

(2011) 08 P&H CK 0200
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1466 of 2011 (O and M)

Shish Ram and others

APPELLANT

Vs

The Assistant Collector, Narnaul, Distt. Mohindergarh and
others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 7

Citation : (2011) 08 P&H CK 0200

Hon'ble Judges : Jasbir Singh, J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jasbir Singh, J.—By filing this appeal, the appellants have laid challenge to an order passed by the learned Single Judge on 19.5.2011, dismissing CWP No.12987 of 1992 filed by them

2.As per record, in that writ petition, the appellants had laid challenge to an order dated 30.6.1992 passed by the Collector vide which an order dated 8.6.1989, declaring the appellants as owners of the land in dispute, was reversed. Record reveals that the appellants filed a suit by invoking the provisions of Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (in short, the 1961 Act) with a prayer that they be declared owners of the land measuring 23 Kanals and 17 Marlas, description of which is given in the order dated 8.6.1989 (P-1). It was contention of the appellants that they are in cultivating possession of the land since from 26.1.1950. They are co-sharers in the Shamlat land of the village, as such, they have become owners of that land. It was prayed that declaration, in that regard, be issued in their favour.

3. The Assistant Collector, First Grade, vide the order mentioned above, decided in their favour. Their suit was decreed and they were declared owners of the land in dispute. The Gram Panchayat - respondent No.3 went in appeal, which was allowed by the Collector, on 30.6.1992. When setting aside an order passed in

favour of the appellants, the Appellate Authority observed as under:

After hearing the arguments advanced by the learned counsel for both the parties and after perusing the order of the Assistant Collector First Grade and the record placed on the file, I have reached to the conclusion that the respondents have already been dispossessed vide order dated 19.2.1968 passed by the Assistant Collector First Grade. No appeal has been filed against this order. This fact was not brought to the notice of the lower court by them. If they would have brought this fact to its knowledge then the case probably would have been decided according to earlier order. If Prabhati son of Jodha and Parbhati son of Chuha is some person and has been wrongly written in the record then respondents should have got this stray entry corrected but no proof of doing this has been presented. It is also revealed from the record that this land has been released on lease and numbers also kept on changing. The respondents have also not established the possession prior to 26.1.1950. As far as the question of dismissing the appeal for non presentation of the copy of the decree sheet is concerned, the same could not be presented because of non-preparation by the lower court and it is not proper to dismiss the appeal only for this reason when the respondents have already been dispossessed from this land. In this way, it is not proper to indulge in necessary litigation time and again. Thus this appeal is accepted by setting aside the impugned order. Both the parties shall bear their expenses

4. Thereafter, the appellants came to this Court by filing CWP No.12987 of 1992, which was dismissed by the learned Single Judge vide the impugned order.

5. The learned Single Judge noted it as a matter of fact that the appellants have failed to prove on record that they were in cultivating possession of the land 12 years prior to the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954.

6. Before us, it is argued by the learned counsel for the appellants that cultivating possession of the appellants, over the land in dispute, is proved since from 26.1.1950. As such, declaration of ownership was rightly given to them by the Assistant Collector, First Grade vide order dated 8.6.1989.

7. We feel that the argument raised by learned counsel for the appellants is liable to be rejected. To assert that the appellants were in cultivating possession over the land in dispute, a copy of the Jamabandi has not been put on record. The Collector in his order dated 30.6.1992 has categorically recorded that the appellants have failed to prove their continuous cultivating possession over the land in dispute. It was also noted that in the year 1968, an order was passed against Parbhati son of Chuha (predecessor in interest of the appellants) for his ejectment from the land in dispute, as per provisions of Section 7 of the 1961 Act. Against that order, no appeal was filed and the order has become final. This fact was concealed when the suit was filed. Not only as above, it was also noted

that in the successive Jamabandis starting from the year 1951-52, the land is not shown continuously in the name of the appellants or their predecessor in interest. There is nothing on record to show to the contrary.

8. Dismissed.