

(2010) 09 P&H CK 0454

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No's. 12381 of 2004, 11963 of 2003, 665, 7516, 7558, 11755 of 2005 and 9259 of 2006

Shiv Kumar and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 18
Haryana Common Purposes Land (Eviction and Rent Recovery) Act, 1985 — Section 4, 7
Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 — Section 2, 23A, 3

Citation : (2011) 161 PLR 291

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jasbir Singh, J.—By this common order, we propose to dispose of C.W.P. Nos. 12381 of 2004, 11963 of 2003, 665, 7516, 7558, 11755 of 2005 and 9259 of 2006 as identical questions of law and facts are involved therein. For the facility of dictation, facts are being taken from C.W.P. No. 12381 of 2004.

2. In all these cases, the Gram Panchayat is admittedly entered as owner of the land in dispute, in the revenue record. By filing these writ petitions, the Petitioners have made a prayer to issue a writ of certiorari to quash order dated 28.5.2004 (Annexure P-7) passed by the Collector (Respondent No. 3) ordering their ejection from the land in dispute. Further challenge has been made by them to the order dated 16.7.2004 (Annexure P-8) passed by Commissioner-Respondent No. 2 dismissing their appeal. It has also been prayed in these writ petitions that directions be issued to the Respondents to allot/lease/sell land in dispute to the Petitioners in terms of the policy issued on 16.10.2000 by the State of Haryana.

3. As per admitted facts on record, in/the year 1975, Respondent No. 4-Gram Panchayat leased out 29 plots measuring 18" x 11" each to the many persons whose names were found mentioned in resolution No. 47 dated 20.12.1978 (Annexure P-2). It has come on the record that initially, the land was leased out for a period of 5 years at the rate of Rs. 12/- per month and it continued to be extended as such upto the year 1993.

Admittedly, after the year 1993, lease was not extended in favour of the Petitioners. It has also come on record that most of the Petitioners are not the original lessees. They either have purchased or got on rent the land/shops from the original lessees. It is also an admitted fact that encroachment was made by all the Petitioners and excess land was added to their shops. When ejectment application was filed the shops were existing in an area of 37" x 11", which clearly indicates that an area measuring 19" x 11" was encroached upon by all the Petitioners. It is also not in dispute that after the year 1993, the Petitioners had not paid any lease amount to the Gram Panchayat. Compelled under the circumstances, the Gram Panchayat filed an application for their ejectment by invoking the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (in short the 1972 Act).

4. After notice and recording evidence of both the parties, application of the Gram Panchayat was allowed and it was found as a matter of fact that the Petitioners were in unauthorized occupation of the land owned by the Gram Panchayat. Their ejectment was ordered vide order dated 31.3.2003 (Annexure P-5). Petitioners went up in appeal which was allowed by the Commissioner and the case was remitted to the Collector for fresh adjudication vide order dated 18.12.2003 (Annexure P-6). Vide impugned order dated 28.5.2004 (Annexure P-7), the Collector again ordered their ejectment by observing as under:

Learned Counsel for the parties were heard and the evidence produced by the parties have been examined. The court also directed both the parties to be present at the time of demarcation. Besides this, Respondents have not deposited the lease amount since 31.12.1999. So, the illegal possession of the Respondents on the land in dispute is proved. It was clearly stated in the resolution of the Gram Panchayat a condition was laid down that if the Respondent did not deposit the half yearly lease instalments, then the Gram Panchayat would have every right to evict the lessee. According to demarcation report, Respondents have illegal possession over 22 x 11 Sq. Feet whereas the Gram Panchayat had given 18" x 11" land in Khasra No. 94/1 to the Respondent for 5 years in the year 1975. Thereafter, Gram Panchayat vide its resolution dated 5.4.1983 had extended the lease up to 31.5.1993. The objection raised by the Counsel for the Respondent that Sh. Sammay Singh Sarpanch is suspended and his evidence is immaterial, does not carry any weight because in all the cases, Examination-in-Chief Sh. Sammay Singh Sarpanch has been carried out and the Counsel for the Respondent has also cross examined him and the Counsel again called him for cross regarding the selling on land on minimum price according to

Government policy. The Respondent has not produced any evidence, so I forthwith evict the Respondents from the entire land and also order them to deposit the penalty of Rs. 20/-per Sq. Ft. since 1.1.1999 for use and occupation. Respondents are further ordered to hand over the possession to the Gram Panchayat within 30 days.

5. Petitioners went up in appeal which was dismissed by the Commissioner vide impugned order dated 16.7.2004 (Annexure P-8. Hence these writ petitions.

6. Counsel for the Petitioners has vehemently contended that orders passed by the Collector and also the Commissioner were without jurisdiction as they were not competent to entertain application filed by the Gram Panchayat-Respondent No. 4 under the provisions of the 1972 Act. It was suggested that in case any action was to be taken against the Petitioners, the same should have been taken by invoking the provisions of the Punjab Village Common Lands Act, 1961 (in short "1961 Act). To say so, reliance was placed on a Division Bench judgment of this Court in Banwari v. The State of Haryana and Ors., (C.W.P. No. 7421 of 2007decided on 21.8.2008) and also on a judgment of the Full Bench of this Court in Roshan alias Roshan Lal and Others Vs. Secretary, Govt. of Haryana Development and Panchayat Deptt. and Others, . It was further argued by counsel for the Petitioners that the Petitioners were ready and willing to make payment of the rent amount and further that their unauthorized occupation was regularized by the Gram Panchayat by passing a resolution on 18.4.2003 earlier to the ejectment and as such, the impugned orders passed were not justified. A prayer has been made that the writ petitions be allowed and the orders under challenge be quashed.

7. It has been vehemently contended by counsel for the Gram Panchayat by stating that the land in dispute was reserved during the consolidation proceedings for common purposes i.e. as a resting place for animals (Baithak Maveshian). By making reference to the provisions of the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985, counsel argued that the provisions of 1972 Act were rightly invoked for evicting the Petitioners. Counsel also placed reliance on a Division Bench judgment of this Court in Gram Panchayat Vs. Kanshi Ram and Others, . He further argued that in the original lease, it has been specifically provided that the lessee shall not be entitled to sublet the land in dispute, however, in violation to the above said provisions, the land/shops were either sold or leased out to the Petitioners by the original lessees. Counsel further argued that on account of unauthorized occupation of land measuring 22 x 11 feet by the Petitioners and raising construction thereon, the Petitioners were liable to be ejected from the property in dispute.

8. After hearing counsel for the parties, we are not convinced with the arguments raised by counsel for the Petitioners. At the time of arguments, copy of the jamabandi for the year 2003-2004 has been shown to us in which following facts regarding the land in dispute are mentioned:

9. A reading of the facts clearly indicates that the Gram Panchayat is owner of the land in dispute which fact even has not been denied by the Petitioners. The land was reserved as a resting place for animals of the village. In the order of the Collector dated 31.3.2003, it is specifically mentioned that the land was reserved for common purposes. The nature of the land as mentioned in the Jamabandi clearly indicates that it was not Shamlat Deh. It was reserved during consolidation proceedings, for common purposes, after imposing pro rata cut on the right holders. If that is so, in terms of the provisions of 1985 Act, the proceedings were rightly initiated by invoking the provisions of 1972 Act. The Object and Reasons of the 1985 Act reads thus:

Statement of Object and Reasons.- The Panchayats and the Government are facing difficulty in the eviction of unauthorized occupants from the lands reserved for common purposes under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as only the management of such lands has been given to Panchayats/Government and the ownership vests in the proprietors. It is intended to bring such lands within the ambit of Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 so as to enable the Panchayats/Government to start eviction proceedings against unauthorized occupants. Hence this Bill.

10. Definition of "common purposes land" has been defined as under in the above said Act:

2. Definition.- In this Act unless the context otherwise requires, "common purposes land" means the land reserved for the common purposes of a village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the management and control whereof vests in the State Government or the Gram Panchayat u/s 23-A of the aforesaid Act.

11. Section 2 defines the "common purposes land" and Section 3 of the above said. Act clearly indicates that for such like lands, proceedings for ejectment are to be initiated under the provisions of 1972 Act. A similar controversy came up for hearing before this Court in Kanshi Ram's case (supra) wherein taking note of the 1985 Act, a Division Bench of this Court observed as under:

5. The Haryana Legislature had promulgated the Haryana Common Purposes Land (Eviction and Rent Recovery) Act, 1985. This Act had received the assent of the President of India on December 4, 1985. It was published in the Haryana Gazette (Extra) Legislative Supplement, Part I dated December 26, 1985. This Act was promulgated to "provide for eviction of unauthorized occupants from land reserved for common purposes under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948." Section 2 defines

the "common purposes land" to mean "the land reserved for the common purposes of a village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the management and control whereof vests in the State Government or the Gram Panchayat u/s 23-A of the aforesaid Act." Section 3 provides that "notwithstanding anything contained in any law for the time being in force, the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, shall apply to common purposes land which shall be deemed to be public premises for the purpose of the said Act." Thus, the 1985 Act introduces a fiction. It provides that the land reserved for common purposes in a village shall be deemed to be public premises for the purposes of 1972 Act. It is true that the land reserved for common purposes may not strictly fall within the definition of "public premises" as contained in Section (2) of the 1972 Act. However, this lacuna was plugged by making the provision in Section 3 of the 1985 Act. u/s 3 of the 1972 Act, a person is deemed to be in unauthorized occupation of public premises on the determination of the lease in accordance with the terms thereof. Still further, on a harmonious consideration of the provisions contained in the 1972 and 1985 Acts, it is clear that the State Government or the Panchayat which is to manage the land may not be its owner. Yet, the land falls within the definition of "Public Premises" and eviction of the unauthorized occupant as also recovery of damages etc. can be sought under the provisions contained in Sections 4 and 7. This is practically what the Commissioner and the Collector had permitted to be done in the present case.

12. Reliance of counsel for the Petitioners on the ratio of the judgments in Roshan @ Roshan Lal's and Banwari's cases (supra) is of no help to the Petitioners. In those cases, it was found as a matter of fact that the land in dispute was in the nature of Shamlat Deh. If that was so, it was rightly held that the proceedings should have been initiated under the provisions of 1961 Act. Situation in the present case is altogether different. The land in dispute is shown in individual ownership of the Gram Panchayat. If that is so, the Gram Panchayat is competent to invoke the provisions of Public Premises Act and it has rightly been done in the present case. Further contention of counsel for the Petitioners is that the Petitioners are ready and willing to purchase the land. However, in that regard, no prayer was made before the Authorities below and thus, in the absence thereof, no directions, as sought for, can be issued by this Court. If the case of the Petitioners is covered by the policy/rules, the Petitioners should have applied to get the relief in terms of the policy framed in that regard.

13. Further the very act of the Petitioners in encroaching upon a vast track of land of the Gram Panchayat disentitles them from getting an equitable relief in exercise of the powers under Article 226 of the Constitution of India. Furthermore, it has come on record that after the year 1993, none of the Petitioners has even paid a penny to the Gram Panchayat and they are using the property/shops unauthorizedly. If that is so, no relief can be granted to the Petitioners.

14. In C.W.P. No. 11963 of 2003, the Commissioner has only remanded the case to the Collector to take a fresh decision after examination of revenue record and hearing the parties. The order passed is perfectly justified and needs no interference.

15. In view of the facts mentioned above, these writ petitions fail and are dismissed.