

(1993) 01 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 956 of 1984

Smt. Ram Piari and others

APPELLANT

Vs

Joint Director Panchayats Punjab Exercising the Powers of
Commissioner and others

RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 3, 5, 7
Punjab Village Common Lands (Regulation) Act, 1961 — Section 15, 2, 4, 7
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 20, 21

Citation : AIR 1993 P&H 259 : (1993) 104 PLR 121

Hon'ble Judges : G.R. Majithia, J; A.S. Nehra, J

Bench : Division Bench

Advocate : Gurdial Singh Jaiswal, for the Appellant; Mr. Gulshan Sharma, D.A.G., for the Respondent

Judgement

A.S. Nehra, J.—Civil Writ Petitions Nos. 956, 1039, 1040, 1320, 3529, 3638, 3639, 3640 and 3641 of 1984 involve a common question of law and fact. Therefore, we shall dispose of these writ petitions by this judgment.

2. The primary question of law that has been referred by the learned single Judge for consideration of the Division Bench is as to whether the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short, "the Eviction Act") is the statute or the Punjab Village Common Lands (Regulations) Act, 1961 (for short, "the Common Lands Act") that would cover a case of eviction of an alleged unauthorized occupant of Shamilat deh land.

3. The Gram Panchayat, respondent No. 3. filed an application under S. 5 and 7 of the Eviction Act before the Collector against the writ petitioner/writ-petitioners. The Collector ordered eviction on 22-4-1981. The appeal against the order of the Collector was dismissed by the Commissioner on 8-6-1983. Aggrieved by the orders passed by the Collector and the Commissioner, the

petitioner/petitioners filed these writ-petitions for quashing the impugned orders on the ground that the Authorities under the Eviction Act were not competent to evict the petitioner/petitioners from the shamilat deh land.

4. Mr. Gurdial Single Jaiswal, Advocate, learned counsel for the petitioners, has contended that the petitioners could be evicted only under S. 7 of the Common Lands Act.

5. "Premises" and "Public premises" have been defined under the Eviction Act as under :

"Premises" means any land, whether used for agricultural or non-agricultural purposes, or any building as part of a building and includes :--

(i) the garden, the grounds and out-house, if any, appertaining to such building; or part of a building; and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof."

"Public premises" means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government and includes any premises belonging to, or taken on lease by, or on behalf of -

(i) any Municipal Committee, Notified Area Committee, Zila Parishad, Panchayat Samiti, Panchayat or Improvement Trust;..."

6. Unauthorized occupants of public premises have been enumerated in S. 3 of the Eviction Act, which reads as under :--

"3. Unauthorised occupation of public premises.-

For the purposes of this Act, a person shall be deemed to be in authorized occupation of any public premises.-

(a) Where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) Where he being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises; or

(c) where any person authorized to occupy any public premises has. whether before or after the commencement of (his Act.-

(i) sublet, in contravention of the terms of allotment, lease or grant without (he permission of the State Government or of any other authority competent to permit such subletting, the whole or any part of such public premises, or

(ii) otherwise acted in contravention of any of the terms, express or implied under which he is authorized to occupy such public premises.

Explanation For the purpose of clause (a), a person shall not, merely by reason of the fact that he has paid any rent, be deemed to have entered into possession as allottee, lessee or grantee."

7. The learned counsel for the petitioners has argued that admittedly the land, in dispute, had been entered in the revenue record as shamilat deh. The Punjab Legislature had in 1961 enacted the Common Lands Act which is a complete Code with regard to the village common lands popularly known as shamilal deh. An elaborate procedure for vesting of village common lands in the Gram Panchayat, their management, ejectment of unauthorized occupants therefrom, right to transfer and utilization thereof and other cognate provisions have been enacted in this Act. Mr. Gurdial Singh Jaiswal, learned counsel for the petitioners, has drawn our attention to the various provisions of the Common Lands Act. S.2(g) of the Common Lands Act gives definition of the "shamilat deh". S. 3 of the Common Lands Act lays down that this Act shall apply to all lands which are shamilat lands. S. 4 of the Common Lands Act vests ownership of the shamilat deh of the village in the Gram Panchayat. It lays down that any land, which is included in the shamilat deh shall vest in the Panchayat. According to S, 5 of the Common Lands Act, the land vested in the Panchayat shall be utilized for the benefit of the inhabitants of the village. S. 7 of the Common Lands Act enacts the procedure for putting the Panchayat in possession of shamilat deh of the village, which had come to vest in it. Rule-making power is contained in S. 15 of the Common Lands Act, in exercise whereof; the Punjab Village Common Lands (Regulation) Rules, 1964, have been framed. According to Rules 20 and 21, the Collector, on an application under S. 7 of the Common Lands Act, may issue a notice in writing, calling upon the person concerned to show cause why an order to put the panchayat into possession of the land or other Immovable property vested in the Panchayat under the Common Lands Act, should not be made and, after recording evidence and holding such enquiry, as may be necessary, if he is satisfied that any person is in authorized occupation of the land may order the eviction of such person.

8. The Eviction Act received the assent of the President of India on 26-6-1973 and was deemed to have come into force on 27th day of November. 1959. The Eviction Act was framed to provide for the eviction of unauthorized occupants from the "public pre-mises" and for certain incidental matters. S. 3 of the Eviction Act provides that any person, who has entered into possession otherwise than under and in pursuance of any allotment, lease or grant, shall be deemed to be in unauthorized occupation. Under S. 4 of the Eviction Act, if the Collector is of opinion that any person is in unauthorized occupation of public premises situate within his jurisdiction and that he should be evicted, the Collector shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be made. Under S. 5 of the Eviction Act, if, after considering the

cause shown by any person in pursuance of a notice under S. 4 and any evidence he may produce in support of the same and after giving him reasonable opportunity of being heard the Collector can order the eviction if he is satisfied that such person is in unauthorized occupation of the public premises. Section 9 of the Eviction Act gives the person aggrieved by the order of the Collector right of appeal. Under S. 15 of the Eviction Act, the jurisdiction of the civil Court to entertain any suit or proceedings in respect of the eviction of any suit or proceedings in respect of the eviction of any person is barred. It is patent from a perusal of the provisions of the Common Lands Act that it has been enacted to consolidate and amend the law relating to shamilat deh and abadi deh. It defines the shamilat land. It vests the shamilat land in the Panchayat. It provides for regulation, use and occupation of the land vested in the Panchayat and ancillary matters. A provision has been made in S. 7 of the Common Lands Act authorizing the Collector to put the Panchayat into possession of the shamilat land after following the prescribed procedure.

9. Shamilat deh land belonging to the Panchayat is "public premises" in view of the clear definition given in S. 2 of the Eviction Act. Under S. 5 of the Eviction Act, persons in unauthorized occupation of the Shamilat deh land can be evicted therefrom.

10. Under both the Acts, i.e., the Common Lands Act and the Eviction Act, the procedure for eviction from the shamilat deh or other Panchayat land is almost similar. The right to appeal is also the same. The procedure for determination of the dispute is also the same. The petitioners have not been able to show that the procedure of ejectment under S. 5 of the Eviction Act is in any way less favourable or more harsh to the petitioners. It is not shown that prejudice has been caused to the petitioners by recourse to the proceedings under S. 5 of the Eviction Act instead of the Common Lands Act.

11. After hearing the learned counsel for the petitioners, we are of the view that the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, and the Punjab Village Common Lands (Regulation) Act, 1961, are special Acts and the Eviction Act does not exclude the application of the Common Lands Act. Unauthorized occupants can be evicted under both the Acts. The law at the present moment provides more than one remedy to a Panchayat for evicting the unauthorized occupants. Where two modes of eviction are provided and the Panchayat adopts one of the modes to eject an unauthorized occupant, which appears to the Panchayat to be more speedy, summary and effective, then it cannot be contended with any justification that the situation created offends against the right of a citizen as guaranteed to him under Art. 14 of the Constitution of India. As Government forms a class by itself and a speedier and more effective procedure can be provided for the Government to take action against the unauthorized occupants of its property, what is true about the Government is equally true about a Gram Panchayat which is a unit of the local self Government.

12. It has been established in due enquiry held by the competent officer that the land, in dispute, belongs to the Gram Panchayat. The petitioners singularly failed to establish that they were the owners of the land, in dispute. The land, in dispute, is owned by the Gram Panchayat. The petitioners were, therefore, clearly in unauthorized occupation of the land, in dispute.

13. For the foregoing reasons, we do not find any merit in these writ petitions and the same are dismissed with costs.

14. Petitions dismissed.