
(2011) 07 P&H CK 0210
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12035 of 2011 (O and M)

Sohan Lal and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 2(g), 7

Citation : (2012) 3 RCR(Civil) 101

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : J.K. Gurna, for the Appellant;

Final Decision : Dismissed

Judgement

Alok Singh, J.—Both the petitions involve identical questions of facts and law. Therefore, the same are being heard and disposed of together with the consent of learned counsel for the petitioners. For the sake of brevity, facts of case CWP No. 12035 of 2011 are being taken.

2. Undisputedly, a proceeding u/s 7 of the Punjab Village Common Land (Regulations) Act, 1961 (hereinafter referred to as the 1961 Act) was initiated against the petitioners wherein eviction order was passed against the petitioners on 27.10.2009. Undisputedly, appeal filed by the petitioners against eviction order was also dismissed vide order dated 4.2.2010. Petitioners thereafter, had filed petition u/s 11 of the 1961 Act seeking declaration of their ownership over the property in dispute and restraint order restraining the Gram Panchayat from interfering with their possession over the property in dispute on 17.5.2010. Undisputedly, prior to the institution of proceeding u/s 11 of the 1961 Act seeking declaration, warrant of possession was issued against the petitioners on 7.12.2009 pursuant to the eviction order dated 27.10.2009. As per the claim of Gram Panchayat, petitioners were dispossessed and possession was taken by the Gram Panchayat pursuant to the warrant of possession dated 7.12.2009.

3. Learned counsel for the petitioners has vehemently argued that any vacant land within the Lal Lakir (Abadi Deh) cannot be called Shamlat deh and does not belong to Panchayat; therefore, Panchayat has absolutely no ownership or authority to evict the petitioners therefrom. Both the Courts below have specifically held that the property in question is being used for common purposes. There is an old well and the property in question adjoins Khera; Gram Panchayat has built a road around this land with the government grant and religious ceremonies are being held over the property in dispute for the last so many decades.

4. Section 2(g) of the 1961 Act defines Shamlat Deh, which reads as under :-

Section 2(g). Shamlat deh" includes -

(1) lands described in the revenue records as shamlat deh exclude abadi deh;

(2) shamlat tikkas;

(3) Lands described in the revenue records as shamlat tarafs, patties, panes and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds within abadi deh or gorah deh; and

(5) Lands in any village described as banjar qadim and used for common purposes of the villages according to revenue records;

Section 85 of the Punjab Panchayti Raj Act reads as under :-

85. Property of Gram Panchayat. (1) A Gram Panchayat shall have power to acquire, hold and dispose of property and to enter into contract :

Provided that in all cases of acquisition or disposal of immovable property by the Gram Panchayat, it shall obtain the prior approval of the State Government.

(2) All property within the local limits of the jurisdiction of Gram Panchayat of the nature hereinafter in this section specified, other than property maintained by the Central Government or the State Government or a local authority or any other Gram Panchayat, shall vest in and belong to the Gram Panchayat, and shall, with all other property of whatsoever nature of kind which may become vested in the Gram Panchayat, be under its direction, management and control, that is to say -

(a) All common properties;

(b) All public streets, including the soil, stones and other materials thereof and all drains, bridges, culverts, street, erections, materials, implements and other things provided for such streets;

(c) All public channels, water courses, springs, tanks, ghats, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other water works whether made, laid or erected at the cost of the Gram Panchayat or otherwise, and all bridges, buildings, engineer works, materials and things connected therewith or appertaining thereto and also any adjacent land (not being private property) appertaining to any public tank;

Provided that water pipes and waterworks, connected therewith or appertaining thereto which with the consent of the Gram Panchayat are laid or set up in any street by the owners of any mill, factory, workshop on the like primarily for the use of their employees shall not be deemed to be public waterworks by reason of their use by the public :

(d) All public sewers and rains, and all works, materials and things appertaining thereto and other conservancy work:

Provided that for the purpose of enlarging, deepening or otherwise repairing or maintaining any such sewer or drain the sub-soil appertaining thereto shall also be deemed to vest in the Gram Panchayat.

(e) All sewage, rubbish and offensive matter deposited on streets or collected by the Gram Panchayat from streets, latrines, urinals, sewers, cesspools and other places;

(f) All public lamps, lamp-posts and apparatus connected therewith or appertaining thereto; and

(g) All buildings erected by the Gram Panchayat and all lands and buildings or the property transferred to the Gram Panchayat by the Central Government or the State Government or acquired by gift, purchase or otherwise for local public purposes.

(3) The State Government may, by notification, exclude any street, bridge or drain from the operation of this Act or of any specified section of this Act.

Provided that if the cost of the construction of the work had been paid from the Gram Panchayat Fund, such work shall not be excluded from the operation of this Act or any specified section of this Act, except after consideration of the views of the Gram Panchayat at a meeting.

(4) The State Government may allocate to a Gram Panchayat any public property situated within its local jurisdiction and thereupon such property shall vest in and come under the control of the Gram Panchayat.

5. From the combined reading of Section 2(g) of the 1961 Act and Section 85 of the Punjab Panchayti Raj Act, it can safely be held that all the properties which are being used for common purposes or are being used as public utility properties whether part of the Shamlat Deh or not, shall vest in the Gram Panchayat.

6. There is a concurrent finding of fact that the property in dispute is being used for the common purpose for worship, religious festivals and parking for the last so many decades and no material has been placed by the petitioners either before both the Courts below or before this Court to prove that the property ever belonged to the petitioners. Petitioners have not placed on record any document, electricity bill or water connection bill to show their long-standing possession. Moreover, instead of taking defence in a proceeding u/s 7 of the 1961 Act, petitioners have filed petition u/s 11 of the 1961 Act after the eviction order, which shows malafide on the part of the petitioners.

7. I do not find any reason to arrive at contrary view to the view taken by the Courts below.

8. Petitions stand dismissed. A photocopy of the order be placed on the file of the connected case.