
(2004) 03 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2731 of 1985

Shankar and Others

APPELLANT

Vs

Joint Director, Panchayats and Others

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 7

Citation : (2004) 137 PLR 345 : (2004) 3 RCR(Civil) 441

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : M.S. Kang, for the Appellant; S.K. Bawa, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This petition is directed against the order dated 8.2.1985 (Annexure P3) vide which Joint Director, Panchayats, Punjab (exercising the powers of Commissioner) (respondent No. 1) allowed the appeal filed by respondent Nos. 4 and 5 u/s 11(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "the Act"), set aside order dated 9.8.1984 passed by District Development and Panchayat Officer (exercising the powers of Collector), Jalandhar (respondent No. 2) and directed that possession of the land measuring 59 kanals 4 mafias comprised in khasra No. 37 be handed over to the Gram Panchayat.

2. The facts:-

Respondent Nos. 4 and 5 filed a petition u/s 11 of the Act for restoration of the possession of the land comprised in khasra No. 87 situated in village Chak Guru to the Gram Panchayat by alleging that the petitioners had unauthorisedly occupied the same. On notice, the petitioners appeared and filed reply to contest the application of respondent Nos. 4 and 5. They claimed that they had purchased the land in dispute from Smt. Harbhajan Kaur (respondent No. 3). On being directed by respondent No. 2, they filed an affidavit that they will not make

encroachment on the panchayat land. Thereafter, respondent No. 2 disposed of the petition of respondent Nos. 4 and 5 vide his order dated 9.8.1984, the relevant portion of which is reproduced below;-

"Today both parties are present along with their respective counsels. The respondents said that they are in possession of the land which they have purchased from the respondent No. 1. They also admitted that they are not making any encroachment on the panchayat land. They were directed to file an affidavit that they are not making any encroachment on panchayat land. They filed an affidavit on the stamp paper amounting to Rs. 3/- that they are in possession of the land which has been purchased from the Sodian family, The detail is given below;-

- a) Shri Janak Raj, respondent No. 4, 5 marlas
- b) Shri Prem Lal, respondent No. 3, 5 marlas
- b) Shri Shankar respondent No. 2, 1 K 1-6 marlas

This land was purchased in the year 1983 and since then this land is in occupation of the respondents.

The respondents will not encroach upon any land except which has been purchased by them.

The affidavit of the above respondents No. 2, 3 and 4 is accepted and restrained to encroach upon any land belongs to village panchayat. The proceedings of the case are closed. File be consigned to the record room".

Dis-satisfied with the order of respondent No. 2, respondent Nos. 4 and 5 filed an appeal u/s 11(2) of the Act which was allowed by respondent No. 1. He over ruled the objection raised on behalf of the petitioners to the locus standi of respondent Nos. 4 and 5 and held that they were entitled to invoke the provisions of Section 11 of the Act. On merits respondent No. 1 held that the land used or reserved for the benefit of the village community forms part of shamlat deh and is vested in the Gram Panchayat and respondent No. 3 had no right to sell the same to the petitioners. He accordingly allowed the appeal filed by respondent Nos. 4 and 5 and directed that possession of the suit land be immediately handed over to the Gram Panchayat.3. Shri M.S. Kang, learned counsel for the petitioners submitted that he is not pressing the petitioners challenge to the locus standi of respondent Nos. 4 and 5 to file petition u/s 11(1) of the Act, but argued that the impugned order is liable to be set aside because while indirectly declaring the Gram Panchayat as the owner of the disputed property, respondent No. 1 did not consider the evidence produced by the petitioners in the form of sale deed showing the purchase of land from respondent No. 3 and the affidavit filed by them that they had not encroached upon the panchayat land.

4. Shri S.K. Bawa, learned counsel for respondent Nos. 4 and 5 defended the

impugned order and argued that the land reserved for public purposes will be deemed to have vested in the Gram Panchayat by virtue of Section 2(g) of the Act and respondent No. 1 did not commit any illegality by directing the petitioners to hand over possession thereof to the Gram Panchayat.

5. I have given serious thoughts to the respective arguments and perused the record.

6. Since Shri Kang has not pressed the petitioner's challenge to the locus standi of respondent Nos. 4 and 5 to file petition u/s 11(1) of the Act, I do not consider it necessary to examine the issue in detail. However, at the same time, I am inclined to observe that the petitioners challenge to the maintainability of the petition filed by the respondent No. 4 and 5 was wholly misconceived and respondent No. 2 did not commit any jurisdictional error by entertaining the same. Sections 7 and 11 of the Act, which have bearing on this issue, read as under:-

"7. Power to put the panchayat in possession of Shamilat deh.- (1) The Collector shall, on an application made to him by a panchayat or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the Collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

(2) An appeal against the order of the collector under Sub-section (1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against.

11. Decision of claims of right, title or interest in shamilat 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 Sub-section (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 reserve the order appealed from and may pass such order as he deems fit."

7. A reading of the plain language of the two sections reproduced above shows that while a petition u/s 7 can be filed for securing possession of the land vested in a Gram Panchayat only by it or an officer duly authorised by the State

Government in this behalf, a petition u/s 11 of the Act can be filed by any person claiming right, title or interest in any land vested or deemed to have been vested in the Panchayat. The use of different phraseologies and expressions in the two sections, which largely operate in the same field, shows that where the question of title of public land, is involved, the legislature did not want to restrict the locus standi to the Gram Panchayat or an officer authorised by the State. Instead, it has been considered proper to confer locus standi on any perspn interested in the land of the Gram Panchayat. If Section 11(1) is read with other provisions of the Act, which was enacted to consolidate and amend the law regulating the rights in shamlat deh and abadi deh, it becomes clear that a wider locus standi has been conferred upon the villagers to see intervention of the Collector and/or of the appellate authority to protect the public land vested or deemed to have been vested in the Gram Panchayat.

8. However, I find considerable merit in the petitioners challenge to the directions given by respondent No. 1 for restoration of the possession of the disputed land to the Gram Panchayat. It appears that while passing the impugned order, respondent No. 1 was greatly influenced by the fact that the land in dispute was vacant one. He felt that the same would be deemed to have been vested in the Gram Panchayat. In this process, respondent No. 1 completely ignored the evidence produced by the petitioners before respondent No. 2 to show that they had purchased the land from respondent No. 3. In my opinion, failure of respondent No. 1 to consider the evidence produced by the petitioners in support of their claim has the effect of vitiating order Annexure P3.

9. Hence, the writ petition is allowed. Order Annexure P3 is quashed and the case is remanded to respondent No. 1 for fresh decision of the appeal filed by respondent Nos. 4 and 5 u/s 11(2) of the Act. The parties are directed to appear before respondent No. 1 on 3.5.2004. It is hoped that the officer concerned will decide the appeal of the petitioners afresh within next three months.