
(1989) 11 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4444 of 1987

Shri Piara Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 8(3)

Citation : (1990) 97 PLR 577

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : C.P. Sapra, for the Appellant; Y.K. Jain and Sanjay Vij, for the Respondent

Judgement

G.R. Majithia, J.—This judgment will dispose of C W. P. No. 4444 of 1987 and C.W.P. 5442 of 1986 as Common questions of law and fact are involved.

2. I have alluded to the facts as given in C.W.P. No. 4444 of 1987. Piara Lal (hereinafter referred to as the petitioner) filed an application u/s 5 of the Punjab Village Common Lands (Regulation) Act 1961 (for short, the Act) against respondent No. 4, Puran, on the ground that the latter was in unauthorised occupation of Shamlat land. The application was accepted by the Collector, Sonapat vide his order dated April 16, 1963 and respondent No. 4 was ordered to be ejected from the disputed land. The order of the Collector, Sonapat was affirmed by the higher authorities vide orders passed on July 2, 1963 and June 30, 1964.

3. Respondent No. 4 filed a suit for an injunction against the orders of the revenue authorities on the ground that the land was not Shamlat Deh. The suit was dismissed by the Sub Judge 1st Class, Sonapat. However, his appeal was allowed by the Senior Subordinate Judge, Rohtak. The petitioner challenged the judgment and decree of the Subordinate Judge in R. S. A. No, 1071 of 1966 titled as Piara Lal and Ors. v. Puran. This appeal was allowed by a Single Judge of

this Court on February 10, 1977.

4. Respondent No. 4 again filed a suit and Section 13-A of the Act before the Assistant Collector 1st Grade, Sonapat regarding the same land for issuance of a declaration and permanent injunction to the effect that he was owner of the disputed land and Gram Panchayat be restrained from interfering in his peaceful possession as the disputed land was not Shamiat Deh. He also pleaded that he had constructed a house on it and the ejectment order passed u/s 7 of the Act was illegal. The Assistant Collector, I Grade, dismissed that suit vide order dated July 9, 1984, which on appeal, was affirmed by the Collector, Sonapat vide order dated March 31, 1986. The revision petition preferred by respondent No. 4 was also dismissed by the Commissioner, Ambala Division, Ambala vide order dated August 22, 1986.

5. In the meantime, respondent No. 4 filed an application before the director of Panchayats, Haryana, Chandigarh on November 3, 1984 praying that he should be allowed to purchase the said land under Rule 8 (3) of the Punjab Village Common Lands (Regulation) Rules 1964. This application was disallowed by the Director of Panchayats vide his order dated March 24, 1986 on the ground that respondent No. 4 was taking inconsistent stands.

6. Respondent No. 4 filed C. W. P No. 5442 of 1986 impugning the orders passed by the Revenue authorities. During the pendency of this writ petition, respondent No. 2, vide his order dated June 1, 1987, accorded approval for the sale of the disputed land to respondent No. 4 under Rule 8(3) of the Punjab Village Common Lands (Regulation) Rules, 1964. The petitioner has impugned the order of sale of the disputed land in favour of respondent No. 4 in Civil Writ Petition No. 4444 of 1987.

7. Respondent No. 4 has assailed the orders passed by the Assistant Collector, 1st Grade, Sonapat in the suit filed by him u/s 13-A of the Act as well as the orders passed by the Collector and the Commissioner in Civil Writ Petition No. 5442 of 1986.

8. I do not find any ground to interfere with the orders impugned in Civil Writ Petition No. 5442 of 1986. The authorities under the Act, on consideration of the entire material placed before them, held that the plaintiff was not the owner of the property in dispute and that Gram Panchayat was the owner of the disputed land. It was further found that the question of title was decided in Regular Second Appeal No. 1071 of 1966 decided on February 10, 1977.

9. Resultantly, C. W. P. 5442 of 1986 is dismissed.

10. As observed earlier, in Civil Writ Petition No. 4444 of 1987 the petitioner has assailed the order of the Director of Panchayats according approval for the sale of the disputed land to respondent No. 4 in the purport to exercise the powers under Rule 8(3) of the Rules. Rule 8 reads as under :-

"8. Use of Shamilat deh by residents :

(1) The land in Shamilat deh declared by the Panchayat by a resolution in writing as pasturable may be utilised by the residents of the village for-

(a) grazing purposes; or

(b) collecting dry fuel-wood from the jungle on terms laid down by the Panchayat.

2. Open spaces near the Abadi deh may, with the previous permission of the Panchayat and in the manner laid down by it be utilised by the inhabitants of the village for threshing the harvests.

3. All inhabitants of the village are entitled to purchase or take on lease non-cultivable Shamilat deh from the Panchayat for residential, commercial or industrial purposes, on the terms and for the "period settled by the Panchayat, but all such sales or leases shall be subject to the approval of the Director of Panchayat:

Provided that members of the Scheduled Castes of the village may take on lease non cultivable Shamilat land near the abadi deh upto one acre for installation of Maidani Brick Kiln at the rate of one faundered rupees per annum.

4. xx xx xx xx

The Panchayat may, by a resolution in writting, permit land which vests in the Shamilat deh for utilisation by the residents of the village for grazing purposes or for collecting dry fuel-wood. Under sub-rule (3) Rule 8 the inhabitants of the village are entitled to puachase or take on lease non-cultivable Siharnilat deh from the Panchayat for residential, commercial or industrial purposes, on the terms and for the period settled by the Panchyat. The sale or lease of non-cultivable Shamilat land by the Panchayat. is subject to the approval by the Director of Panchayats. The initiation for leasing out or for transfer of the Shamilat deh is to be made by the Panchayat. The terms and conditions of lease and of transfer are to be settled between the prospective buyer and the lessee by the Panchayat. The transation of lease or sale of the Shamilat deh so settled by the Panchayat has to be approved by the Director of Panchayats who may either accept the transfer by way of lease or sale or reject it But the rule does not entitle the Director of Panchayats to transfer Shamilat land of his own accord. The power to grant approval for transfer either by way of lease of sale of Shamilat Deh by the Panchayat does not enable the Director of Panchayats to exercise the power of transfer, which is his own discretion. The transfer of the disputed property in the instant case in the purport of exercise the, powers under sub-rule (3) of Rule 8 of the Rules by the Director of Panahayats is not warranted. The order passed by the Director of Panchayats is beyond the scope of sub-rule (3) of Rule 8 and is, thus, without jurisdiction and is resultantly quashed.

11. For the reasons aforementioned, C. W. P. No. 4444 of 1987 is allowed and G. W. P. 5442 of 1986 is dismissed. However, the parties are left to bear their own costs.