismissed vide order dated 10.3.2010 with the observation that in view of Section 13-C no revision lies against the orders of the Collector and the Commissioner.

7. When the said order was challenged before this Court, the learned Single Judge has dismissed the writ petition on the ground that once this Court in the earlier writ petition did not find any illegality in the orders passed by the Collector and the Commissioner, and was about to dismiss the writ petition, the same was withdrawn with liberty to approach the Financial Commissioner, when in view of Section 13-C, those orders could not have been challenged before the Financial Commissioner. Therefore, the learned Single Judge has rightly come to the conclusion that the Financial Commissioner was right while observing that no revision lies against the orders of the Collector and the Commissioner on a proceeding u/s 7 of the Act. It has been further observed by the learned Single Judge that impugning the orders of the Collector and the Commissioner amounts to review of the earlier order dated 14.5.2009 passed in writ petition.

8. After hearing the learned counsel for the appellants, we do not find any illegality in the order passed by the learned Single Judge, Undisputedly, against the order passed by the Assistant Collector 1st Grade on an application filed u/s 7 of the Act, the remedy of appeal has been provided u/s 13-B of the Act and the order of the Appellate Authority is final. In case the Assistant Collector 1st Grade has converted the proceedings in the title suit under the Proviso to Section 7 of the Act, then after filing of the appeal, the further remedy of revision has been provided before the Commissioner u/s 13-B(2). Against the order of the Commissioner, as per Section 13-C no further appeal or revision has been provided under the Act. In the present case, the proceedings were filed u/s 7 of the Act, but the issue of title was decided while converting the proceedings in the

title suit and a finding was recorded that the land in dispute vests in the Gram Panchayat. The order of the Assistant Collector 1st Grade was upheld in appeal as well as revision filed by the predecessor of the appellants u/s 13-B and thereafter in view of Section 13-C no further appeal or revision is available under the Act. In case of the title suit filed u/s 13-A(1) of the Act, the remedy of appeal is provided to the Commissioner and revision before the Financial Commissioner u/s 13AA(1) and 13AA(2), respectively. This is not the position in the present case. Therefore, against the orders of the Collector and the Commissioner, no appeal or revision was available. When the learned Single Judge was going to dismiss the earlier writ petition filed by the predecessor of the appellants finding no illegality in those orders, he withdrew the writ petition with liberty to approach the Financial Commissioner without realizing the fact that Financial Commissioner has no jurisdiction to entertain revision against the orders of the Collector and the Commissioner passed on a proceeding u/s 7 of the Act. Thus, in our view, the learned Single Judge has rightly observed that in view of the earlier order passed in the writ petition the predecessor of the appellants was trying to review the said order by filing the second petition. The reasoning given by the learned Single Judge is perfectly valid. Even as per the revenue record the land in question belongs to Shamlat Thola Haridhan and Khana and was being used by the proprietors and non-proprietors as Banjar Kadim Charand, therefore, in view of the definition of Section 2(g)(3) of the Act, such land is Shamlat Deh and vests in the Gram Panchayat. During the course of arguments, learned counsel for the appellants heavily relied upon the collusive decree dated 7.6.1990, in which the Gram Panchayat was not even a party, by contending that since the other co-sharers, who were similarly situated, have been declared owners, the appellants be also declared owners of the land in dispute. This contention of the learned counsel is wholly without any substance because, firstly, under the Act the Civil Court has no jurisdiction to decide the question whether the particular land is Shamlat Deh as defined in Section 2(g) of the Act or is vested in Gram Panchayat; and secondly, the collusive decree passed by the Civil Court, where the Gram Panchayat was not a party, is not binding on the Gram Panchayat and cannot be relied upon.

In view of the aforesaid, we do not find any illegality in the impugned order passed by the learned Single Judge. Dismissed.